

ITEM 6
TEST CLAIM
FINAL STAFF ANALYSIS

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Health and Safety Code Sections 25358.1 and 25358.7.1 as added by Statutes 1999, Chapter 23
Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668;
Statutes 2004, Chapter 689; Statutes 2007, Chapter 130: and, Statutes 2008, Chapter 148

California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70 as added or amended by Registers 78-05, 79-34, 80-12, 80-26, 81-19, 84-51, 86-44, 98-49, 98-52, 99-11, 99-14, 99-29, 99-31, 99-41, 99-52, 2000-02, 2000-11, 2000-26, 2000-29, 2000-37, 2000-52, 2001-01, 2001-24, 2001-30, 2001-33, 2001-51, 2002-15, 2002-18, 2002-33, 2002-37, 2002-38, 2002-40, 2002-45, 2003-03, 2003-06, 2003-07, 2003-08, 2003-09, 2003-18, 2003-24

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School Facilities Funding Requirements (02-TC-30, 02-TC-43 and 09-TC-01)

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Cases and Other Supporting Documentation

California Case Law

Candid Enterprises v. Grossmont Union High School District (1985) 39 Cal.3rd 878

Santa Barbara School District v. Superior Court (1975) 13 Cal.3d 315

Other Supporting Documents

2009-2010 State Budget, item 0985

Acquisition of Agricultural Land for a School Site (98-TC-04 and 01-TC-03)

Financing School Facilities in California (Brunner, Eric J., October 2006)

State Allocation Board, Annual Adjustment to School Facility Program Grants,
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State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

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Exhibit A

JUN 18 2003
COMMISSION ON
STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-30

Local Agency or School District Submitting Claim

CLOVIS UNIFIED SCHOOL DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, California 92117

Voice: 858-514-8605
Fax: 858-514-8645

Claimants Addresses

William C. McGuire, Associate Superintendent
Clovis Unified School District
1450 Herndon Avenue
Clovis, California 93611

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B, of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

School Facilities Funding Requirements

See: Attached

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

William C. McGuire
Associate Superintendent

(559) 327-9110
FAX (559) 327-9129

Signature of Authorized Representative

Date

X 

June 4, 2003

Attached Exhibit to Form CSM 2 (1/91)
 Test Claim of Clovis Unified School District

Chaptered Bills:

Chapter 1168, Statutes of 2002	Chapter 1075, Statutes of 2002	Chapter 935, Statutes of 2002
Chapter 199, Statutes of 2002	Chapter 33, Statutes of 2002	Chapter 734, Statutes of 2001
Chapter 725, Statutes of 2001	Chapter 647, Statutes of 2001	Chapter 194, Statutes of 2001
Chapter 159, Statutes of 2001	Chapter 132, Statutes of 2001	Chapter 753, Statutes of 2000
Chapter 590, Statutes of 2000	Chapter 530, Statutes of 2000	Chapter 193, Statutes of 2000
Chapter 44, Statutes of 2000	Chapter 992, Statutes of 1999	Chapter 858, Statutes of 1999
Chapter 709, Statutes of 1999	Chapter 133, Statutes of 1999	Chapter 1076, Statutes of 1998
Chapter 957, Statutes of 1998	Chapter 941, Statutes of 1998	Chapter 848, Statutes of 1998
Chapter 741, Statutes of 1998	Chapter 691, Statutes of 1998	Chapter 485, Statutes of 1998
Chapter 407, Statutes of 1998	Chapter 940, Statutes of 1997	Chapter 893, Statutes of 1997
Chapter 513, Statutes of 1997	Chapter 277, Statutes of 1996	

Education Code Sections:

15271	15272	15274	15276	15278	15280	15282
15284	15301	15302	15303	15320	15321	15322
15323	15324	15325	15326	15327	15336	15340
15341	15342	15343	15346	15347	15349	15349.1
15350	15351	15352	15354	15355	15359.2	15359.3
15380	15381	15384	15390	15391	17006	17008.3
17009	17009.5	17014	17015	17016	17017	17017.2
17017.5	17017.6	17017.7	17017.9	17018	17018.5	17018.7
17019.3	17019.5	17020	17021.3	17022	17022.7	17024
17025	17029	17029.5	17030	17030.5	17031	17032
17032.3	17032.5	17036	17038	17040	17040.1	17040.2
17040.3	17040.6	17040.7	17040.8	17041.1	17041.2	17041.8
17042.7	17042.9	17047	17047.5	17049	17056	17059
17059.1	17061	17062	17063	17064	17065	17066
17070.33	17070.50	17070.51	17070.60	17070.63	17070.70	17070.71
17070.75	17070.77	17070.80	17070.90	17070.95	17070.97	17070.98
17071.10	17071.25	17071.30	17071.33	17071.35	17071.40	17071.46
17071.75	17072.10	17072.12	17072.13	17072.20	17072.33	17072.35
17073.10	17074.10	17074.15	17074.16	17074.20	17074.25	17074.26
17074.30	17074.50	17074.52	17074.54	17074.56	17075.10	17075.15
17076.10	17076.11	17077.10	17077.30	17077.35	17077.40	17077.42
17077.45	17078.18	17078.20	17078.22	17078.24	17078.25	17088.3
17088.5	17088.7	17089	17089.2	17090	17092	17096
17110	17111	17150	17180	17183.5	17193.5	17194
17199.1	17199.4	100620				

California Code of Regulations:

1859.20	1859.21	1859.22	1859.30	1859.31	1859.32	1859.33
1859.35	1859.40	1859.41	1859.50	1859.60	1859.70	1859.72
1859.74.1	1859.75	1859.75.1	1859.76	1859.77.1	1859.77.2	1859.79
1859.79.2	1859.79.3	1859.81	1859.81.1	1859.82	1859.90	1859.100
1859.102	1859.104	1859.104.1	1859.104.2	1859.104.3	1859.105	1859.105.1
1859.106	1859.107	1862.52	1862.53	1865.3	1865.8	1865.32.5
1865.33	1865.39	1865.42	1865.43	1865.50	1865.70	

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Implementing Guidelines Sections:

Substantial Progress and Expenditure Audit Guide of May 2003
School Facility Program Guidebook of January 2003
State Relocatable Classroom Program Handbook of January 2003
The Lease-Purchase Applicant Handbook of April 1988

1 Claim Prepared By:
2 Keith B. Petersen
3 SixTen and Associates
4 5252 Balboa Avenue, Suite 807
5 San Diego, CA 92117
6 Voice: (858) 514-8605
7

8 BEFORE THE
9
10 COMMISSION ON STATE MANDATES
11
12 STATE OF CALIFORNIA
13

14 Test Claim of:)	
15	)	No. CSM _____
16 Clovis Unified School District)	
17	)	Chapter 1168, Statutes of 2002
18 Test Claimant.	)	Chapter 1075, Statutes of 2002
19	)	Chapter 935, Statutes of 2002
20	)	Chapter 199, Statutes of 2002
21	)	Chapter 33, Statutes of 2002
22	)	Chapter 734, Statutes of 2001
23	)	Chapter 725, Statutes of 2001
24	)	Chapter 647, Statutes of 2001
25	)	Chapter 194, Statutes of 2001
26	)	Chapter 159, Statutes of 2001
27	)	Chapter 132, Statutes of 2001
28	)	Chapter 753, Statutes of 2000
29	)	Chapter 590, Statutes of 2000
30	)	Chapter 530, Statutes of 2000
31	)	Chapter 193, Statutes of 2000
32	)	Chapter 44, Statutes of 2000
33	)	Chapter 992, Statutes of 1999
34	)	Chapter 858, Statutes of 1999
35	)	Chapter 709, Statutes of 1999
36	)	Chapter 133, Statutes of 1999
37	)	Chapter 1076, Statutes of 1998
38	)	Chapter 957, Statutes of 1998
39)	
40	)	(Continued on Next Page)
41)	
42)	<u>SCHOOL FACILITIES FUNDING</u>
43)	<u>REQUIREMENTS</u>
44)	
45)	TEST CLAIM FILING

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School Facilities Funding Requirements

1)	Chapter 941, Statutes of 1998
2)	Chapter 848, Statutes of 1998
3)	Chapter 741, Statutes of 1998
4)	Chapter 691, Statutes of 1998
5)	Chapter 485, Statutes of 1998
6)	Chapter 407, Statutes of 1998
7)	Chapter 940, Statutes of 1997
8)	Chapter 893, Statutes of 1997
9)	Chapter 513, Statutes of 1997
10)	Chapter 277, Statutes of 1996
11)	
12)	Education Code Sections 15271, 15272,
13)	15274, 15276, 15278, 15280, 15282,
14)	15284, 15301, 15302, 15303, 15320,
15)	15321, 15340, 15341, 15342, 15343,
16)	15346, 15347, 15349, 15349.1, 15350,
17)	15351, 15352, 15354, 15355, 15359.2,
18)	15359.3, 15380, 15381, 15384, 15390,
19)	15391, 17006, 17008.3, 17009,
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25)	17029.5, 17030, 17030.5, 17031,
26)	17032, 17032.3, 17032.5, 17036,
27)	17038, 17040, 17040.1, 17040.2,
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32)	17063, 17064, 17065, 17066, 17070.33,
33)	17070.50, 17070.51, 17070.60,
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37)	17070.98, 17071.10, 17071.25,
38)	17071.30, 17071.33, 17071.35,
39)	17071.40, 17071.46, 17071.75,
40)	17072.10, 17072.12, 17072.13,
41)	17072.20, 17072.33, 17072.35,
42)	
43)	
44)	(Continued on Next Page)

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1)	17073.10, 17074.10, 17074.15,
2)	17074.16, 17074.20, 17074.25,
3)	17074.26, 17074.30, 17074.50,
4	)	17074.52, 17074.54, 17074.56,
5	)	17075.10, 17075.15, 17076.10,
6	)	17076.11, 17077.10, 17077.30,
7	)	17077.35, 17077.40, 17077.42,
8	)	17077.45, 17078.18, 17078.20,
9	)	17078.22, 17078.24, 17078.25,
10	)	17088.3, 17088.5, 17088.7, 17089,
11	)	17089.2, 17090, 17092, 17096, 17110,
12	)	17111, 17150, 17180, 17183.5,
13	)	17193.5, 17194, 17199.1, 17199.4,
14	)	100620
15)	
16	)	Title 2, California Code of Regulations,
17	)	Sections 1859.20, 1859.21, 1859.22,
18	)	1859.30, 1859.31, 1859.32, 1859.33,
19	)	1859.35, 1859.40, 1859.41, 1859.50,
20	)	1859.60, 1859.70, 1859.72, 1859.74.1,
21	)	1859.75, 1859.75.1, 1859.76,
22	)	1859.77.1, 1859.77.2, 1859.79,
23	)	1859.79.2, 1859.79.3, 1859.81,
24	)	1859.81.1, 1859.82, 1859.90, 1859.100,
25	)	1859.102, 1859.104, 1859.104.1,
26	)	1859.104.2, 1859.104.3, 1859.105,
27	)	1859.105.1, 1859.106, 1859.107,
28	)	1862.52, 1862.53, 1865.3, 1865.8,
29	)	1865.32.5, 1865.33, 1865.39, 1865.42,
30	)	1865.43, 1865.50, 1865.70
31)	
32	)	Implementing Guidelines Sections
33	)	Substantial Progress and Expenditure
34	)	Audit Guide of May 2003
35	)	School Facility Program Guidebook of
36	)	January 2003
37	)	State Relocatable Classroom Program
38	)	Handbook of January 2003
39	)	The Lease-Purchase Applicant
40	)	Handbook of April 1988
41)	
42)	
43)	
44)	

1 SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

2 None. The Leroy Greene State School Building Lease-Purchase Law of 1976,
3 was adopted after this date. All other bonds and funding sources providing for school
4 and community college construction, renovation, maintenance and modernization of
5 facilities, included in this test claim, were adopted after January 1, 1975.

6 SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

7 A. EDUCATION CODES

8 PART 10. SCHOOL BONDS

9 CHAPTER 1.5. STRICT ACCOUNTABILITY IN LOCAL SCHOOL
10 CONSTRUCTION BONDS ACT OF 2000

11 Chapter 44, Statutes of 2000, Section 3, added Chapter 1.5, "Strict
12 Accountability in Local School Construction Bonds Act of 2000," operative upon
13 passage of Initiative Measure (Prop. 39) at the November 7, 2000, general election.

14 ARTICLE 1. GENERAL PROVISIONS

15 Chapter 44, Statutes of 2000, Section 3, added Education Code Section 15264²

² Education Code Section 15264, added by Chapter 44, Statutes of 2000,
Section 3:

"It is the intent of the Legislature that all of the following are realized:

(a) Vigorous efforts are undertaken to ensure that the expenditure of bond
measures, including those authorized pursuant to paragraph (3) of subdivision (b) of
Section 1 of Article XIII A of the California Constitution, are in strict conformity with the
law.

(b) Taxpayers directly participate in the oversight of bond expenditures.

(c) The members of the oversight committees appointed pursuant to this chapter
promptly alert the public to any waste or improper expenditure of school construction

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1 to state that vigorous efforts must be undertaken to ensure that the expenditure of bond
2 measures are in strict conformity with the law. Subdivision (c) requires that the
3 members of the oversight committees, appointed pursuant to Article 2 "Citizens'
4 Oversight Committee," Sections 15278 through 15282, promptly alert the public to any
5 waste or improper expenditure of school construction money. Subdivision (d) requires
6 that unauthorized expenditures of school construction bond revenues be vigorously
7 investigated and prosecuted.

8 Chapter 132, Statutes of 2001, Section 1, amended Education Code Section
9 15266³. Subdivision (a) provides that the governing board of a school or community

bond money.

(d) That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures."

³ Education Code Section 15266, added by Chapter 44, Statutes of 2000, Section 3, as amended by Chapter 132, Statutes of 2001, Section 1:

"(a) As an alternative to authorizing and issuing bonds pursuant to Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), the governing board of a school district or community college district may decide, pursuant to a two-thirds vote and subject to Section 15100 or 15302, as appropriate, to pursue the authorization and issuance of bonds pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution. An election may only be ordered on the question of whether bonds of a school district or community college district shall be issued and sold pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution at a primary or general election, a regularly scheduled local election, or a statewide special election.

(b) Upon adopting a resolution to incur bonded indebtedness pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution and after the question has been submitted to the voters, if approved at the election, the bonds shall be issued pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the

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1 college district shall, as may be necessary, pursue the authorization and issuance of
2 bonds in accordance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of
3 the California Constitution⁴ requiring that any proposition for bonded indebtedness

California Constitution and this chapter, and the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under Chapter 1 (commencing with Section 15100) or under Chapter 2 (commencing with Section 15300), as appropriate. Where not inconsistent, the provisions of Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), as appropriate, shall apply to this chapter.”

⁴ Section 1, Article XIII A, California Constitution, Paragraph 3, Subdivision (b):

“(a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any of the following: (1) Indebtedness approved by the voters prior to July 1, 1978. (2) Bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition. (3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements: (A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIII A, Section 1(b) (3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses. (B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list. (C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed. (D) A requirement that the school district

1 approved by the voters must comply with the following:

2 (A) The proceeds from the sale of the bonds be used only for the purposes
3 specified herein, and not for any other purpose, including teacher and
4 administrator salaries and other school operating expenses;

5 (B) A list of the specific school facilities projects to be funded and certification
6 that the school district board, community college board, or county office of
7 education has evaluated safety, class size reduction, and information technology
8 needs in developing that list;

9 (C) The assurance that the school district board, community college board, or
10 county office of education conducted an annual, independent performance audit
11 providing that the funds have been expended only on the specific projects listed;
12 and

13 (D) A requirement that the school district board, community college board, or
14 county office of education conduct an annual, independent financial audit of the
15 proceeds from the sale of the bonds until all of those proceeds have been
16 expended for the school facilities projects.

17 The governing board of a school or community college district shall also, as may be

board, community college board, or county office of education conduct an annual,
independent financial audit of the proceeds from the sale of the bonds until all of those
proceeds have been expended for the school facilities projects.

(c) Notwithstanding any other provisions of law or of this Constitution, school
districts, community college districts, and county offices of education may levy a 55
percent vote ad valorem tax pursuant to subdivision (b)."

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1 necessary, pursue the authorization and issuance of bonds in accordance with
2 subdivision (b) of Section 18 of Article XVI of the California Constitution⁵ requiring that
3 any proposition for the incurrence of indebtedness in the form of general obligation
4 bonds for the construction, reconstruction, rehabilitation, or replacement of school

⁵ Section 18, Article XVI, California Constitution, Subdivision (b):

“(a) No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose, except that with respect to any such public entity which is authorized to incur indebtedness for public school purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the purpose of repairing, reconstructing or replacing public school buildings determined, in the manner prescribed by law, to be structurally unsafe for school use, shall be adopted upon the approval of a majority of the voters of the public entity voting on the proposition at such election; nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and to provide for a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the indebtedness.

(b) Notwithstanding subdivision (a), on or after the effective date of the measure adding this subdivision, in the case of any school district, community college district, or county office of education, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, shall be adopted upon the approval of 55 percent of the voters of the district or county, as appropriate, voting on the proposition at an election. This subdivision shall apply only to a proposition for the incurrence of indebtedness in the form of general obligation bonds for the purposes specified in this subdivision if the proposition meets all of the accountability requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A.

(c) When two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when two-thirds or a majority or 55 percent of the voters, as the case may be, voting on any one of those propositions, vote in favor thereof, the proposition shall be deemed adopted.”

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1 facilities, including the furnishing and equipping of school facilities, or the acquisition or
2 lease of real property for school facilities, shall be adopted only upon the approval of 55
3 percent of the voters of the district or county. A school district or community college
4 district shall, as may be necessary, pursue authorization and issuance of bonds under
5 either section of the California Constitution as opposed to seeking authorization and
6 issuance of bonds pursuant to Chapter 1 "Bonds of School Districts and Community
7 College Districts" (commencing with Section 15100) or Chapter 2 "Bonds of School
8 Facilities Improvement Districts" (commencing with Section 15300). However, a school
9 district or community college shall only order an election on bonds pursuant to
10 subdivision (b) of Section 18 of Article XVI of the California Constitution at a primary or
11 general election, a regularly scheduled local election, or a statewide special election.
12 Subdivision (b) provides that upon adopting a resolution to incur bonded indebtedness
13 pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution and
14 after the question has been submitted to the voters, if approved at the election, the
15 bonds shall be issued pursuant to paragraph (3) of subdivision (b) of Section 1 of Article
16 XIII A of the California Constitution and this chapter. The governing board may not then,
17 regardless of the number of votes cast in favor of the bond, subsequently proceed
18 exclusively under Chapter 1 "Bonds of School Districts and Community College
19 Districts" or under Chapter 2 "Bonds of School Facilities Improvement Districts."
20 However, where not inconsistent, the provisions of Chapter 1 or Chapter 2, as
21 appropriate, shall also apply to this chapter.

1 Chapter 580, Statutes of 2000, Section 2, amended Education Code Section
2 15268⁶ to set the total amount of bonds that may be issued to school districts or
3 community college districts. The bonds shall not exceed 1.25 percent of the taxable
4 property of the district as shown by the last equalized assessment of the county or
5 counties in which the district is located. Bonds may only be issued if the tax rate levied
6 to meet the requirements of Section 18 of Article XVI of the California Constitution (see
7 Fn. 4 supra) in the case of indebtedness incurred by a school district pursuant to this
8 chapter, at a single election, would not exceed thirty dollars (\$30) per year per one
9 hundred thousand dollars (\$100,000) of taxable property when assessed valuation is
10 projected by the district to increase in accordance with Article XIII A of the California

⁶ Education Code Section 15268, added by Chapter 44, Statutes of 2000, Section 2, as amended by Chapter 580, Statutes of 2000, Section 3:

"The total amount of bonds issued, including bonds issued pursuant to this section and Section 15102 Chapter 1 (commencing with Section 15100), shall not exceed 1.25 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred by a school district pursuant to this chapter, at a single election, would not exceed thirty dollars (\$30) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll."

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1 Constitution (see Fn. 3 supra). Any calculation of the taxable property of a district for
2 any fiscal year shall include the assessed value of all unitary and operating nonunitary
3 property of the district.

4 Chapter 132, Statutes of 2001, Section 2, amended Education Code Section
5 15270⁷. Subdivision (a) provides that any unified school shall, as may be necessary,

⁷ Education Code Section 15270, added by Chapter 44, Statutes of 2000, Section 3, as amended by Chapter 132, Statutes of 2001, Section 2:

“(a) Notwithstanding Sections 15102 and 15268, any unified school district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to ~~Section 15106 Chapter 1 (commencing with Section 15100)~~, may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if ~~t~~The tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars (\$60) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

(b) Notwithstanding Sections 15102 and 15268, any community college district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to ~~Section 15106 Chapter 1 (commencing with Section 15100)~~, may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if ~~t~~The tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a community college district, would not exceed twenty-five dollars (\$25) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

(c) In computing the outstanding bonded indebtedness of any unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the

1 issue bonds that do not exceed 2.5 percent of the taxable property of the district as
2 shown by the last equalized assessment of the county or counties in which the district is
3 located. The unified school district shall only issue bonds if the tax rate levied to meet
4 the requirements of Section 18 of Article XVI of the California Constitution (see Fn. 4
5 supra), in the case of indebtedness incurred pursuant to this chapter at a single
6 election, would not exceed sixty dollars (\$60) per year per one hundred thousand
7 dollars (\$100,000) of taxable property when assessed valuation is projected by the
8 district to increase in accordance with Article XIII A of the California Constitution (see
9 Fn. 3 supra). Subdivision (b) provides that bonds shall not be issued by any community
10 college district pursuant to the same standards as set forth in subdivision (a) if the tax

governing board of the unified school district or community college district to each of those purposes respectively.

(d) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts subsequent to the 1987-88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15268.

(e) For the purposes of this article, "general obligation bonds," as that term is used in Section 18 of Article XVI of the California Constitution, means bonds of a school district or community college district the repayment of which is provided for by this chapter and Chapter 1 (commencing with Section 15100) of Part 10, and includes bonds of a school facilities improvement district the repayment of which is provided for by this chapter and Chapter 2 (commencing with Section 15300)."

1 rate levied to meet the requirements of Section 18 of Article XVI of the California
2 Constitution in the case of indebtedness incurred pursuant to this chapter at a single
3 election exceeds twenty-five dollars (\$25) per year per one hundred thousand dollars
4 (\$100,000) of taxable property. Subdivision (c) determines the computation of
5 outstanding bonded indebtedness for any unified school district or community college
6 district. Subdivision (d) requires that the calculation of the taxable property of a district,
7 or the taxable property of any unified school districts, for any fiscal year shall include
8 the assessed value of all unitary and operating nonunitary property of the district(s).
9 Subdivision (e) defines "general obligation bonds."

10 Chapter 132, Statutes of 2001, Section 3, added Education Code Section
11 15271⁸ to provide that the governing board of a school district or community college
12 district shall proceed pursuant to this chapter as may be necessary, on behalf of a
13 school facilities improvement district created by and under the exclusive authority of the
14 school district or community college district. The governing board of a school district or
15 community college district shall, as may be necessary, act on behalf of the school
16 facilities district as provided pursuant to Chapter 2 "Bonds of School Facilities

⁸ Education Code Section 15271, added by Chapter 132, Statutes of 2001,
Section 3:

"The governing board of a school district or community college district may proceed pursuant to this chapter on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district and act on behalf of the school facilities district as provided pursuant to Chapter 2 (commencing with Section 15300)."

1 Improvement Districts” (commencing with Section 15300).

2 Chapter 44, Statutes of 2000, Section 3, added Education Code Section 15272⁹
3 to require that the ballots for bond measures shall, in addition to the ballot requirements
4 of Section 15122 (referenced generally in the Legislative History Prior to January 1,
5 1975 when discussing Chapter 1 “Bonds of School Districts and Community College
6 Districts”) and the ballot provisions of this code applicable to governing board member
7 elections, be printed with a statement that the board will appoint a citizens’ oversight
8 committee and conduct annual independent audits to assure that funds are spent only
9 on school and classroom improvements and for no other purposes.

10 Chapter 44, Statutes of 2000, Section 3, added Education Code Section 15274¹⁰

⁹ Education Code Section 15272, added by Chapter 44, Statutes of 2000,
Section 3:

“In addition to the ballot requirements of Section 15122 and the ballot provisions
of this code applicable to governing board member elections, for bond measures
pursuant to this chapter, the ballot shall also be printed with a statement that the board
will appoint a citizens’ oversight committee and conduct annual independent audits to
assure that funds are spent only on school and classroom improvements and for no
other purposes.”

¹⁰ Education Code Section 15274, added by Chapter 44, Statutes of 2000,
Section 3:

“If it appears from the certificate of election results that 55 percent of the votes
cast on the proposition of issuing bonds pursuant to subdivision (b) of Section 18 of
Article XVI of the California Constitution are in favor of issuing bonds, the governing
board shall cause an entry of that fact to be made upon its minutes. The governing
board shall then certify to the board of supervisors of the county whose superintendent
of schools has jurisdiction over the district, all proceedings had in the premises. The
county superintendent of schools shall send a copy of the certificate of election results
to the board of supervisors of the county.”

1 to require the governing board to cause a factual entry upon its minutes if it appears
2 from the certificate of election results that 55 percent of the votes cast on the
3 proposition of issuing bonds pursuant to subdivision (b) of Section 18 of Article XVI of
4 the California Constitution are in favor of issuing bonds. The governing board shall
5 then certify to the board of supervisors of the county whose superintendent of schools
6 has jurisdiction over the district, all proceedings had in the premises. The county
7 superintendent of schools shall send a copy of the certificate of election results to the
8 board of supervisors of the county.

9 Chapter 44, Statutes of 2000, Section 3, added Education Code Section 15276
10 to provide that "notwithstanding any other provision of law, a county board of education
11 may not order an election to determine whether bonds may be issued under this article
12 to raise funds for a county office of education."

13 ARTICLE 2. CITIZENS' OVERSIGHT COMMITTEE

14 Chapter 44, Statutes of 2000, Section 3, added Education Code Section
15 15278¹¹. Subdivision (a) provides that the governing board of the school district or

¹¹ Education Code Section 15278, added by Chapter 44, Statutes of 2000,
Section 3:

"(a) If a bond measure authorized pursuant to paragraph (3) of subdivision (b) of
Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18
of Article XVI of the California Constitution is approved, the governing board of the
school district or community college shall establish and appoint members to an
independent citizens' oversight committee, pursuant to Section 15282, within 60 days of
the date that the governing board enters the election results on its minutes pursuant to
Section 15274.

(b) The purpose of the citizens' oversight committee shall be to inform the public

1 community college shall establish and appoint members to an independent citizens'

concerning the expenditure of bond revenues. The citizens' oversight committee shall actively review and report on the proper expenditure of taxpayers' money for school construction. The citizens' oversight committee shall advise the public as to whether a school district or community college district is in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution. The citizens' oversight committee shall convene to provide oversight for, but not be limited to, both of the following:

(1) Ensuring that bond revenues are expended only for the purposes described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Ensuring that, as prohibited by subparagraph (A) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, no funds are used for any teacher or administrative salaries or other school operating expenses.

(c) In furtherance of its purpose, the citizens' oversight committee may engage in any of the following activities:

(1) Receiving and reviewing copies of the annual, independent performance audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Receiving and reviewing copies of the annual, independent financial audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) Inspecting school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(4) Receiving and reviewing copies of any deferred maintenance proposals or plans developed by a school district or community college district, including any reports required by Section 17584.1.

(5) Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures, including, but not limited to, all of the following:

(A) Mechanisms designed to reduce the costs of professional fees.

(B) Mechanisms designed to reduce the costs of site preparation.

(C) Recommendations regarding the joint use of core facilities.

(D) Mechanisms designed to reduce costs by incorporating efficiencies in schoolsite design.

(E) Recommendations regarding the use of cost-effective and efficient reusable facility plans."

1 oversight committee, pursuant to Section 15282, within 60 days of the date that the
2 governing board enters the election results on its minutes pursuant to Section 15274, if
3 an authorized bond measure is approved pursuant to the California Constitution.

4 Subdivisions (b) and (c) provide the purpose of the citizens' oversight committee and
5 the activities the committee shall engage in.

6 Chapter 44, Statutes of 2000, Section 3, added Education Code Section
7 15280¹². Subdivision (a) requires that the governing board of the district, without
8 expending bond funds, provide the citizens' oversight committee with any necessary
9 technical assistance, administrative assistance in furtherance of its purpose, and
10 sufficient resources to publicize the conclusions of the citizens' oversight committee.
11 Subdivision (b) requires the governing board to maintain an Internet website detailing
12 the citizens' oversight committee's minutes, and all documents received and reports
13 issued. Further, these minutes, documents and reports must be preserved as a matter

¹² Education Code Section 15280, added by Chapter 44, Statutes of 2000,
Section 3:

"(a) The governing board of the district shall, without expending bond funds, provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee.

(b) All committee proceedings shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board. The citizens' oversight committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year. Minutes of the proceedings of the citizens' oversight committee and all documents received and reports issued shall be a matter of public record and be made available on an Internet website maintained by the governing board."

1 of public record.

2 Chapter 44, Statutes 2000, Section 3, added Education Code Section 15282¹³
3 to provide the membership requirements for the citizens' oversight committee.
4 Subdivision (b) provides that no employee or official of the district, nor any vendor,
5 contractor or consultant of the district, shall be appointed to the citizens' oversight
6 committee.

¹³ Education Code Section 15282, added by Chapter 44, Statutes of 2000,
Section 3:

“(a) The citizens' oversight committee shall consist of at least seven members to serve for a term of two years without compensation and for no more than two consecutive terms. While consisting of a minimum of at least seven members, the citizens' oversight committee shall be comprised, as follows:

(1) One member shall be active in a business organization representing the business community located within the district.

(2) One member shall be active in a senior citizens' organization.

(3) One member shall be active in a bona fide taxpayers' organization.

(4) For a school district, one member shall be the parent or guardian of a child enrolled in the district. For a community college district, one member shall be a student who is both currently enrolled in the district and active in a community college group, such as student government. The community college student member may, at the discretion of the board, serve up to six months after his or her graduation.

(5) For a school district, one member shall be both a parent or guardian of a child enrolled in the district and active in a parent-teacher organization, such as the Parent Teacher Association or schoolsite council. For a community college district, one member shall be active in the support and organization of a community college or the community colleges of the district, such as a member of an advisory council or foundation.

(b) No employee or official of the district shall be appointed to the citizens' oversight committee. No vendor, contractor, or consultant of the district shall be appointed to the citizens' oversight committee. Members of the citizens' oversight committee shall, pursuant to Sections 35233 and 72533, abide by the prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code.”

1 ARTICLE 3. BOND ACCOUNTABILITY

2 Chapter 44, Statutes 2000, Section 3, added Education Code Section 15284¹⁴ to

¹⁴ Education Code Section 15284, added by Chapter 44, Statutes of 2000,
Section 3:

“(a) An action to obtain an order restraining and preventing any expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution may be maintained against any officer, agent, or other person acting on behalf of, that school district or community college district, by a citizen residing in the school or community college district who is assessed and is liable to pay an ad valorem tax on real property within the school or community college district, or who has paid an ad valorem tax on real property within the school or community college district within one year before the commencement of the action if it appears by the complaint or affidavits that any of the following conditions are present:

(1) An expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter is for purposes other than those specified in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) The expenditure is not in compliance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) That an expenditure in violation of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution will be made or will continue to be made during the litigation that would produce waste or great or irreparable injury.

(4) The governing board of a school district or community college has willfully failed to appoint the citizens' oversight committee in violation of the requirements of Section 15278.

(b) An action brought pursuant to this section shall take special precedence over all civil matters on the calendar of the court except those matters granted equal precedence by law.

(c) The rights, remedies, or penalties established by this section are cumulative to the rights, remedies, or penalties established under other laws, including subdivision (a) of Section 526 of Chapter 3 of Title 7 of Part 2 of the Code of Civil Procedure.

(d) If an order is obtained to restrain and prevent an expenditure of funds pursuant to subdivision (a), a court may award attorneys' fees pursuant to Chapter 6 (commencing with Section 1021.5) of Title 14 of Part 2 of the Code of Civil Procedure.

(e) The action authorized by this section shall be known as a 'School Bond

1 establish a civil remedy called the "School Bond Waste Prevention Action," granting a
2 resident taxpayer standing to enjoin and prevent any expenditure of funds authorized
3 under this chapter by any officer, agent, or other person acting on behalf of, that school
4 district or community college district if any of the following conditions are present:

5 (1) An expenditure of funds for purposes other than those specified in paragraph
6 (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution
7 (see Fn. 3 supra);

8 (2) An expenditure not in compliance with paragraph (3) of subdivision (b) of
9 Section 1 of Article XIII A of the California Constitution;

10 (3) An expenditure in violation of paragraph (3) of subdivision (b) of Section 1 of
11 Article XIII A of the California Constitution that would produce waste or great or
12 irreparable injury; or

13 (4) The governing board of a school district or community college has willfully
14 failed to appoint the citizens' oversight committee.

15 Chapter 44, Statutes of 2000, Section 3, added Education Code Section 15288¹⁵
16 to provide that any allegations of waste or misuse of bond funds shall lead to an

Waste Prevention Action."

¹⁵ Education Code Section 15288, added by Chapter 44, Statutes of 2000,
Section 3:

"It is the intent of the Legislature that upon receipt of allegations of waste or
misuse of bond funds authorized in this chapter, appropriate law enforcement officials
shall expeditiously pursue the investigation and prosecution of any violation of law
associated with the expenditure of those funds."

1 investigation by the appropriate law enforcement official, and any violation of law
2 associated with the expenditure of those funds shall lead to prosecution.

3 CHAPTER 2. BONDS OF SCHOOL FACILITIES IMPROVEMENT DISTRICTS

4 Chapter 277, Statutes of 1996, Section 2, added Chapter 2, "Bonds of School
5 Facilities Improvement Districts."

6 ARTICLE 1. GENERAL PROVISIONS

7 Chapter 893, Statutes of 1997, Section 5, added¹⁶ Education Code Section
8 15300¹⁷ to provide a method under this chapter for the formation of school facilities
9 improvement districts consisting of a portion of the territory within a school district or
10 community college district and for the issuance of general obligation bonds by a school
facilities improvement district.

12 Chapter 940, Statutes of 1997, Section 1, amended Education Code Section
13 15301¹⁸. Subdivision (a) provides that any school district or community college district

¹⁶ Former Education Code Section 15300, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15300, was repealed by Chapter 893, Statutes of 1997, Section 5.

¹⁷ Education Code section 15300, added by Chapter 893, Statutes of 1997, Section 6:

"This chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district and for the issuance of general obligation bonds by a school facilities improvement district."

¹⁸ Education Code Section 15301, added by Chapter 1005, Statutes of 1994, Section 1, as amended by Chapter 940, Statutes of 1997, Section 1:

1 that has a community facilities district formed pursuant to the Mello-Roos Community
2 Facilities Act of 1982, and also having as one of its purposes the construction of school
3 facilities within a portion of the territory of the school district or community college
4 district, shall as may be necessary proceed under this chapter. Subdivision (b) requires

“(a) Any school district or community college district that has a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, that has as one of its purposes the construction of school facilities within a portion of the territory of the school district or community college district, may proceed under this chapter.

(b) The boundaries of any school facilities improvement district formed pursuant to this chapter shall include all of the portion of the territory within the boundaries of the school district or community college district that is not located within the boundaries of the community facilities district as described in subdivision (a).

(c) A school district or community college district may proceed under this chapter without meeting the requirements of subdivisions (a) and (b) if the governing board of the school district or community college district determines that it is necessary and in the best interest of the school district or community college district, respectively, to form a school facilities improvement district pursuant to this chapter to finance any or all of the improvements set forth in Section 15302. As a part of that determination, the governing board of the school district or community college district shall make a finding that the overall cost of financing the bonds issued pursuant to this chapter would be less than the overall cost of other school facilities financing options available to the school district or community college district, including, but not limited to, issuing bonds pursuant to the Mello-Roos Communities Facilities Act of 1982 (Ch. 2.5 (commencing with Sec. 53311), Pt. 1, Div. 2, Title 5, Gov. C.). The governing board of the school district or community college district proceeding under this subdivision shall define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the school district or community college district, except that the boundaries may not include all or a portion of the territory of the community facilities district described in subdivision (a).

(d) The governing body of a school district or community college district that proceeds under this chapter shall comply with the filing requirements established by Section 54902 of the Government Code. Any plat or map that is filed pursuant to this subdivision shall specifically identify any property, located within the school district or community college district, that is not located within the improvement district established by the school district or community college district pursuant to this chapter.”

1 that the boundaries of any school facilities improvement district formed pursuant to this
2 chapter shall also incorporate all other territory within the boundaries of the school
3 district or community college district not already accounted for pursuant to the Mello-
4 Roos Community Facilities Act of 1982. Subdivision (c) provides that a school district
5 or community college district shall proceed under this chapter without complying with
6 subdivisions (a) and (b) if the governing board of the school district determines that it is
7 necessary to form a school facilities improvement district in order to finance any or all of
8 the improvements set forth in Section 15302. The governing board of the school district
9 or community college district must make a finding that the overall cost of financing
10 bonds issued pursuant to this chapter would be less than the overall cost of other
11 school facilities financing options including any bonds issued pursuant to the Mello-
12 Roos Communities Facilities Act of 1982. The governing board of the school district or
13 community college district must then define the boundaries of the school facilities
14 improvement district to include any portion of territory within the jurisdiction of the
15 school district of community college district except for any territory described in
16 subdivision (a). Subdivision (d) requires that the governing body of a school district or
17 community college district that proceeds under this chapter must comply with the filing
18 requirements established by Section 54902 of the Government Code (providing that "on
19 or before December 1 of the year immediately proceeding the year in which the
20 assessments or taxes are to be levied, the statement shall be filed with the auditor of
21 each levying county, and the statement and the map or plat shall be filed with each

1 assessor whose roll is used for the levy and with the State Board of Equalization in
2 Sacramento”).

3 Chapter 277, Statutes of 1996, Section 2, added¹⁹ Education Code Section
4 15302²⁰ to provide that school facilities improvement districts shall as may be necessary
5 issue general obligation bonds for the following purposes benefitting the land within the
6 school facilities improvement district:

- 7 (a) To purchase real estate upon which to construct school facilities;
8 (b) To build or purchase school facilities;

¹⁹ Former Education Code Section 15302, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15302, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁰ Education Code Section 15302, added by Chapter 277, Statutes of 1996, Section 2:

“General obligation bonds of the school facilities improvement district may be issued for the following purposes, if the purpose of the bonds is to benefit the land within the school facilities improvement district consistent with any of the following:

- (a) To purchase real property upon which to construct school facilities.
- (b) To build or purchase school facilities.
- (c) To make alterations or additions to the school facilities other than those necessary for ordinary maintenance, operation, or repairs.
- (d) To repair, restore, or rebuild any school facilities damaged, injured, or destroyed by fire or other public calamity.
- (e) To supply playgrounds with furniture, equipment, or necessary apparatus of a permanent nature.
- (f) To permanently improve school grounds.
- (g) To refund any valid outstanding indebtedness of the school facilities improvement district that is evidenced by bonds.
- (h) To carry out the projects or purposes authorized in Section 39613.
- (i) To demolish or raze any school building with the intent to replace it with another school building, whether in the same location or in any other location.”

1 (c) To make alterations or additions to the school facilities other than those
2 necessary for ordinary maintenance, operation, or repairs;

3 (d) To repair, restore, or rebuild any school facilities damaged, injured, or
4 destroyed by fire or other public calamity;

5 (e) To supply playgrounds with furniture, equipment, or necessary apparatus of a
6 permanent nature;

7 (f) To permanently improve school grounds;

8 (g) To refund any valid outstanding indebtedness of the school facilities
9 improvement district that is evidenced by bonds;

10 (h) To carry out the projects or purposes authorized in Section 39613, namely
the construction and maintenance of sewers and drains; or

12 (i) To demolish or raze any school building with the intent to replace it with
13 another school building, whether in the same location or in any other location.

14 Chapter 893, Statutes of 1997, Section 10, added²¹ Education Code Section
15 15303²² to require that the board of supervisors adopt this chapter by majority resolution

²¹ Former Education Code Section 15303, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15303, was repealed by Chapter 893, Statutes of 1997, Section 9.

²² Education Code Section 15303, added by Chapter 893, Statutes of 1997, Section 10:

"This chapter shall not be operative in any county or counties until the board of supervisors of either the county in which the county superintendent of schools having jurisdiction over the school district or community college district in which the school facilities improvement district is located or, if a school facilities improvement district lies

1 before it is applicable and operative in any county or counties.

2 ARTICLE 2. FORMATION OF DISTRICT

3 Chapter 893, Statutes 1997, Section 12, added²³ Education Code Section
4 15320²⁴ to require that whenever the governing board of a school district or community

in two or more counties, the board of supervisors for those counties, by resolution adopted by a majority vote of the board of supervisors, makes this chapter applicable in the county or counties."

²³ Former Education Code Section 15320, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15320, was repealed by Chapter 893, Statutes of 1997, Section 11.

²⁴ Education Code Section 15320, added by Chapter 893, Statutes of 1997, Section 12:

"Whenever the governing board of a school district or community college district meeting the requirements set forth in Section 15301 determines that a school facilities improvement district is necessary, the governing board shall adopt a resolution of intention that states all of the following:

(a) The intention of the governing board to form the proposed school facilities improvement district.

(b) The purpose for which the proposed school facilities improvement district is to be formed, consistent with the requirements set forth in Section 15302.

(c) The estimated cost of the school facilities improvement project.

(d) That any taxes levied for the purpose of financing the general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities improvement district.

(e) That a map showing the exterior boundaries of the proposed school facilities improvement district is on file with the governing board of the school district or community college district and is available for inspection by the public. The boundaries of the school facilities improvement district shall meet the requirements set forth in subdivision (b) of Section 15301.

(f) The time and place for a hearing by the governing board on the formation of the proposed school facilities improvement district.

(h) That any interested persons, including all persons owning lands in the school district or community college district, or in the proposed school facilities improvement district, may appear and be heard."

Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1 college district meeting the requirements set forth in Section 15301 determines that a
2 school facilities improvement district is necessary, it shall adopt a resolution of intention
3 that states all of the following:

4 (a) The intention of the governing board to form the proposed school facilities
5 improvement district;

6 (b) The purpose for which the proposed school facilities improvement district is to
7 be formed, consistent with the requirements set forth in Section 15302;

8 (c) The estimated cost of the school facilities improvement project;

9 (d) That any taxes levied for the purpose of financing the general obligation
10 bonds issued to finance the project shall be levied exclusively upon the lands in
11 the proposed school facilities improvement district;

12 (e) That a map showing the exterior boundaries of the proposed school facilities
13 improvement district is on file with the governing board of the school district or
14 community college district and is available for inspection by the public;

15 (f) The time and place for a hearing by the governing board on the formation of
16 the proposed school facilities improvement district;

17 [There is no subdivision (g)]; and

18 (h) That any interested persons, including all persons owning lands in the school
19 district or community college district, or in the proposed school facilities
20 improvement district, may appear and be heard.

Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1 Chapter 277, Statutes of 1996, Section 2, added²⁵ Education Code Section
2 15321²⁶ to require that notice of the hearing shall be given by publishing a copy of the
3 resolution of intention in a newspaper of general circulation published in each affected
4 county, and posting a copy of the resolution in three public places located within the
5 proposed school facilities improvement district for at least 14 days prior to the time fixed
6 for the hearing.

7 Chapter 893, Statutes of 1997, Section 14, added²⁷ Education Code Section
8 15322²⁸ to require that the governing board of the school district or community college

²⁵ Former Education Code Section 15321, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15321, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁶ Education Code Section 15321, added by Chapter 277, Statutes of 1996, Section 2:

“Notice of the hearing shall be given by publishing a copy of the resolution of intention in a newspaper of general circulation published in each affected county, pursuant to Section 6066 of the Government Code, the first publication shall be at least 14 days prior to the time fixed for the hearing. The notice shall also be given by posting a copy of the resolution in three public places located within the proposed school facilities improvement district for at least 14 days prior to the time fixed for the hearing. No notice other than that required by this section need be given.”

²⁷ Former Education Code Section 15322, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15322, was repealed by Chapter 893, Statutes of 1997, Section 13.

²⁸ Education Code Section 15322, added by Chapter 893, Statutes of 1997, Section 14:

“The governing board of the school district or community college district shall hold the hearing provided for by resolution of intention at the time and place fixed by that resolution. Any interested person, including, but not limited to, all persons owning

1 district shall hold hearings provided for by resolution of intention at the time and place
2 fixed by that resolution. These hearings shall not exclude any persons owning land in
3 the school district, the proposed school facilities improvement district, or the community
4 college district.

5 Chapter 893, Statutes of 1997, Section 16, added²⁹ Education Code Section
6 15323³⁰ to provide that the governing board of the school district or community college
7 district shall adopt, as may be necessary, a resolution proposing modifications,
8 consistent with Section 15302, of the purpose stated in the resolution of intention. A
9 resolution proposing modification shall describe the proposed modifications, state the
10 change, if any, in the estimated cost of carrying out the purpose, and shall fix a time
and place for hearing by the governing board.

land in the school district, or in the proposed school facilities improvement district or
community college district, may appear and be heard concerning any matters set forth
in the resolution of intention."

²⁹ Former Education Code Section 15323, (added by Chapter 1005, Statutes of
1994, Section 1), relating to similar subject matter as new Section 15323, was repealed
by Chapter 893, Statutes of 1997, Section 15.

³⁰ Education Code Section 15323, added by Chapter 893, Statutes of 1997,
Section 16:

"At the hearing, the governing board of the school district or community college
district may adopt a resolution proposing modifications, consistent with Section 15302,
of the purpose stated in the resolution of intention. A resolution proposing modification
shall describe the proposed modifications, state the change, if any, in the estimated
cost of carrying out the purpose, and shall fix a time and place for hearing by the
governing board."

1 Chapter 893, Statutes of 1997, Section 18, added³¹ Education Code Section
2 15324³² to require that the governing board publish the resolution proposing the
3 modifications to the resolution of intention once in the same newspaper in which the
4 resolution of intention was first published at least 14 days prior to the date of hearing on
5 the proposed modifications.

6 Chapter 277, Statutes of 1996, Section 2, added³³ Education Code Section
7 15325³⁴ to provide that the hearing on any proposed modifications shall be held, as
8 may be necessary, at the same time and place as any continued hearing on the
9 resolution of intention and both hearings shall be held and conducted concurrently, as

³¹ Former Education Code Section 15324, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15324, was repealed by Chapter 893, Statutes of 1997, Section 17.

³² Education Code Section 15324, added by Chapter 893, Statutes of 1997, Section 18:

“The governing board of the school district or community college district shall publish the resolution proposing the modifications to the resolution of intention once in the same newspaper in which the resolution of intention was published at least 14 days prior to the date of hearing on the proposed modifications.”

³³ Former Education Code Section 15325, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15325, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁴ Education Code Section 15325, added by Chapter 277, Statutes of 1996, Section 2:

“The hearing on any proposed modifications may be held at the same time and place as any continued hearing on the resolution of intention and both hearings may be held and conducted concurrently.”

1 necessary.

2 Chapter 893, Statutes of 1997, Section 20, added³⁵ Education Code Section
3 15326³⁶ to require that at the conclusion of the hearing on the resolution of intention
4 and of the hearing, if any, upon proposed modifications, the governing board shall by
5 resolution order the school facilities improvement district formed. The resolution shall
6 state its estimated cost, and name and number the school facilities improvement district
7 formed.

8 Chapter 893, Statutes of 1997, Section 22, added³⁷ Education Code Section

³⁵ Former Education Code Section 15326, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15326, was repealed by Chapter 893, Statutes of 1997, Section 19.

³⁶ Education Code Section 15326, added by Chapter 893, Statutes of 1997, Section 20:

“At the conclusion of the hearing on the resolution of intention and of the hearing, if any, upon proposed modifications, the governing board may by resolution order the school facilities improvement district formed for the purpose and with the boundaries described in the resolution of intention, and, if relevant, the resolution proposing modifications. The resolution ordering the school facilities improvement district formed shall state the estimated cost of carrying out the purpose described in the resolution. The resolution shall also number and designate the school facilities improvement district substantially as ‘School Facilities Improvement District of the ____ School District’ or ‘School Facilities Improvement District of the ____ Community College District.’”

³⁷ Former Education Code Section 15327, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15327, was repealed by Chapter 893, Statutes of 1997, Section 21.

1 15327³⁸ to provide that the governing board of the school district or community college
2 district in which a school facilities improvement district has been formed shall have the
3 same rights, powers, duties and responsibilities with respect to the formation and
4 government of school facilities improvement district as the governing board has with
5 respect to the school district or community college district.

6 ARTICLE 3. FINANCING THE BONDS

7 Chapter 277, Statutes of 1996, Section 2, added³⁹ Education Code Section
8 15330⁴⁰ to require that the total amount of bonds issued shall not exceed 1.25 percent

³⁸ Education Code Section 15327, added by Chapter 893, Statutes of 1997,
Section 22:

“The governing board of the school district or community college district in which
a school facilities improvement district has been formed shall have the same rights,
powers, duties and responsibilities with respect to the formation and government of
school facilities improvement district as the governing board has with respect to the
school district or community college district.”

³⁹ Former Education Code Section 15330, (added by Chapter 1005, Statutes of
1994, Section 1), relating to similar subject matter as new Section 15330, was repealed
by Chapter 277, Statutes of 1996, Section 1.

⁴⁰ Education Code Section 15330, added by Chapter 277, Statutes of 1996,
Section 2:

“The total amount of bonds issued shall not exceed 1.25 percent of the taxable
property of the school facilities improvement district as shown by the last equalized
assessment of the county or counties in which the school facilities improvement district
is located. For purposes of this section, the taxable property of a school facilities
improvement district for any fiscal year shall be calculated to include, but not be limited
to, the assessed value of all unitary and operating nonunitary property located within
the school facilities improvement district, which shall be derived by dividing the gross
assessed value of the unitary and operating nonunitary property located within the
school facilities improvement district for the fiscal year by the gross assessed value of

1 of the taxable property of the school facilities improvement district. The calculation of
2 the taxable property of a school facilities improvement district for any fiscal year shall
3 include the assessed value of all unitary and operating nonunitary property located
4 within the school facilities improvement of the district.

5 Chapter 277, Statutes of 1996, Section 2, added⁴¹ Education Code Section
6 15331⁴² to require that for the purpose of computing the limit on the amount of bonds
7 that may be issued by a school facilities improvement district pursuant to the provisions
8 of this chapter, the taxable property shall be determined upon the basis that the school
9 facilities improvement district's assessed value has not been reduced by the exemption
10 of the assessed value of business inventories in the school facilities improvement
district or reduced by the homeowner's property tax exemption.

all unitary and operating nonunitary property located within the county in which the
school facilities improvement district is located for the fiscal year, and multiplying that
result by the gross assessed value of all unitary and operating nonunitary property of
the county on the last equalized assessment roll."

⁴¹ Former Education Code Section 15331, (added by Chapter 1005, Statutes of
1994, Section 1), relating to similar subject matter as new Section 15331, was repealed
by Chapter 277, Statutes of 1996, Section 1.

⁴² Education Code Section 15331, added by Chapter 277, Statutes of 1996,
Section 2:

"Notwithstanding any other law, for the purpose of computing the limit on the
amount of bonds that may be issued by a school facilities improvement district pursuant
to the provisions of this chapter, the taxable property of the school facilities
improvement district shall be determined upon the basis that the school facilities
improvement district's assessed value has not been reduced by the exemption of the
assessed value of business inventories in the school facilities improvement district or
reduced by the homeowner's property tax exemption."

1 Chapter 277, Statutes of 1996, Section 2, added⁴³ Education Code Section
2 15332⁴⁴ to require that, notwithstanding Section 15330, any school facilities
3 improvement district that is located within the boundaries of a unified school district
4 shall, as may be necessary, issue bonds not to exceed 2.5 percent of the taxable
5 property of the school facilities improvement district as shown by the last equalized
6 assessment of the county or counties in which the school facilities improvement district

⁴³ Former Education Code Section 15332, (added by Chapter 1005, Statutes of 1994, Chapter 1), relating to similar subject matter as new Section 15332, was repealed by Chapter 277, Statutes of 1996, Section 1.

⁴⁴ Education Code Section 15332, added by Chapter 277, Statutes of 1996, Chapter 2:

“Notwithstanding Section 15330, any school facilities improvement district that is located within the boundaries of a unified school district may issue bonds not to exceed 2.5 percent of the taxable property of the school facilities improvement district as shown by the last equalized assessment of the county or counties in which the school facilities improvement district is located.

In computing the outstanding bonded indebtedness of any school facilities improvement district that is located in any unified school district, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district to each of those purposes respectively.

For purposes of this section, the taxable property of a school facilities improvement district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property located within the school facilities improvement district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property located within the district for the fiscal year by the gross assessed value of all unitary and operating nonunitary property located within the county in which the district is located for the fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.”

1 is located. Pursuant to this section, the calculation of the taxable property of a school
2 facilities improvement district for any fiscal year shall include the assessed value of all
3 unitary and operating nonunitary property located within the school facilities
4 improvement of the district.

5 Chapter 277, Statutes of 1996, Section 2, added⁴⁵ Education Code Section
6 15333⁴⁶ to require in computing the limitation of indebtedness of any school facilities
7 improvement district, hereinafter referred to as the "bonding district," the outstanding
8 indebtedness of any previously existing district all or any part of which forms a

⁴⁵ Former Education Code Section 15334, (added by Chapter 1005, Statutes of 1996, Section 1), relating to similar subject matter as new Section 15334, was repealed by Chapter 277, Statutes of 1996, Section 1.

⁴⁶ Education Code Section 15333, added by Chapter 277, Statutes of 1996, Section 2:

"In computing the limitation of indebtedness of any school facilities improvement district, hereinafter in this section referred to as the "bonding district," the outstanding indebtedness of any previously existing district all or any part of which forms a component part of the bonding district and the outstanding indebtedness of any district for which any territory that has become a part of the bonding district is liable shall be excluded and shall not be deemed, for the purposes of computing the limitation of indebtedness under Sections 15330 and 15332, to constitute outstanding indebtedness of the bonding district, except to the extent that the outstanding indebtedness has been expressly assumed by the bonding district by vote of not less than two-thirds of the electors of the bonding district voting at an election at which the proposition of assuming the indebtedness is voted upon. Nothing in this section shall operate to release any property from liability for taxes to pay the principal and interest of indebtedness incurred by any component district or for which any territory that has become a part of the bonding district is liable and in which the taxable property is located at the time of the incurring of the indebtedness. It is the intent of the Legislature to provide in this section a special method of computing the limitation of indebtedness of school facilities improvement districts irrespective of liability of the area embraced within the school districts for the payment of any bonded indebtedness."

1 component part of the bonding district and the outstanding indebtedness of any district
2 for which any territory that has become a part of the bonding district is liable shall be
3 excluded and shall not be deemed, for the purposes of computing the limitation of
4 indebtedness under Sections 15330 and 15332, to constitute outstanding indebtedness
5 of the bonding district, except to the extent that the outstanding indebtedness has been
6 expressly assumed by the bonding district by vote of not less than two-thirds of the
7 electors of the bonding district voting at an election at which the proposition of
8 assuming the indebtedness is voted upon.

9 Chapter 277, Statutes of 1996, Section 2, added⁴⁷ Education Code Section
10 15334⁴⁸ to exclude that portion of the bonded indebtedness of the school facilities
11 improvement district for which another district or territory in another district is liable from
12 the determination of indebtedness of a school facilities improvement district at issue
13 under Section 15330 or 15332.

⁴⁷ Former Education Code Section 15334, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15334, was repealed by Chapter 277, Statutes of 1996, Section 1.

⁴⁸ Education Code Section 15334, added by Chapter 277, Statutes of 1996, Section 2:

“For the purpose of determining the limitation of indebtedness of a school facilities improvement district under Section 15330 or 15332, that portion of the bonded indebtedness of the school facilities improvement district for which another district or territory in another district is liable shall be excluded and shall not be deemed to constitute outstanding bonded indebtedness of the school facilities improvement district.”

1 Chapter 893, Statutes of 1997, Section 24, added⁴⁹ Education Code Section
2 15334.5⁵⁰ to require that no bonded indebtedness shall be incurred in an amount that
3 would cause the bonded indebtedness of the territory of the school district or
4 community college district of which the school facilities improvement district is a part, to
5 exceed 1.25 percent of the taxable property of the school facilities improvement district
6 as shown by the last equalized assessment of the county or counties in which the
7 school facilities improvement district is located, or 2.5 percent for any school facilities
8 improvement district that is located within the boundaries of a unified school district.

9 Chapter 277, Statutes of 1996, Section 2, added⁵¹ Education Code Section

⁴⁹ Former Education Code Section 15334.5, (added by Chapter 1072, Statutes of 1996, Section 10), relating to similar subject matter as new Section 15334.5, was repealed by Chapter 893, Statutes of 1997, Section 23.

⁵⁰ Education Code Section 15334.5, added by Chapter 893, Statutes of 1997, Section 24:

“Notwithstanding any other provision of law, no bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106. No bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school facilities improvement district to exceed the limitation of indebtedness specified in Sections 15330 and 15332.”

⁵¹ Former Education Code Section 15335, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15335, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 15335⁵² to provide that a civil action to determine the validity of bonds and of the
2 ordering of the improvement or acquisition shall be commenced as necessary.

3 Chapter 893, Statutes of 1997, Section 26, added⁵³ Education Code Section
4 15336⁵⁴ to require that the governing board of the school district or community college
5 district in which the school facilities improvement district is located submit a report,
6 within 30 days after the end of each fiscal year, to the county superintendent of schools
7 who has jurisdiction over the school district or community college district including: (a)

⁵² Education Code Section 15335, added by Chapter 277, Statutes of 1996,
Section 2:

“An action to determine the validity of bonds and of the ordering of the improvement or acquisition may be commenced pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. In the action, all findings, conclusions and determinations of the legislative body that conducted the proceedings shall be conclusive in the absence of actual fraud.”

⁵³ Former Education Code Section 15336, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15336, was repealed by Chapter 893, Statutes of 1997, Section 25.

⁵⁴ Education Code Section 15336, added by Chapter 893, Statutes of 1997,
Section 26:

“Within 30 days after the end of each fiscal year, the governing board of the school district or community college district in which the school facilities improvement district is located shall submit a report containing the information to an election held pursuant to Article 4 (commencing with Section 15340), to the county superintendent of schools who has jurisdiction over the school district or community college district:

(a) The total amount of the bond issue, bonded indebtedness, or other indebtedness involved.

(b) The percentage of qualified electors who are residents of the school facilities improvement district who voted at the election.

(c) The results of the election, with the percentage of votes cast for and against the proposition involved.”

1 the total amount of the bond issue, bonded indebtedness, or other indebtedness
2 involved; (b) the percentage of qualified electors who are residents of the school
3 facilities improvement district who voted at the election; and (c) the results of the
4 election, with the percentage of votes cast for and against the proposition involved.

5 ARTICLE 4. GENERAL PROVISIONS FOR BOND ELECTIONS

6 Chapter 199, Statutes of 2002, Section 2 amended⁵⁵ Education Code Section
7 15340⁵⁶. Subdivision (a) requires that, after adopting the resolution ordering the
8 formation of the school facilities improvement district, the governing board shall as
9 necessary provide for and call a special bond election within the school facilities
10 improvement district to submit to the voters of the school facilities improvement district

⁵⁵ Former Education Code Section 15340, (added by Chapter 1005, Statutes of 1994, Section 1) relating to similar subject matter as new Section 15340, was repealed by Chapter 277, Statutes of 1996, Section 1.

⁵⁶ Education Code Section 15340, added by Chapter 277, Statutes of 1996, Section 2, as amended by Chapter 199, Statutes of 2002, Section 2:

“(a) After adopting the resolution ordering the formation of the school facilities improvement district, the governing board may provide for and call a special bond election within the school facilities improvement district to, or may at the next statewide election, submit to the voters of the school facilities improvement district a proposition of whether or not an indebtedness of the district shall be incurred and bonds issued therefor in an amount not exceeding the estimate stated in the resolution ordering the school facilities improvement district formed. ~~Notwithstanding any other provision of law, any special election called pursuant to this section may be called for any date except as set forth in Section 1100 of the Elections Code, and except as provided in subdivision (a) of Section 15266 for bonds authorized and issued under the authority of subdivision (b) of Section 15348 and Chapter 1.5 (commencing with Section 15264).~~

(b) The indebtedness and the bonds shall be payable from taxes to be levied and collected upon lands located within the school facilities improvement district.”

1 a proposition of whether or not an indebtedness of the district shall be incurred and
2 bonds issued therefor in an amount not exceeding the estimate stated in the resolution
3 ordering the school facilities improvement district formed. Subdivision (b) requires that
4 the indebtedness and the bonds shall be payable from taxes to be levied and collected
5 upon lands located within the school facilities improvement district.

6 Chapter 199, Statutes of 2002, Section 3, added Education Code Section
7 15341⁵⁷ to require that no special bond elections may not be held pursuant to this
8 chapter within 45 days before a statewide election or within 45 days after a statewide
9 election unless conducted at the same time as the statewide election.

10 Chapter 893, Statutes of 1997, Section 28, added⁵⁸ Education Code Section
11 15342⁵⁹ to provide that the governing board of the school district or community college

⁵⁷ Education Code Section 15341, added by Chapter 199, Statutes of 2002, Section 3:

“Notwithstanding any other law, an election may not be held pursuant to this chapter within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as the statewide election, subject to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code, or on an established election date pursuant to Section 1000 of the Elections Code.”

⁵⁸ Former Education Code Section 15342, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15342, was repealed by Chapter 893, Statutes of 1997, Section 27.

⁵⁹ Education Code Section 15342, added by Chapter 893, Statutes of 1997, Section 28:

“Any one or more of the purposes enumerated in Section 15302, except that of refunding any outstanding valid indebtedness of the school facilities improvement district evidenced by bonds, may, by order of the governing board of the school district

1 district in which the school facilities improvement district is located shall, as may be
2 necessary, order a united and single proposition for any one or more of the purposes
3 enumerated in Section 15302 for issuing general obligation bonds, except that of
4 refunding any outstanding valid indebtedness of the school facilities improvement
5 district evidenced by bonds.

6 Chapter 277, Statutes of 1996, Section 2, added⁶⁰ Education Code section
7 15343⁶¹ to require that the election shall be conducted as required by the Election Code
8 except:

or community college district in which the school facilities improvement district is
located, be united and voted upon in a single proposition.”

⁶⁰ Former Education Code Section 15343, (added by Chapter 1005, Statutes of
1994, Section 1), relating to similar subject matter as new Section 15343, was repealed
by Chapter 277, Statutes of 1996, Section 1.

⁶¹ Education Code Section 15343, added by Chapter 277, Statutes of 1996,
Section 2:

“The election shall be conducted as provided in Chapter 3 (commencing with
Section 5300) of Part 4 except as provided by each of the following:

- (a) As otherwise provided in this chapter.
- (b) That the formal notice of the election shall contain and specify, in
addition to the items specified in Section 5361:
 - (1) The purposes for which the bonds are to be issued.
 - (2) The amount of the bonds.
 - (3) The maximum rate of interest, not to exceed the maximum rate
of interest allowed by Article 5 (commencing with Section 15350).
 - (4) The maximum number of years, not to exceed 25, not to exceed
which the bonds or any series thereof are to run.
- (c) No election shall be held under the provisions of this section in any
school facilities improvement district for a period of 90 days after an election in
the same school facilities improvement district.”

1 (a) As otherwise provided in this chapter;

2 (b) That the formal notice of the election shall contain and specify: (1) the
3 purposes for which the bonds are to be issued, (2) the amount of the bonds, (3)
4 the maximum rate of interest, and (4) the maximum number of years, not to
5 exceed 25, which the bonds or any series thereof are to run; and

6 (c) No election shall be held under the provisions of this section in any school
7 facilities improvement district for a period of 90 days after an election in the
8 same school facilities improvement district.

9 Chapter 277, Statutes of 1996, Section 2, added⁶² Education Code Section
10 15344⁶³ to provide that any election called pursuant to this chapter may be consolidated
11 with any other election pursuant to the Elections Code.

12 Chapter 277, Statutes of 1996, Section 2, added⁶⁴ Education Code Section

⁶² Former Education Code Section 15344, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15344, was repealed by Chapter 277, Statutes of 1996, Section 1.

⁶³ Education Code Section 15344, added by Chapter 277, Statutes of 1996, Section 2:

“Any election called pursuant to this chapter may be consolidated with any other election pursuant to the provisions of Part 2.5 (commencing with Section 23300) of Division 14 of the Elections Code.”

⁶⁴ Former Education Code Section 15345, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15345, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 15345⁶⁵ to provide that any qualified elector who is a resident of the territory of the
2 school facilities improvement district may vote on the proposition of issuing bonds of the
3 school facilities improvement district.

4 Chapter 277, Statutes of 1996, Section 2, added⁶⁶ Education Code Section
5 15346⁶⁷ to require specific wording on the ballot forms. In addition, a brief statement of
6 the proposition, setting forth the amount of the bonds to be voted upon, the maximum
7 rate of interest, and the purposes for which the proceeds of the sale of the bonds are to
8 be used, shall be printed upon the ballot. However, no defect in the statement other
9 than in the statement of the amount of the bonds to be authorized shall invalidate the
10 bonds election.

⁶⁵ Education Code Section 15345, added by Chapter 277, Statutes of 1996,
Section 2:

"Any qualified elector who is a resident of the territory of the school facilities
improvement district may vote on the proposition of issuing bonds of the school facilities
improvement district."

⁶⁶ Former Education Code Section 15346, (added by Chapter 1005, Statutes of
1994, Section 1), relating to similar subject matter as new Section 15346, was repealed
by Chapter 277, Statutes of 1996, Section 1.

⁶⁷ Education Code Section 15346, added by Chapter 277, Statutes of 1996,
Section 2:

"The words to appear upon the ballots shall be "Bonds--Yes" and "Bonds--No,"
or words of similar import. A brief statement of the proposition, setting forth the amount
of the bonds to be voted upon, the maximum rate of interest, and the purposes for
which the proceeds of the sale of the bonds are to be used, shall be printed upon the
ballot. No defect in the statement other than in the statement of the amount of the
bonds to be authorized shall invalidate the bonds election."

1 Chapter 277, Statutes of 1996, Section 2, added⁶⁸ Education Code Section
2 15347⁶⁹ to require the form and details of all ballots at school facilities improvement
3 elections shall comply with ballot provisions in the Government Code, unless otherwise
4 specified in this chapter.

5 Chapter 132, Statutes of 2001, Section 5 amended⁷⁰ Education Code Section
6 15348⁷¹. Subdivision (a) provides that the proposition shall be deemed approved upon

⁶⁸ Former Education Code Section 15347, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15347, was repealed by Chapter 277, Statutes of 1996, Section 1.

⁶⁹ Education Code Section 15347, added by Chapter 277, Statutes of 1996, Section 2:

“Unless otherwise specified in this chapter, the form and details of all ballots at school facilities improvement elections shall comply with ballot provisions of Part 4 (commencing with Section 2400) of the Government Code.”

⁷⁰ Former Education Code Section 15348, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15348, was repealed by Chapter 277, Statutes of 1996, Section 1.

⁷¹ Education Code Section 15348, added by Chapter 277, Statutes of 1996, Section 2, as amended by Chapter 132, Statutes of 2001, Section 5:

“(a) The proposition shall be deemed approved upon approval by two-thirds of the votes cast by voters voting on the proposition of issuing bonds of the school facilities improvement district unless subdivision (b) is applicable.

(b) Alternatively, for a governing board of a school district or community college district that proceeds pursuant to Chapter 1.5 (commencing with Section 15264) and subject to the requirements therein on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district, as specified in Section 15359.3, the proposition shall be deemed approved upon approval by 55 percent of the votes cast by voters voting on the proposition of issuing bonds of the school facilities improvement district.”

1 approval by two-thirds of the votes cast by voters voting on the proposition of issuing
2 bonds of the school facilities improvement district. Subdivision (b) alternatively provides
3 that for a governing board of a school district or community college district which
4 proceeds pursuant to Chapter 1.5 "Strict Accountability in Local School Construction
5 Bonds Act of 2000" (commencing with Section 15264), and subject to requirements
6 specified in Section 15359.3, the proposition shall be deemed approved upon approval
7 by 55 percent of the votes cast by voters on the proposition of issuing bonds of the
8 school facilities district.

9 Chapter 893, Statutes of 1997, Section 30, added⁷² Education Code Section
10 15349⁷³ to require that the governing board of the school district or community college
district in which the school facilities improvement district is located shall cause an entry
12 to be made upon its minutes if it appears from the certificate of election results that

⁷² Former Education Code Section 15349, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15349, was repealed by Chapter 893, Statutes of 1997, Section 29.

⁷³ Education Code Section 15349, added by Chapter 893, Statutes of 1997, Section 30:

"If it appears from the certificate of election results that two-thirds of the votes cast by the voters voting on the proposition of issuing bonds of the school facilities improvement district are in favor of issuing the bonds, the governing board of the school district or community college district in which the school facilities improvement district is located shall cause an entry of that fact to be made upon its minutes. The governing board of the school district or community college district shall then certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the school district or community college district, all proceedings had in the premises. The county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county."

1 two-thirds of the votes cast by the voters voting on the proposition of issuing bonds of
2 the school facilities improvement district are in favor of issuing the bonds. The
3 governing board of the school district or community college district shall then certify to
4 the board of supervisors of the county whose superintendent of schools has jurisdiction
5 over the school district or community college district, all proceedings had in the
6 premises. The county superintendent of schools shall send a copy of the certificate of
7 election results to the board of supervisors of the county.

8 Chapter 277, Statutes of 1996, Section 2, added⁷⁴ Education Code Section
9 15349.1⁷⁵ to require that the proceedings relating to the authorization of bonds of a
10 school facilities improvement district that is located within a joint school district of any
11 type need be certified only to the board of supervisors of the county whose
12 superintendent of schools has jurisdiction over the school district in which the school
13 facilities improvement district exists. The board of supervisors shall as necessary issue

⁷⁴ Former Education Code Section 15349.1, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15349.1, was repealed by Chapter 277, Statutes of 1996, Section 1.

⁷⁵ Education Code Section 15349.1, added by Chapter 277, Statutes of 1996, Section 2:

“The proceedings relating to the authorization of bonds of a school facilities improvement district that is located within a joint school district of any type need be certified only to the board of supervisors of the county whose superintendent of schools has jurisdiction over the school district in which the school facilities improvement district exists. The board of supervisors may issue and sell the bonds and no action of the board of supervisors of any other county in which the school board is situated shall be required in connection with the issuance and sale of the bonds, and the bonds need not be signed by any officer of any other county.”

1 and sell the bonds and no action of the board of supervisors of any other county in
2 which the school board is situated shall be required in connection with the issuance and
3 sale of the bonds, and the bonds need not be signed by any officer of any other county.

4 Chapter 277, Statutes of 1996, Section 2, added⁷⁶ Education Code Section
5 15349.2⁷⁷ to require that an election or any bonds authorized by that election shall not
6 be invalidated by error, irregularity, or omission that does not affect the substantial
7 rights of the taxpayers within the school facilities improvement district or the qualified
8 electors voting at any election at which bonds of any school facilities improvement
9 district are authorized to be issued.

10 ARTICLE 5. ISSUANCE AND SALE OF BONDS

1 Chapter 893, Statutes of 1997, Section 32, added⁷⁸ Education Code Section

⁷⁶ Former Education Code Section 15349.2, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15349.2, was repealed by Chapter 277, Statutes of 1996, Section 1.

⁷⁷ Education Code Section 15349.2, added by Chapter 277, Statutes of 1996, Section 2:

“No error, irregularity, or omission that does not affect the substantial rights of the taxpayers within the school facilities improvement district or the qualified electors voting at any election at which bonds of any school facilities improvement district are authorized to be issued shall invalidate the election or any bonds authorized by that election.”

⁷⁸ Former Education Code Section 15350, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15350, was repealed by Chapter 893, Statutes of 1997, Section 31.

1 15350⁷⁹ to require that bonds of a school facilities improvement district shall be offered
2 for sale by the board of supervisors of the county in which the county superintendent of
3 schools has jurisdiction over the school district or community college district in which
4 the school facilities improvement district is located as soon as possible, when
5 appropriate, following receipt of a resolution duly adopted by the governing board of
6 that school district or community college district. The resolution shall prescribe the total
7 amount of bonds to be sold. The resolution shall also, as may be necessary, prescribe
8 the maximum acceptable interest rate, not to exceed 8 percent, and the time or times
9 when the whole or any part of the principal of the bonds shall be payable, which shall
10 not be more than 25 years from the date of the bonds.

11 Chapter 893, Statutes of 1997, Section 34, added⁸⁰ Education Code Section

⁷⁹ Education Code Section 15350, added by Chapter 893, Statutes of 1997, Section 32:

“Bonds of a school facilities improvement district shall be offered for sale by the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located as soon as possible, when appropriate, following receipt of a resolution duly adopted by the governing board of that school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds.”

⁸⁰ Former Education Code Section 15351, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15351, was repealed by Chapter 893, Statutes of 1997, Section 33.

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1 15351⁸¹ to provide that, when authorized by the governing board of the school district or
2 community college district in which the school facilities improvement district is located,
3 bonds of the school facilities improvement district shall be offered for sale as a group by
4 the board of supervisors of the county in which the county superintendent of schools
5 has jurisdiction over the school district or community college district in which the school
6 facilities improvement district is located, at a time determined by the board of
7 supervisors following receipt of a resolution duly adopted by the governing board of that
8 school district or community college district. The resolution shall prescribe the total
9 amount of bonds to be sold. The resolution shall also, as may be necessary, prescribe
10 the maximum acceptable interest rate, not to exceed 8 percent, and the time or times

⁸¹ Education Code Section 15351, added by Chapter 893, Statutes of 1997,
Section 34:

“When authorized by the governing board of the school district or community college district in which the school facilities improvement district is located, bonds of the school facilities improvement district may be offered for sale as a group by the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located, at a time determined by the board of supervisors following receipt of a resolution duly adopted by the governing board of that school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. Bidders shall be required to bid a lump-sum bid on all bonds as a group. If bids satisfactory to the governing board of each school district or community college district in which a school facilities improvement district is located are received, the bonds offered for sale shall be awarded to the bidder whose bid will result in the lowest net interest cost for the group or for the bonds of any district included within the group. Bonds shall be issued and sold in the name of each school facilities improvement district in the same manner as provided in this chapter.”

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1 when the whole or any part of the principal of the bonds shall be payable, which shall
2 not be more than 25 years from the date of the bonds. Bidders shall be required to bid
3 a lump-sum bid on all bonds as a group. If bids satisfactory to the governing board of
4 each school district or community college district in which a school facilities
5 improvement district is located are received, the bonds offered for sale shall be
6 awarded to the bidder whose bid will result in the lowest net interest cost for the group
7 or for the bonds of any district included within the group. Bonds shall be issued and
8 sold in the name of each school facilities improvement district in the same manner as
9 provided in this chapter.

10 Chapter 893, Statutes of 1997, Section 36, added⁸² Education Code Section
11 15352⁸³ to require that the bonds shall be issued in the name of the school facilities
12 improvement district and with specific designations, and each bond and all interest
13 coupons shall state that the tax for the payment thereof shall be limited to annual taxes
14 to be levied upon and collected from the lands within the school facilities improvement

⁸² Former Education Code Section 15352, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15352, was repealed by Chapter 893, Statutes of 1997, Section 35.

⁸³ Education Code Section 15352, added by Chapter 893, Statutes of 1997, Section 36:

“The bonds shall be issued in the name of the school facilities improvement district and shall be designated "Bonds of the School Facilities Improvement District of the ____ School District" or "Bonds of the School Facilities Improvement District of the ____ Community College District" and each bond and all interest coupons shall state that the tax for the payment thereof shall be limited to annual taxes to be levied upon and collected from the lands within the school facilities improvement district.”

1 district.

2 Chapter 893, Statutes of 1997, Section 38, added⁸⁴ Education Code Section
3 15353⁸⁵ to require that the bonds shall be issued in the denomination or denominations
4 as the board of supervisors of the county in which the county superintendent of schools
5 has jurisdiction over the school district or community college district in which the school
6 facilities improvement district is located may prescribe.

7 Chapter 277, Statutes of 1996, Section 2, added⁸⁶ Education Code Section
8 15354 to require that “the bonds shall not bear a rate of interest greater than 8 percent
9 per annum, payable annually or semiannually.”

10 Chapter 277, Statutes of 1996, Section 2, added⁸⁷ Education Code Section
15355 to provide that “the number of years the whole or any part of the bonds are to

⁸⁴ Former Education Code Section 15353, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15353, was repealed by Chapter 893, Statutes of 1997, Section 37.

⁸⁵ Education Code Section 15353, added by Chapter 893, Statutes of 1997, Section 38:

“The bonds shall be issued in the denomination or denominations as the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located may prescribe.”

⁸⁶ Former Education Code Section 15354, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15354, was repealed by Chapter 277, Statutes of 1996, Section 1.

⁸⁷ Former Education Code Section 15355, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15355, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 run shall not exceed 25 years, from the date of the bonds or the date of any series
2 thereof.”

3 Chapter 893, Statutes of 1997, Section 40, added⁸⁸ Education Code Section
4 15356⁸⁹. Subdivision (a)(1) provides that the board of supervisors of the county in

⁸⁸ Former Education Code Section 15356, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15356, was repealed by Chapter 893, Statutes of 1997, Section 39.

⁸⁹ Education Code Section 15356, added by Chapter 893, Statutes of 1997, Section 40:

“(a) (1) The board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located shall prescribe the form of the bonds by an order entered upon its minutes.

(2) The bonds shall be signed by the chairperson of the board of supervisors, or by any other member thereof as the board of supervisors shall, by resolution adopted by a four-fifths vote of all its members, authorize and designate for that purpose, and also signed by the treasurer of the county, and shall be countersigned by the clerk of the board of supervisors or by a deputy of either of the officers. Unless the board of supervisors otherwise provides, all the signatures and countersignatures may be printed, lithographed, engraved, or otherwise mechanically reproduced except that one of the signatures or countersignatures to the bonds shall be manually affixed. Any signature may be affixed in accordance with the provisions of the Uniform Facsimile Signatures of Public Officials Act, Chapter 6 (commencing with Section 5500) of Title 1 of the Government Code.

(3) All expenses incurred for the preparation, sale, and delivery of the school facilities improvement bonds, including but not limited to, fees of an independent financial consultant, the publication of the official notice of sale of the bonds, the preparation, printing, and distribution of the official statement, the obtaining of a rating, the purchase of insurance insuring the prompt payment of interest and principal, the preparation of the certified copy of the transcript for the successful bidder, the printing of the bonds, and legal fees of independent bond counsel retained by the school facilities improvement district issuing the bonds are legal charges against the funds of the school facilities improvement district issuing the bonds and may be paid from the proceeds of sale of the bonds.

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1 which the county superintendent of schools has jurisdiction over the school district or
2 community college district in which the school facilities improvement district is located
3 shall prescribe the form of the bonds by an order entered upon its minutes. Subdivision
4 (a)(2) provides the requirements for authorizing and designating the bonds, and the
5 signatures and votes required. Subdivision (a)(3) describes the necessary expenses
6 incurred in preparing, selling and delivery the school facilities improvement bonds.
7 Subdivision (b) provides for the temporary approval of bonds by faxed-signatures.

8 Chapter 893, Statutes of 1997, Section 42, added⁹⁰ Education Code Section
9 15357⁹¹ to require that the board of supervisors shall establish within the county
10 treasury a school facilities improvement fund for each school facilities improvement
district for the purpose of depositing the proceeds of the bonds issued pursuant to this

(b) Notwithstanding subdivision (a), the board of supervisors may, in its discretion, determine that all of the required signatures and countersignatures shall be by facsimiles, provided, however, that the bonds shall not be valid or become obligatory for any purpose until manually signed by an authenticating agent duly appointed by the board or its authorized designee.”

⁹⁰ Former Education Code Section 15357, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15357, was repealed by Chapter 893, Statutes of 1997, Section 41.

⁹¹ Education Code Section 15357, added by Chapter 893, Statutes of 1997, Section 42:

“The board of supervisors shall establish within the county treasury a school facilities improvement fund for each school facilities improvement district the purpose of depositing the proceeds of the bonds issued pursuant to this chapter. The board of supervisors shall also establish within the county treasury a school facilities improvement bond interest and sinking fund for each school facilities improvement district.”

1 chapter, and a school facilities improvement bond interest and sinking fund for each
2 school facilities improvement district.

3 Chapter 893, Statutes of 1997, Section 44, added⁹² Education Code Section
4 15358⁹³. Subdivision (a) provides that the bonds shall be issued by the board of
5 supervisors, payable out of the interest and sinking fund of the school facilities
6 improvement district. Subdivision (b) requires that the proceeds of the sale of the

⁹² Former Education Code Section 15358, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15358, was repealed by Chapter 893, Statutes of 1997, Section 43.

⁹³ Education Code Section 15358, added by Chapter 893, Statutes of 1997, Section 44:

“(a) The bonds shall be issued by the board of supervisors, payable out of the interest and sinking fund of the school facilities improvement district. The board of supervisors, in its discretion, and without further authorization from the governing board of the school district or community college district in which the school facilities improvement district is located, may sell the bonds at a negotiated sale or by competitive bidding. The bonds may be sold at a discount not to exceed 5 percent and at an interest rate not exceeding the maximum permitted by Section 15354. If the sale is by competitive bid, the board of supervisors shall comply with the provisions of Sections 15359 and 15359.1. The bonds shall be sold by the board of supervisors no later than the date designated by the governing board of the school district or community college district in which the school facilities improvement district is located as the final date for the sale of the bonds.

(b) The proceeds of the sale of the bonds, exclusive of any premium received, shall be deposited in the county treasury to the credit of the school facilities improvement fund of the school facilities improvement district. The proceeds deposited shall be drawn out as necessary to finance the purposes approved by the voters pursuant to this chapter. The bond proceeds withdrawn shall not be applied to any other purposes than those for which the bonds were issued. Any premium or accrued interest received from the sale of the bonds shall be deposited in the interest and sinking fund of the county treasury established for the school facilities improvement district.”

1 bonds, exclusive of any premium received, shall be deposited in the county treasury to
2 the credit of the school facilities improvement fund of the school facilities improvement
3 district.

4 Chapter 893, Statutes of 1997, Section 46, added⁹⁴ Education Code Section
5 15359⁹⁵ to require that before the board of supervisors sells the bonds, or any part of
6 them, it shall seeks bids for at least two weeks by advertising in a daily or weekly
7 newspaper of general circulation published in the county in which the school facilities
8 improvement district is located.

9 Chapter 221, Statutes of 2002, Section 11, amended⁹⁶ Education Code Section
10 15359.1⁹⁷. Subdivision (a) requires that if satisfactory bids are received, the bonds

⁹⁴ Former Education Code Section 15359, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15359, was repealed by Chapter 893, Statutes of 1997, Section 45.

⁹⁵ Education Code Section 15359, added by Chapter 893, Statutes of 1997, Section 46:

“Before selling the bonds, or any part of them, the board of supervisors as appropriate, shall advertise for bids at least two weeks in some daily or weekly newspaper of general circulation published in the county whose county superintendent of schools has jurisdiction over the governing board of the school district or community college district in which the school facilities improvement district is located or if there is no newspaper published in the county, in a newspaper published in some other county in the state having a general circulation in the county.”

⁹⁶ Former Education Code Section 15359.1, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15359.1, was repealed by Chapter 893, Statutes of 1997, Section 47.

⁹⁷ Education Code Section 15359.1, added by Chapter 893, Statutes of 1997, Section 48, as amended by Chapter 221, Statutes of 2002, Section 11:

1 offered for sale shall be awarded to the highest responsible bidder or bidders.
2 Subdivision (b) provides the formula for calculating whether or not a bid exceeds the
3 maximum acceptable interest rate.

4 Chapter 893, Statutes of 1997, Section 50, added Education Code Section
5 15359.2⁹⁸. Subdivision (a) provides that the issuing school facilities improvement

“(a) If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder or bidders, and the county clerk of the board of supervisors shall prepare and certify to all of the proceedings on file in his or her office relative to the issuance and sale of the bonds, which transcript of proceedings shall be delivered to the successful bidder or bidders without charge. If no bids are received, or if the board determines that the bids received exceed either the maximum acceptable interest rate prescribed by the governing board or the maximum rate prescribed by Section 15353, or that they are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and without further authorization from the governing board of the school district or community college district in which the school facilities improvement district is located, either readvertise or sell the bonds at private sale.

(b) For the purpose of determining whether or not a bid exceeds the maximum acceptable interest rate, the interest rate of that bid shall be deemed to be the interest rate resulting from the total net interest cost arrived at by computing the total amount of interest that the school facilities improvement district would be required to pay from the date of the bonds to the respective maturity dates thereof at the rate or rates specified in the bid and by deducting therefrom any premium bid.”

⁹⁸ Education Code Section 15359.2, added by Chapter 893, Statutes of 1997, Section 50:

“(a) The issuing school facilities improvement district, by action of the governing board of the school district or community college district in which the school facilities improvement district is located, may prepare, or have prepared, bond brochures to serve as a prospectus for bond buyers to assist in the satisfactory sale of the bonds, the expense of the brochures shall be payable out of the funds of the district. The brochures may be prepared only after the issuance of the bonds to be sold has been approved by the electors of the school facilities improvement district pursuant to Article 4 (commencing with Section 15340).

1 district, by action of the governing board, may prepare, or have prepared, bond
2 brochures to serve as a prospectus for bond buyers to assist in the satisfactory sale of
3 the bonds. The expense of the brochures shall be payable out of the funds of the
4 district. However, the brochures shall only be prepared once the issuance of the bonds
5 to be sold has been approved by the electors of the school facilities improvement
6 district. Subdivision (b) provides that the issuing school facilities improvement district,
7 through its governing board, shall, as may be necessary, expend funds for the purposes
8 of advertising the availability of bonds for sale in any publications or newspaper that will
9 give proper notice to potential buyers.

10 Chapter 132, Statutes of 2001, Section 6, added Education Code Section
11 15359.3 to provide that "the governing board of a school district or community college
12 district may proceed pursuant to Chapter 1.5 (commencing with Section 15264) and
13 subject to the requirements therein on behalf of a school facilities improvement district
14 that is created by and under the exclusive authority of the school district or community
15 college district under this chapter."

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(b) The issuing school facilities improvement district by action of the governing board in which the school facilities improvement district is located may expend funds of the school facilities improvement district for the purposes of advertising the availability of the bonds for purchase in any publication or newspaper that in the opinion of that governing board will give notice to prospective bond buyers that the bonds are available for purchase by bond buyers."

1 ARTICLE 6. REQUIRED FORM OF BONDS

2 Chapter 277, Statutes of 1996, Section 2, added⁹⁹ Education Code Section
3 15360 to provide that “notwithstanding any other provision of law, whenever any bonds
4 are issued pursuant to this chapter, the bonds may be issued either in the form of
5 coupon bonds, or in the form of registered bonds, or some in the form of coupon bonds
6 and some in the form of registered bonds, as may be provided in the proceedings for
7 the issuance of the bonds.”

8 Chapter 277, Statutes of 1996, Section 2, added¹⁰⁰ Education Code Section
9 15361¹⁰¹ to provide that if any officer whose signature, countersignature, or attestation
10 appears on any school facilities improvement bonds or coupons ceases to be an officer
11 before the delivery of the bonds to the purchaser, the signature, countersignature, or

⁹⁹ Former Education Code Section 15360, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15360, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁰⁰ Former Education Code Section 15361, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15361, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁰¹ Education Code Section 15361, added by Chapter 277, Statutes of 1996, Section 2:

“If any officer whose signature, countersignature, or attestation appears on any school facilities improvement bonds or coupons ceases to be an officer before the delivery of the bonds to the purchaser, the signature, countersignature, or attestation either on the bonds or the coupons, or on both, is valid and sufficient for all purposes as if the officer had remained in office until the delivery of the bonds, and the signature upon the coupons of the person who is auditor at the date of the bonds, is valid although the bonds themselves may be attested by a different person who is auditor at the time of delivery of the bonds.”

1 attestation either on the bonds or the coupons, or on both, remains valid.

2 Chapter 277, Statutes of 1996, Section 2, added¹⁰² Education Code Section
3 15362 to provide that “any bonds executed in the manner provided by the board of
4 supervisors shall be valid, notwithstanding any change in the officers who signed the
5 bonds or the coupons, or in the seal of the board of supervisors, occurring after the
6 execution.”

7 ARTICLE 7. REGISTRATION OF BONDS

8 Article 7, Sections 15370 through 15374 pertain to bond ownership rights.

9 ARTICLE 8. CANCELLATION OF UNSOLD BONDS

10 Chapter 893, Statutes of 1997, Section 52, added¹⁰³ Education Code Section
15380¹⁰⁴ to provide that the governing board may petition the board of supervisors that

¹⁰² Former Education Code Section 15362, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15362, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁰³ Former Education Code Section 15380, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15380, was repealed by Chapter 893, Statutes of 1997, Section 51.

¹⁰⁴ Education Code Section 15380, added by Chapter 893, Statutes of 1997, Section 52:

“If any bonds authorized under this chapter have not been offered for sale for one year from the date of the election at which they were authorized or remain unsold for a period of six months after having been offered for sale in the manner prescribed by the board of supervisors, the governing board of the school district or community college district in which the school facilities improvement district is located and for which the bonds were authorized, may petition the board of supervisors that has jurisdiction of the issuance and sale of the bonds to cause the unsold bonds to be canceled.”

1 has jurisdiction of the issuance and sale of the bonds to cancel any unsold bonds if the
2 bonds have not been offered for sale for one year from the date of the election at which
3 they were authorized or remain unsold for a period of six months after having been
4 offered for sale.

5 Chapter 893, Statutes of 1997, Section 54, added¹⁰⁵ Education Code Section
6 15381¹⁰⁶ to require that, upon receiving the petition, signed by a majority of the
7 members of the governing board of the school district or community college district in
8 which the school facilities improvement district is located, the board of supervisors shall
9 fix a time for a hearing, which shall not be more than 30 days after receipt of the
10 petition, and shall cause a notice stating the time and place of the hearing, and the
11 object of the petition in general terms, to be published for 10 days prior to the hearing,
12 in a newspaper published in the school facilities improvement district if there is one, and

¹⁰⁵ Former Education Code Section 15381, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15381, was repealed by Chapter 893, Statutes of 1997, Section 53.

¹⁰⁶ Education Code Section 15381, added by Chapter 893, Statutes of 1997, Section 54:

“Upon receiving the petition, signed by a majority of the members of the governing board of the school district or community college district in which the school facilities improvement district is located, the board of supervisors shall fix a time for a hearing, which shall not be more than 30 days after receipt of the petition, and shall cause a notice stating the time and place of the hearing, and the object of the petition in general terms, to be published for 10 days prior to the hearing, in a newspaper published in the school facilities improvement district if there is one, and if there is no newspaper published in the school facilities improvement district, in a newspaper published at the county seat of the county.”

1 if there is no newspaper published in the school facilities improvement district, in a
2 newspaper published at the county seat of the county.

3 Chapter 277, Statutes of 1996, Section 2, added¹⁰⁷ Education Code Section
4 15382 to provide that "at the time and place designated in the notice, or at any
5 subsequent time to which the hearing may be postponed, the board of supervisors shall
6 hear any reasons that may be submitted for or against the granting of the petition."

7 Chapter 277, Statutes of 1996, Section 2, added¹⁰⁸ Education Code Section
8 15383 to provide that "if the board of supervisors deem it for the best interests of the
9 school facilities improvement district named in the petition that the unsold bonds be
10 canceled, it shall make and enter an order in the minutes of its proceedings that the
11 unsold bonds be canceled. Upon the entry of the order the bonds and the vote by which
12 they were authorized to be issued shall cease to be of any validity."

13 Chapter 893, Statutes of 1997, Section 56, added¹⁰⁹ Education Section Code

¹⁰⁷ Former Education Code Section 15382, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15382, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁰⁸ Former Education Code Section 15383, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15383, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁰⁹ Former Education Code Section 15384, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15384, was repealed by Chapter 893, Statutes of 1997, Section 55.

1 15384¹¹⁰ to provide that the governing board shall, as may be necessary, petition the
2 board of supervisors to cancel the remaining authorization of that district to issue and
3 sell bonds resulting from any particular school bond election after the sale of at least 90
4 percent of the bonds authorized at the election if the amount of the remaining
5 authorization is not more than twenty-five thousand dollars (\$25,000) and the sale of
6 the remaining bonds would not be economically justified. The board of supervisors, if it
7 determines that the public interest will be served thereby, may make and enter an order
8 in the minutes of its proceedings that the remaining authorization be canceled. Upon
9 the entry of the order, the vote by which the remaining authorization was created shall
10 cease to be of any validity with respect to the remaining authorization.
11
12

¹¹⁰ Education Code Section 15384, added by Chapter 893, Statutes of 1997,
Section 56:

"The governing board of a school district or community college district in which a school facilities improvement district is located may petition the board of supervisors to cancel the remaining authorization of that district to issue and sell bonds resulting from any particular school bond election after the sale of at least 90 percent of the bonds authorized at the election if the amount of the remaining authorization is not more than twenty-five thousand dollars (\$25,000) and in the opinion of the governing board the sale of the remaining bonds would not be economically justified. Sections 15381 and 15382 shall be applicable and at or following the hearing therein provided for, the board of supervisors, if it determines that the public interest will be served thereby, may make and enter an order in the minutes of its proceedings that the remaining authorization be canceled. Upon the entry of the order, the vote by which the remaining authorization was created shall cease to be of any validity with respect to the remaining authorization."

1 ARTICLE 9. PURCHASE OF BONDS BY ISSUING SCHOOL DISTRICTS

2 Chapter 893, Statutes of 1997, Section 58, added¹¹¹ Education Code Section
3 15390 to provide that "the governing board of a school district or community college
4 district in which a school facilities improvement district is located may purchase in the
5 open market bonds issued by the school facilities improvement district with available
6 funds from the school facilities improvement fund."

7 Chapter 893, Statutes of 1997, Section 60, added¹¹² Education Code Section
8 15391¹¹³ to provide that when any bonds issued by a school facilities improvement
9 district have been purchased by the governing board, the bonds shall be deemed
10 canceled and of no further validity. The governing board shall immediately, after

¹¹¹ Former Education Code Section 15390, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15390, was repealed by Chapter 893, Statutes of 1997, Section 57.

¹¹² Former Education Code Section 15391, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15391, was repealed by Chapter 893, Statutes of 1997, Section 59.

¹¹³ Education Code Section 15391, added by Chapter 893, statutes of 1997, Section 60:

"When any bonds issued by a school facilities improvement district have been purchased by the governing board of the school district or community college district in which the school facilities improvement district is located, the bonds shall be deemed canceled and of no further validity. The governing board of the school district or community college district in which the school facilities improvement district is located shall immediately, after purchasing the bonds, notify the board of supervisors of its action, describing the bonds purchased. At its first meeting thereafter, the board of supervisors shall note the purchase and cancellation of the bonds in the minutes of its proceedings."

1 purchasing the bonds, notify the board of supervisors of its action, describing the bonds
2 purchased. At its first meeting thereafter, the board of supervisors shall note the
3 purchase and cancellation of the bonds in the minutes of its proceedings.

4 ARTICLE 10. METHOD OF BOND PAYMENT

5 Chapter 893, Statutes of 1997, Section 62, added¹¹⁴ Education Code Section
6 15400¹¹⁵. Subdivision (a) provides that the board of supervisors, by an order entered
7 upon its minutes, shall fix the time when the whole or any part of the principal of the

¹¹⁴ Former Education Code Section 15400, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15400, was repealed by Chapter 893, Statutes of 1997, Section 61.

¹¹⁵ Education Code Section 15400, added by Chapter 893, Statutes of 1997, Section 62:

“(a) The board of supervisors, by an order entered upon its minutes, shall fix the time when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. If the governing board of the school district or community college district in which the school facilities improvement district is located has prescribed in its resolution the time or times when the whole or any part of the bonds shall be payable, the times and amounts shall be fixed by the order of the board of supervisors.

(b) Any bonds may be issued subject to call and redemption before maturity at the option of the governing board of the school district or community college district in which the school facilities improvement district exists. The governing board may include in its resolution a requirement that all or any part of the bonds shall be issued subject to call and redemption before maturity and the price or prices at which said bonds shall be redeemed. The board of supervisors, in its order fixing the form of the bonds and the maturities thereof, shall provide that the bonds be redeemable at the option of the governing board and at the price or prices fixed in the resolution. Bonds issued subject to call and redemption prior to maturity shall contain a recital to that effect, and no bond shall be subject to call or redemption prior to maturity unless it contains the recital. The board of supervisors in its order shall fix the method of giving notice of redemption to holders of bonds to be redeemed.”

1 bonds shall be payable, which shall not be more than 25 years from the date of the
2 bonds. If the governing board has prescribed in its resolution the time or times when
3 the whole or any part of the bonds shall be payable, the times and amounts shall be
4 fixed by the order of the board of supervisors. Subdivision (b) provides that any bonds
5 may be issued subject to call and redemption before maturity at the option of the
6 governing board. The governing board may include in its resolution a requirement that
7 all or any part of the bonds shall be issued subject to call and redemption before
8 maturity and the price or prices at which said bonds shall be redeemed. The board of
9 supervisors, in its order fixing the form of the bonds and the maturities thereof, shall
10 provide that the bonds be redeemable at the option of the governing board and at the
11 price or prices fixed in the resolution. Bonds issued subject to call and redemption prior
12 to maturity shall contain a recital to that effect, and no bond shall be subject to call or
13 redemption prior to maturity unless it contains the recital. The board of supervisors in
14 its order shall fix the method of giving notice of redemption to holders of bonds to be
15 redeemed.

16 Chapter 893, Statutes of 1997, Section 64, added¹¹⁶ Education Code Section
17 15401¹¹⁷ to provide that the board of supervisors, at the direction of the governing

¹¹⁶ Former Education Code Section 15401, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15401, was repealed by Chapter 893, Statutes of 1997, Section 63.

¹¹⁷ Education Code Section 15401, added by Chapter 893, Statutes of 1997, Section 64:

1 board, may divide the principal amount of bonds authorized at any election into two or
2 more series and may fix different dates for the bonds of each series, in which event the
3 maximum maturity date of the bonds shall be calculated from the date of each series
4 respectively. When the issuance of bonds shall have been authorized pursuant to two
5 or more propositions submitted at the same or different elections, all or any part of the
6 bonds not theretofore issued may be combined and issued and sold as one or more
7 series.

8 Chapter 277, Statutes of 1996, Section 2, added¹¹⁸ Education Code Section
9 15402¹¹⁹ to provide that the board of supervisors may make the principal and interest of

“The board of supervisors, at the direction of the governing board of the school district or community college district in which the school facilities improvement district is located, may divide the principal amount of bonds authorized at any election into two or more series and may fix different dates for the bonds of each series, in which event the maximum maturity date of the bonds shall be calculated from the date of each series respectively. When the issuance of bonds shall have been authorized pursuant to two or more propositions submitted at the same or different elections, all or any part of the bonds not theretofore issued may be combined and issued and sold as one or more series.”

¹¹⁸ Former Education Code Section 15402, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15402, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹¹⁹ Education Code Section 15402, added by Chapter 277, Statutes of 1996, Section 2:

“The board of supervisors may make the principal and interest of the bonds payable at the office of the treasurer of the county, or at any other place within the United States which the board may designate, or at the office of the county treasurer, or at any other designated place at the option of the bondholder. The place of payment shall be specified in the bonds. The expense of paying the bonds elsewhere than at the office of the treasurer shall be a proper charge against the school facilities

1 the bonds payable at the office of the treasurer of the county, or at any other place
2 within the United States which the board may designate, or at any other designated
3 place at the option of the bondholder. The place of payment shall be specified in the
4 bonds. The expense of paying the bonds elsewhere than at the office of the treasurer
5 shall be a proper charge against the school facilities improvement district to be paid out
6 of the tax levied and collected for the payment of the bonds.

7 Chapter 893, Statutes of 1997, Section 66, added¹²⁰ Education Code Section
8 15403¹²¹ to provide that the principal and interest on the bonds shall be paid by the
9 county treasurer, at the place required by the terms of the bonds, upon presentation
10 and surrender of warrants drawn by the county auditor in payment thereof, after he or
she has canceled the bonds and coupons, or upon the receipt of the registered owner,

improvement district to be paid out of the tax levied and collected for the payment of the
bonds.”

¹²⁰ Former Education Code Section 15403, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15403, was repealed by Chapter 893, Statutes of 1997, Section 65.

¹²¹ Education Code Section 15403, added by Chapter 893, Statutes of 1997, Section 66:

“The principal and interest on the bonds shall be paid by the county treasurer of the county in which the superintendent of schools has jurisdiction of the school district or community college district in which the school facilities improvement district is located, at the place required by the terms of the bonds, upon presentation and surrender of warrants drawn by the county auditor in payment thereof, after he or she has canceled the bonds and coupons, or upon the receipt of the registered owner, if the bonds are registered, after a proper warrant has been drawn by the auditor, out of the fund provided for their payment.”

1 if the bonds are registered, after a proper warrant has been drawn by the auditor, out of
2 the fund provided for their payment.

3 Chapter 893, Statutes of 1997, Section 68, added¹²² Education Code Section
4 15404¹²³ to require that upon the order of the auditor, any money remaining in the
5 interest and sinking fund of any school facilities improvement district after the payment
6 of all bonds and coupons payable from the fund, or any money in excess of an amount
7 sufficient to pay all unpaid bonds and coupons payable from the fund, shall be
8 transferred to the general fund of the governing board.

9 Chapter 893, Statutes of 1997, Section 70, added¹²⁴ Education Code Section
10 15405 to provide that "any money paid into the county treasury of the county and
11 credited to the interest and sinking fund of any school facilities improvement district
12 remaining after the payment of all bonds and coupons payable from the fund, or which

¹²² Former Education Code Section 15404, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15404, was repealed by Chapter 893, Statutes of 1997, Section 67.

¹²³ Education Code Section 15404, added by Chapter 893, Statutes of 1997, Section 68:

"Upon the order of the auditor, any money remaining in the interest and sinking fund of any school facilities improvement district after the payment of all bonds and coupons payable from the fund, or any money in excess of an amount sufficient to pay all unpaid bonds and coupons payable from the fund, shall be transferred to the general fund of the governing board of the school district or community college district in which the school facilities improvement district is located."

¹²⁴ Former Education Code Section 15405, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15405, was repealed by Chapter 893, Statutes of 1997, Section 69.

1 is in excess of an amount sufficient to pay all unpaid bonds and coupons payable from
2 the fund, shall be transferred to the special reserve fund of the school district or
3 community college district in which the school facilities improvement district is located
4 and may be used only for the purpose specified in Section 42840.”

5 ARTICLE 11. TAX FOR PAYMENT OF BONDS

6 Article 11, Sections 15410 through 15414 provides for the levying and collection
7 of taxes on bonds.

8 ARTICLE 12. TAX FOR PAYMENT OF BONDS OF SCHOOL FACILITIES

9 IMPROVEMENT DISTRICT LOCATED IN TWO OF MORE COUNTIES.

10 Article 12, Sections 15420 through 15422 provides for the assessment of taxes
to each county when a school district is located in two of more counties.

12 ARTICLE 13. MAXIMUM TAX FOR PAYMENT OF BONDS

13 Chapter 893, Statutes of 1997, Section 80, added¹²⁵ Education Code Section
14 15425¹²⁶ to provide that notwithstanding any other provision of this chapter, the rate of

¹²⁵ Former Education Code Section 15425, (added by Chapter 1005, Statutes of 1994, Section 1), relating to similar subject matter as new Section 15425, was repealed by Chapter 893, Statutes of 1997, Section 79.

¹²⁶ Education Code Section 15425, added by Chapter 893, Statutes of 1997, Section 80:

“Notwithstanding any other provision of this chapter, it is the intent of the Legislature that the rate of taxes levied annually upon the property in a school facilities improvement district formed pursuant to subdivision (a) of Section 15301 not be greater than the rate of the annual special tax levied upon parcels in the same school district or community college district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5

1 taxes levied annually upon the property in a school facilities improvement district
2 formed pursuant to subdivision (a) of Section 15301 shall not be greater than the rate of
3 the annual special tax levied upon parcels in the same school district or community
4 college district that are part of a community facilities district formed pursuant to the
5 Mello-Roos Community Facilities Act of 1982. A determination by the governing board
6 of a school district or community college district, made at the time bonds are sold
7 pursuant to this chapter, that the rate of taxes to be levied annually upon the property in
8 the school facilities improvement district does not exceed the rate of the annual special
9 tax levied upon parcels in the same school district or community college district that are
10 part of a community facilities district formed pursuant to the Mello-Roos Community
11 Facilities Act of 1982, shall be conclusive evidence of compliance with the intent of this
12 section.

(commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code. A determination by the governing board of a school district or community college district, made at the time bonds are sold pursuant to this chapter, that the rate of taxes to be levied annually upon the property in the school facilities improvement district, based upon tax rate estimates prepared pursuant to Section 9401 of the Elections Code, does not exceed the rate of the annual special tax levied upon parcels in the same school district or community college district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, shall be conclusive evidence of compliance with the intent of this section."

1 CHAPTER 12. STATE SCHOOL BUILDING LEASE-PURCHASE LAW OF 1976

2 ARTICLE 1. GENERAL PROVISIONS

3 Chapter 277, Statutes of 1996, Section 2, added¹²⁷ Education Code Section
4 17000¹²⁸ to cite Chapter 12 as the "Leroy F. Greene State School Building
5 Lease-Purchase Law of 1976."

6 Chapter 277, Statutes of 1996, Section 2, added¹²⁹ Education Code Section
7 17001¹³⁰. Subdivision (a) provides that, in the interest of the state and the people

¹²⁷ Former Education Code Section 19350, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as 17700 by Chapter 1010, Statutes of 1976, Section 2), relating to similar subject matter as new Section 17000, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹²⁸ Education Code Section 17000, added by Chapter 277, Statutes of 1996, Section 2:

"This chapter may be cited as the 'Leroy F. Greene State School Building Lease-Purchase Law of 1976.'"

¹²⁹ Former Education Code Section 19351, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as 17701 by Chapter 1010, Statutes of 1976, Section 2), relating to similar subject matter as new Section 17001, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹³⁰ Education Code Section 17001, added by Chapter 277, Statutes of 1996, Section 2:

"(a) The Legislature hereby declares that it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements, and to acquire new schoolsites and buildings for the purpose of making them available to local school districts for the pupils of the public school system, that system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.

(b) In order to expedite the elimination of the use of nonconforming school

1 thereof, the state shall reconstruct, remodel, or replace existing school buildings that
2 are educationally inadequate or that do not meet present-day structural safety
3 requirements, and to acquire new schoolsites and buildings for the purpose of making
4 them available to local school districts for the pupils of the public school system.
5 Subdivision (b) provides that in order to expedite the elimination of the use of
6 nonconforming school buildings that are used or designed to be used for instructional
7 purposes or intended to be entered by pupils, the State Allocation Board may establish
8 criteria that considers the special circumstances of school districts under which funds
9 may be allocated for the reconstruction of nonconforming buildings. However, the
10 allocated funds cannot exceed 75 percent of the cost of facility replacement.
11 Subdivision (c) requires that all construction projects be designed and constructed to
12 maximize the use of educational technology, including computers, telephones,
13 televisions, and video cassette recorders.

14 Chapter 277, Statutes of 1996, Section 2, added¹³¹ Education Code Section

buildings that are used or designed to be used for instructional purposes or intended to be entered by pupils, the State Allocation Board may establish criteria that considers special circumstances under which funds may be allocated for the reconstruction of nonconforming buildings. The funds allocated in accordance with this section shall not exceed 75 percent of the cost of facility replacement.

(c) It is the intent of the Legislature that all construction projects be designed and constructed to maximize the use of educational technology, as set forth in subdivision (b) of Section 17002.”

¹³¹ Former Education Code Section 19352, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as 17702 by Chapter 1010, Statutes of 1976, Section 2), relating to similar subject matter as new Section 17002, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17002¹³² to define the terms "board," "cost of project," "lease," "project," "property," and
2 "apportionment."
3 Chapter 277, Statutes of 1996, Section 2, added¹³³ Education Code Section

¹³² Education Code Section 17002, added by Chapter 277, Statutes of 1996,
Section 2:

"The following terms wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Board" means the State Allocation Board.

(b) "Cost of project" includes, but is not limited to, the cost of all real estate property rights, and easements acquired, and the cost of developing the site and streets and utilities immediately adjacent thereto, the cost of construction, reconstruction, or modernization of buildings and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project. For purposes of this section, "educational technology hardware" includes, but is not limited to, computers, telephones, televisions, and video cassette recorders.

(c) The term "lease" includes a lease with an option to purchase.

(d) "Project" means the facility being constructed or acquired by the state for rental to the applicant school district and may include the reconstruction or modernization of existing buildings, construction of new buildings, the grading and development of sites, acquisition of sites therefor and any easements or rights-of-way pertinent thereto or necessary for its full use including the development of streets and utilities.

(e) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(f) "Apportionment" means a reservation of funds necessary to finance the cost of any project approved by the board for lease to an applicant school district."

¹³³ Former Education Code Section 17702.1, (added by Chapter 899, Statutes of 1980, Section 1 and last amended by Chapter 1439, Statutes of 1989, Section 1) relating to similar subject matter as renumbered Section 17002.1, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17002.1¹³⁴ to require the inclusion of the terms and concepts of reconstruction,
2 modernization, replacement of facilities, and the performance of deferred maintenance
3 activities on facilities under the rubric of construction as used in this chapter. Funding
4 for deferred maintenance activities for a facility shall be approved under this chapter
5 without regard to whether project funding for the reconstruction, modernization, or
6 replacement of the facility is prohibited under Section 17021 (providing that funding will
7 not be approved for the reconstruction, modernization, or replacement of any school
8 building that was constructed or reconstructed less than 30 years ago, or any portable
9 classroom less than 20 years ago).

10 Chapter 277, Statutes of 1996, Section 2, added¹³⁵ Education Code Section
11 17005.1¹³⁶ to require an annual plan for allocation of funds for each forthcoming fiscal

¹³⁴ Education Code Section 17002.1, added by Chapter 277, Statutes of 1996, Section 2:

“As used in this chapter, construction shall include, but not be limited to, reconstruction, modernization, and replacement of facilities, and the performance of deferred maintenance activities on facilities pursuant to rules and regulations regarding those activities as may be adopted by the board. Funding for deferred maintenance activities for a facility may be approved under this chapter without regard to whether project funding for the reconstruction, modernization, or replacement of the facility is prohibited under Section 17021.”

¹³⁵ Former Education Code Section 17705.1, (added by Chapter 899, Statutes of 1980, Section 2) relating to similar subject matter as renumbered Section 17005.1, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹³⁶ Education Code Section 17005.1, added by Chapter 277, Statutes of 1996, Section 2:

“On or before June 30, 1981, and on or before June 30 of each year thereafter,

1 year for the purposes of deferred maintenance activities and the manner in which such
2 funds shall be allocated to applicant districts.

3 Chapter 277, Statutes of 1996, Section 2, added¹³⁷ Education Code Section
4 17005.3¹³⁸. Subdivision (a) provides that any school district with an average daily

the board shall approve a plan specifying (a) the amount of funds to be allocated in the forthcoming fiscal year for the purposes of deferred maintenance activities and (b) the manner in which such funds shall be allocated to applicant districts.”

¹³⁷ Former Education Code Section 17705.11, (added by Chapter 1048, Statutes of 1993, Section 1 and amended by Chapter 194, Statutes of 1994, Section 1) relating to similar subject matter as renumbered Section 17005.3, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹³⁸ Education Code Section 17005.3, added by Chapter 277, Statutes of 1996, Section 2:

(a) Any school district with an average daily attendance of less than 2,501 pupils may apply to the board for a loan to cover the project activities of the first or second phase, as those phases were defined on July 1, 1993, of a project funded under this chapter. The loan shall not be utilized for the purchase of real property and shall be repaid by the school district either through a dedication of fees or charges levied pursuant to Section 17620 until the loan is repaid or upon receiving the project funding at the construction phase, but, in any event, the loan shall be repaid within five years from the date on which the board makes the loan. In addition to the other methods of repayment specified in this subdivision, the board may also notify the Controller if a school district is 90 days late in making loan repayments, in which case the Controller shall reduce the apportionments to which the school district is otherwise entitled under Section 42238 as necessary to recover past due payments and any current payments.

(b) The board may make loans under this section to the extent that the board determines that funds are available for that purpose. The total annual maximum funds that may be loaned under this section is ten million dollars (\$10,000,000) per fiscal year.

(c) The board may make loans under this section only for those projects and phases that have met all of the eligibility standards of the board and receive approval for an apportionment, but for which apportionment funds are not available. In any event, the amount of the loan shall not exceed the amount that would have been eligible for apportionment.”

1 attendance of less than 2,501 pupils shall, when necessary, apply to the board for a
2 loan to cover the project activities of the first or second phase, as those phases were
3 defined on July 1, 1993, of a project funded under this chapter. The loan shall not be
4 utilized for the purchase of real property and shall be repaid by the school district either
5 through a dedication of fees or charges levied pursuant to Section 17620 (the subject of
6 another Test Claim) until the loan is repaid or upon receiving the project funding at the
7 construction phase. The loan shall be repaid within five years from the date on which
8 the board makes the loan. The board may also notify the Controller if a school district
9 is 90 days late in making loan repayments, and the Controller shall then reduce the
10 apportionments to which the school district is otherwise entitled as necessary to recover
11 past due payments and any current payments. Subdivision (b) provides that the
12 maximum allocation of funds that could be loaned under this section is ten million
13 dollars (\$10,000,000) per fiscal year. Subdivision (c) requires that only those projects
14 and phases that have met all of the eligibility standards of the board and have received
15 approval for an apportionment, but for which apportionment funds are not available, are
16 eligible for a loan from the board. The amount of the loan shall not exceed the amount
17 that would have been eligible for apportionment.

18 Chapter 277, Statutes of 1996, Section 2, added¹³⁹ Education Code Section

¹³⁹ Former Education Code Section 17705.15, (added by Chapter 1111, Statutes of 1994, Section 1) relating to similar subject matter as renumbered Section 17005.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

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1 17005.5¹⁴⁰ to provide that school districts shall, as may be necessary, receive aid in the
2 form of loans from the board out of the proceeds of the sale of bonds pursuant to the
3 School Facilities Bond Act of 1992 and the 1992 School Facilities Bond Act when those
4 proceeds are available in the State School Building Lease-Purchase Fund. However, In
5 order to have a loan provided, both of the following conditions shall be met: (a) the
6 amount of the loan shall not exceed the amount set forth in legislation enacted that
7 specifies the loan amount; and (b) the loan shall be repaid pursuant to a schedule set
8 forth in legislation enacted that specifies a loan repayment schedule.

9 Chapter 277, Statutes of 1996, Section 2, added¹⁴¹ Education Code Section
10 17006¹⁴². Subdivision (a) provides that the board will not enter into any lease with

¹⁴⁰ Education Code Section 17005.5, added by Chapter 277, Statutes of 1996,
Section 2:

“The board may provide a loan to any school district from the proceeds of the sale of bonds pursuant to the School Facilities Bond Act of 1992, and the 1992 School Facilities Bond Act, to provide aid for school districts in accordance with this chapter, when those proceeds are available in the State School Building Lease-Purchase Fund. In order to provide a loan, both of the following conditions shall be met:

(a) The amount of the loan shall not exceed the amount set forth in legislation enacted that specifies the loan amount.

(b) The loan shall be repaid pursuant to a schedule set forth in legislation enacted that specifies a loan repayment schedule.”

¹⁴¹ Former Education Code Section 19356, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as 17706 by Chapter 1010, Statutes of 1976, Section 2), relating to similar subject matter as new Section 17006, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁴² Education Code Section 17006, added by Chapter 277, Statutes of 1996,
Section 2:

1 respect to an application for replacing inadequate school facilities unless it first has
2 investigated and made a finding, or the governing board of a self-certifying district, as
3 applicable, first certifies that it has investigated and made a finding, consistent with
4 guidelines adopted by the board, that one or both of the following conditions exists: (1)
5 it would not be economical or good practice to rehabilitate those facilities, and/or (2) the
6 school facilities are inadequate due to their susceptibility to repeated flooding. The
7 board shall develop and adopt regulations that define inadequacy of school facilities on
8 the basis of susceptibility to repeated flooding. The building area of any facility found to
9 be inadequate pursuant to this subdivision shall be excluded, for the purposes of any

“(a) The board shall not enter into any lease with respect to an application for replacing inadequate school facilities unless it first has investigated and made a finding, or the governing board of a self-certifying district, as applicable, first certifies that it has investigated and made a finding, consistent with guidelines adopted by the board, that one or both of the following conditions exists:

(1) It would not be economical or good practice to rehabilitate those facilities.

(2) The school facilities are inadequate due to their susceptibility to repeated flooding. The board shall develop and adopt regulations that define inadequacy of school facilities on the basis of susceptibility to repeated flooding. The building area of any facility found to be inadequate pursuant to this subdivision shall be excluded, for the purposes of any application for the replacement of any facility, from the calculation under this chapter of the area of adequate school construction existing in the applicant school district.

(b) The self-certifying district shall maintain documentation of each investigation and finding it conducts pursuant to subdivision (a) as may be required by the board, and the investigation and finding shall be subject to subsequent audit as the board may direct.

(c) For purposes of this chapter, a "self-certifying district" as to any project to be funded under this chapter, is an applicant district that provides 50 percent or more of the cost of the project from funding sources other than any state program administered by the board.”

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1 application for the replacement of any facility, from the calculation under this chapter of
2 the area of adequate school construction existing in the applicant school district.

3 Subdivision (b) requires the self-certifying district to maintain documentation of each
4 investigation and finding it conducts pursuant to subdivision (a) as may be required by
5 the board, and the investigation and finding shall be subject to subsequent audit as the
6 board may direct. Subdivision (c) provides that for purposes of this chapter, a
7 "self-certifying district" as to any project to be funded under this chapter, is an applicant
8 district that provides 50 percent or more of the cost of the project from funding sources
9 other than any state program administered by the board.

10 Chapter 277, Statutes of 1996, Section 2, added¹⁴³ Education Code Section
11 17008¹⁴⁴ to create a State Treasury fund known as the State School Building
12 Lease-Purchase Fund. All money in the State School Building Lease-Purchase Fund,

¹⁴³ Former Education Code Section 19358, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as 17706 by Chapter 1010, Statutes of 1976, Section 2), relating to similar subject matter as new Section 17008, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁴⁴ Education Code Section 17008, added by Chapter 277, Statutes of 1996, Section 2:

"A fund is hereby created in the State Treasury to be known as the State School Building Lease-Purchase Fund. All money in the State School Building Lease-Purchase Fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated for expenditure pursuant to this chapter.

The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the State School Building Lease-Purchase Fund from any source."

1 including any money deposited in that fund from any source whatsoever, is
2 appropriated for expenditure pursuant to this chapter.

3 Chapter 277, Statutes of 1996, Section 2, added¹⁴⁵ Education Code Section
4 17008.3¹⁴⁶. Subdivision (a) provides that a revolving loan account within the State
5 School Building Lease-Purchase Fund shall be established as necessary, from which

¹⁴⁵ Former Education Code Section 17708.3, (added by Chapter 886, Statutes of 1986, Section 3) relating to similar subject matter as Section 17008.3, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁴⁶ Education Code Section 17008.3, added by Chapter 277, Statutes of 1996, Section 2:

“(a) The board may establish a revolving loan account within the State School Building Lease-Purchase Fund, and may allocate from the fund to that account those amounts it determines to be necessary for the purposes of this section.

(b) The board may apportion to any school district that submits to the board a statement of its intent to subsequently file a project application under this chapter, a loan for the purpose of advance planning and related administrative costs pursuant to the preparation of that application. The loan amount shall not exceed 3 percent of the estimated project cost, as determined pursuant to the building cost standards established under this chapter.

(c) If, within a period of 24 months following the receipt of any loan amounts under this section, the project for which those advance planning funds were provided has not been found by the board to be qualified for funding under this chapter, the board shall so notify the Controller, who shall reduce the apportionments to which the district is otherwise entitled under Section 42238 as necessary to repay the amount of all loans provided under this section, over such period of time as the board finds to be reasonable. The Controller shall transfer the amount of all apportionment reductions imposed under this subdivision to the revolving loan account established under this section.

(d) The repayment of loan amounts received under this section by school districts other than those described under subdivision (c) shall be accomplished by the withholding, as determined by the board, of apportionment funds that would be available to the district for purposes of the project for which the district received funding approval under this chapter.”

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1 funds will be allocated by the board as determined necessary for the purposes of this
2 section. Subdivision (b) provides that if any school district submits to the board a
3 statement of its intent to subsequently file a project application under this chapter, the
4 board shall, as may be necessary, apportion a loan for the purpose of advance
5 planning and related administrative costs pursuant to the preparation of that application.
6 The loan will not exceed 3 percent of the estimated project cost, as determined
7 pursuant to the building cost standards established under this chapter. Subdivision (c)
8 provides that if, within a period of 24 months following the receipt of any loan amounts
9 under this section, the school district's project for which those advance planning funds
10 were provided has not been found by the board to be qualified for funding under this
11 chapter, the board shall so notify the Controller, who shall reduce the apportionments
12 as necessary to repay the amount of all loans provided under this section, over such
13 period of time as the board finds to be reasonable. Subdivision (d) requires school
14 districts to repay the loan amounts received under this section, other than those
15 described under subdivision (c), by having apportioned funds that would have been
16 available to the district for purposes of an approved project withheld by the board.

17 Chapter 277, Statutes of 1996, Section 2, added¹⁴⁷ Education Code Section

¹⁴⁷ Former Education Code Section 17708.5, (added by Chapter 1749, Statutes of 1984, Section 1), relating to similar subject matter as Section 17008.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17008.5¹⁴⁸ to provide that projects may be approved and funds may be apportioned in
2 amounts not exceeding those funds on deposit in the State School Building
3 Lease-Purchase Fund plus any amount of bonds authorized by the State School
4 Building Finance Committee but not yet sold by the Treasurer. Disbursements may be
5 made under any apportionment made from any funds in the State School Building
6 Lease-Purchase Fund, irrespective of whether there exists at the time of the
7 disbursement a sufficient amount in the State School Building Lease-Purchase Fund to
8 permit payment in full of all apportionments previously made. However, no
9 disbursement shall be made from any funds required by law to be transferred to the
10 General Fund.

11 Chapter 277, Statutes of 1996, Section 2, added¹⁴⁹ Education Code Section

¹⁴⁸ Education Code Section 17008.5, added by Chapter 277, Statutes of 1996,
Section 2:

“The board may approve projects and make apportionments in amounts not exceeding those funds on deposit in the State School Building Lease-Purchase Fund plus any amount of bonds authorized by the State School Building Finance Committee but not yet sold by the Treasurer.

Disbursements may be made under any apportionment made from any funds in the State School Building Lease-Purchase Fund, irrespective of whether there exists at the time of the disbursement a sufficient amount in the State School Building Lease-Purchase Fund to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.”

¹⁴⁹ Former Education Code Section 17709, (added by Chapter 388, Statutes of 1993, Section 1) relating to similar subject matter as Section 17009, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17009¹⁵⁰. Subdivision (a) provides that the county superintendent of schools or county
2 office of education shall be eligible to receive any funds from the portion of the
3 proceeds of the sale of any state bonds that are set aside for the construction,
4 reconstruction, or modernization of, or deferred maintenance on facilities to house
5 special education pupils who are defined as severely handicapped and eligible pursuant
6 to Section 17047 (providing that allowable new building area necessarily be allocated to
7 providing special day class and Resource Specialist Program facilities for special
8 education students). Subdivision (b) provides that subdivision (a) is only applicable if
9 the county superintendent of schools or county office of education has filed with the
10 board a regionalized facility plan, as developed and approved by the State Department
of Education, that covers the county or special education local planning agency area of
12 responsibility.

13 Chapter 407, Statutes of 1998, Section 2, added Education code Section
14 17009.3 to provide that "the board may not approve any projects pursuant to this

¹⁵⁰ Education Code Section 17009, added by Chapter 277, Statutes of 1996,
Section 2:

"(a) The county superintendent of schools or county office of education shall be eligible to receive any funds from the portion of the proceeds of the sale of any state bonds that are set aside for the construction, reconstruction, or modernization of, or deferred maintenance on facilities to house special education pupils who are defined as severely handicapped and eligible pursuant to Section 17047.

(b) Subdivision (a) is only applicable if the county superintendent of schools or county office of education has filed with the State Allocation Board a regionalized facility plan, as developed and approved by the State Department of Education, that covers the county or special education local planning agency area of responsibility."

1 chapter on and after November 4, 1998.”

2 Chapter 753, Statutes of 2000, Section 1, amended Education Code Section
3 17009.5¹⁵¹. Subdivision (a) requires that the board shall only approve and fund school

¹⁵¹ Education Code Section 17009.5, added by Chapter 407, Statutes of 1998, Section 3, as amended by Chapter 753, Statutes of 2000, Section 1:

“(a) * * * Except as set forth in Section 17052, on and after November 4, 1998, the board shall only approve and fund school facilities construction projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(b) A school district with a first priority project that has received a construction approval by the Department of General Services, Division of the State Architect, or a joint-use project approval by the board, prior to November 4, 1998, for growth or modernization pursuant to this chapter shall receive funding pursuant to this chapter for all unfunded approved project costs as it would have received under this chapter, and the increased capacity assigned to the project shall be included in calculating the district's capacity pursuant to Chapter 12.5 (commencing with Section 17070.10). Funds received for projects described in this subdivision shall constitute the state's final and full contribution to these projects. The board shall not consider additional project funding except when otherwise authorized under Chapter 12.5 (commencing with Section 17070.10).

(c) A school district with a second priority project that has received a construction approval by the Department of General Services, Division of the State Architect prior to November 4, 1998, for growth or modernization pursuant to this chapter shall elect to do either of the following:

(1) Withdraw the application under this chapter, submit an initial report and application pursuant to Chapter 12.5 (commencing with Section 17070.10), and receive per pupil allocations as set forth in Chapter 12.5 (commencing with Section 17070.10). If the district withdraws the application, any funds previously allocated under this chapter for the project shall be offset from the first grant to the district under Chapter 12.5 (commencing with Section 17070.10).

(2) Convert the second priority project approved under this chapter to a first priority status and receive funds in accordance with this chapter.

(d) Notwithstanding priorities established pursuant to Chapter 12.5 (commencing with Section 17070.10), projects authorized for funding as set forth in this section shall be funded by the board pursuant to this chapter prior to funding other projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(e) For purposes of funding priority for modernization grants under Chapter 12.5 (commencing with Section 17070.10), a district that applies under subdivision (b) or

1 facilities construction projects pursuant to Chapter 12.5 "Leroy F. Greene School
2 Facilities Act of 1998" (commencing with Section 17070.10), except as set forth in
3 Section 17052, on and after November 4, 1998. Subdivision (b) provides that a school
4 district with a first priority project that has received a construction approval by the
5 Department of General Services, Division of the State Architect, or a joint-use project
6 approval by the board, prior to November 4, 1998, for growth or modernization pursuant
7 to this chapter shall receive funding pursuant to this chapter for all unfunded approved
8 project costs as it would have received under this chapter, and the increased capacity
9 assigned to the project shall be included in calculating the district's capacity pursuant to
10 Chapter 12.5. Funds received for projects described in this subdivision shall constitute
11 the state's final and full contribution to these projects. The board shall not consider
12 additional project funding except when otherwise authorized under Chapter 12.5.
13 Subdivision (c) requires that a school district with a second priority project that has
14 received a construction approval by the Department of General Services, Division of the
15 State Architect prior to November 4, 1998, for growth or modernization pursuant to this
16 chapter shall elect to do either of the following: (1) withdraw the application under this
17 chapter, submit an initial report and application pursuant to Chapter 12.5, and receive

paragraph (1) of subdivision (c) shall retain its original project approval date.

(f) Notwithstanding Section 17017.1, West Contra Costa Unified School District shall be eligible for state facilities funds beginning November 4, 1998.

(g) The State Allocation Board shall adopt regulations to ensure that an appropriate offset is made from funds approved pursuant to this chapter, for funds awarded to school districts pursuant to Chapter 12 (commencing with Section 17000) prior to November 4, 1998."

1 per pupil allocations as set forth in Chapter 12.5. If the district withdraws the
2 application, any funds previously allocated under this chapter for the project shall be
3 offset from the first grant to the district under Chapter 12.5; or (2) convert the second
4 priority project approved under this chapter to a first priority status and receive funds in
5 accordance with this chapter. Subdivision (d) provides that notwithstanding priorities
6 established pursuant to Chapter 12.5, projects authorized for funding as set forth in this
7 section shall be funded by the board pursuant to this chapter prior to funding other
8 projects pursuant to Chapter 12.5. Subdivision (e) provides that for purposes of funding
9 priority for modernization grants under Chapter 12.5, a district that applies under
10 subdivision (b) or paragraph (1) of subdivision (c) shall retain its original project
11 approval date. Subdivision (f) relates specifically to the West Contra Costa Unified
12 School District. Subdivision (g) requires that the State Allocation Board shall adopt
13 regulations to ensure that an appropriate offset is made from funds approved pursuant
14 to this chapter, for funds awarded to school districts pursuant to this chapter prior to
15 November 4, 1998.

16 ARTICLE 2. PROJECTS

17 Chapter 277, Statutes of 1996, Section 2, added¹⁵² Education Code Section

¹⁵² Former Education Code Section 19359, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as Section 17710 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as new Section 17010, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17010¹⁵³ to provide that the board may construct any project, and may acquire all
2 property necessary therefor, on any terms and conditions as it may deem advisable.
3 When any part of the work is to be done or performed by any public body or the United
4 States jointly or in conjunction with the board, the portion of the cost of the project to be
5 borne by the board may be turned over to the government of the United States or to
6 any other public body, to be expended by it in the acquisition, construction or
7 completion of the project.

8 Chapter 277, Statutes of 1996, Section 2, added¹⁵⁴ Education Code Section
9 17011 to provide that “the board may use for the payment of the costs of acquisition,
10 construction or completion of any project any funds made available to the board by the
11 State of California or any other funds provided by the board from any source, to be
12 expended for accomplishing the purposes set forth in this chapter, together with the
13 proceeds of bonds issued and sold pursuant to the State School Building

¹⁵³ Education Code Section 17010, added by Chapter 277, Statutes of 1996,
Section 2:

“The board may construct any project, and may acquire all property necessary therefor, on any terms and conditions as it may deem advisable. When any part of the work is to be done or performed by any public body or the United States jointly or in conjunction with the board, the portion of the cost of the project to be borne by the board may be turned over to the government of the United States or to any other public body, to be expended by it in the acquisition, construction or completion of the project.”

¹⁵⁴ Former Education Code Section 19360, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as Section 17711 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as new Section 17011, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 Lease-Purchase Bond Law of 1976.”

2 Chapter 277, Statutes of 1996, Section 2, added¹⁵⁵ Education Code Section
3 17012 to provide that “the board has full charge of the acquisition, construction,
4 completion, and control of all projects authorized by them and may proceed with such
5 work forthwith.”

6 Chapter 277, Statutes of 1996, Section 2, added¹⁵⁶ Education Code Section
7 17013 to provide that “title to all property acquired, constructed, or improved by the
8 board and the revenues and income therefrom, is in the State of California. All such
9 property, and the income therefrom are exempt from all taxation by the State of
10 California or by any county, city and county, city, district, political subdivision or public
11 corporation thereof.”

12 Chapter 513, Statutes of 1997, Section 1, amended¹⁵⁷ Education Code Section

¹⁵⁵ Former Education Code Section 19361, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as Section 17712 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as new Section 17012, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁵⁶ Former Education Code Section 19362, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as Section 17713 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as new Section 17013, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁵⁷ Former Education Code Section 19363, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as Section 17714 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17014, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17014¹⁵⁸. Subdivision (a) requires the school district to make all necessary repairs,

¹⁵⁸ Education Code Section 17014, added by Chapter 277, Statutes of 1996, Section 2, as amended by Chapter 513, Statutes of 1997, Section 1:

"(a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and encourage applicants to maintain all buildings under their control, the board shall require the applicant to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the district's general fund for the exclusive purpose of providing moneys for regular maintenance and routine repair of school buildings, according the highest priority to funding for the purpose set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for the term of the lease agreements of all projects constructed under this chapter, a minimum amount equal to or greater than 2 percent of the applicant's General Fund budget for that fiscal year. This paragraph is applicable only to the following districts:

(A) High school districts with average daily attendance greater than 300.

(B) Elementary school districts with average daily attendance greater than 900.

(C) Unified school districts with average daily attendance greater than 1,200.

(c) For each project funded after July 1, 1998, the board shall require the applicant school district governing board to certify, as part of the school district's annual budget process and beginning in the fiscal year in which the project is funded by the state, that a plan has been prepared for completing major maintenance, repair, and replacement requirements for the project. For purposes of this subdivision, the term "major maintenance, repair, and replacement" means roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and other items designated by the governing board of the school district. The board shall require the school district's governing board to certify that the plan includes and is being implemented as follows:

(1) Identification of the major maintenance, repair, and replacement needs for the project.

(2) Specification of a schedule for completing the major maintenance, repair, and replacement needs.

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1 renewals, and replacements to ensure that a project is at all times kept in good repair,
2 working order, and condition. All costs incurred for this purpose shall be borne by the
3 school district. Subdivision (b) requires that in order to ensure compliance with
4 subdivision (a) and to encourage applicants to maintain all buildings under their control,
5 applicants must do all of the following prior to the board-approval of a project: (1)
6 establish a restricted account within the district's general fund for the exclusive purpose
7 of providing moneys for regular maintenance and routine repair of school buildings,
8 according the highest priority to funding for the purpose set forth in subdivision (a); (2)
9 agree to deposit into the restricted account, in each fiscal year for the term of the lease
10 agreements of all projects constructed under this chapter, a minimum amount equal to
11 or greater than 2 percent of the applicant's General Fund budget for that fiscal year.
12 This paragraph is applicable only to the following districts: (A) high school districts with

(3) Specification of a current cost estimate for the scheduled major maintenance, repair, and replacement needs.

(4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance, repair, and replacement needs.

(5) Review of the plan annually, as a part of the school district's annual budget process, and update, as needed, the major maintenance, repair, and replacement needs, the estimates of expected costs, and any adjustments in funding the reserve.

(6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district.

(7) Provision in the school district's annual budget of a provision that states the total funding available in reserve for scheduled major maintenance, repair and replacement needs as specified in the updated plan, and an explanation if this amount is less than that specified in the updated plan. The reserve shall be maintained in the restricted account established pursuant to subdivision (b)."

1 average daily attendance greater than 300; (B) elementary school districts with average
2 daily attendance greater than 900; and (C) unified school districts with average daily
3 attendance greater than 1,200. Subdivision (c) requires that for each project funded
4 after July 1, 1998, the applicant school district governing board must certify, as part of
5 the school district's annual budget process and beginning in the fiscal year in which the
6 project is funded by the state, that a plan has been prepared for completing major
7 maintenance, repair, and replacement requirements for the project. For purposes of
8 this subdivision, the term "major maintenance, repair, and replacement" means roofing,
9 siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling
10 systems, landscaping, fences, and other items designated by the governing board of
the school district. The school district's governing board is further required to certify
12 that the plan includes:

13 (1) Identification of the major maintenance, repair, and replacement needs for
14 the project;

15 (2) Specification of a schedule for completing the major maintenance, repair, and
16 replacement needs;

17 (3) Specification of a current cost estimate for the scheduled major maintenance,
18 repair, and replacement needs;

19 (4) Specification of the school district's schedule for funding a reserve to pay for
20 the scheduled major maintenance, repair, and replacement needs;

21 (5) Review of the plan annually, as a part of the school district's annual budget.

1 process, and update, as needed, the major maintenance, repair, and
2 replacement needs, the estimates of expected costs, and any adjustments in
3 funding the reserve;

4 (6) Availability for public inspection of the original plan, and all updated versions
5 of the plan, at the office of the superintendent of the school district during the
6 working hours of the school district; and

7 (7) A provision in the school district's annual budget stating the total funding
8 available in reserve for scheduled major maintenance, repair and replacement
9 needs as specified in the updated plan, and an explanation if this amount is less
10 than that specified in the updated plan. The reserve shall be maintained in the
11 restricted account established pursuant to subdivision (b).

12 Chapter 277, Statutes of 1996, Section 2, added¹⁵⁹ Education Code Section
13 17015 to provide that "the board shall require the school district to insure against public
14 liability or property damage in connection with any project."

15 Chapter 485, Statutes of 1998, Section 45, amended¹⁶⁰ Education Code Section

¹⁵⁹ Former Education Code Section 19364, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as Section 17715 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17015, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁶⁰ Former Education Code Section 19365, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as Section 17716 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17016, was repealed by Chapter 893, Statutes of 1997, Section 99.

1 17016¹⁶¹. Subdivision (a) provides that the board, by the adoption of rules, may
2 establish priorities for the construction and leasing of projects to those school districts
3 the pupils of which will benefit most. The board shall, as may be necessary, make
4 exceptions from established priorities when it determines that to do so will benefit the
5 pupils affected. Subdivision (b) provides that the board shall adopt rules establishing
6 priorities for the acquisition and leasing of portable classrooms to county
7 superintendents of schools that will most benefit pupils needing a county community
8 school. Each county superintendent of schools who leases portable classrooms
9 pursuant to Section 17017.2 is required to demonstrate that the portable classrooms
10 are utilized solely for operation of a county community school.

1 Chapter 277, Statutes of 1996, Section 2, added¹⁶² Education Code Section

¹⁶¹ Education Code Section 17016, added by Chapter 893, Statutes of 1997, Section 83, as amended by Chapter 485, Statutes of 1998, Section 45:

“(a) The board, by the adoption of rules, may establish priorities for the construction and leasing of projects to those school districts the pupils of which will benefit most. The board may make exceptions from established priorities when it determines that to do so will benefit the pupils affected.

(b) The board may adopt rules establishing priorities for the acquisition and leasing of portable classrooms to county superintendents of schools that will most benefit pupils needing a county community school. The board shall require each county superintendent of schools who leases portable classrooms pursuant to Section 17017.2 to demonstrate that the portable classrooms are utilized solely for operation of a county community school.”

¹⁶² Former Education Code Section 19366, (added by Chapter 1009, Statutes of 1975, Section 1 and renumbered as Section 17717 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17017, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17017¹⁶³ to require each school district that desires to lease a project for a grade level
2 maintained by it, to submit through its governing board an application therefor to the
3 board in the form and number of copies that the board may prescribe. Immediately
4 upon receipt of an application in the prescribed form accompanied by the required
5 estimate of cost, a copy thereof shall be transmitted by the board to the Director of
6 General Services. Each copy of the application shall be accompanied by a statement
7 of the estimated cost of the project certified by an architect or structural engineer, and
8 by layout plans showing the entire construction project. Before the board approves an

¹⁶³ Education Code Section 17017, added by Chapter 277, Statutes of 1996,
Section 2:

“Each school district that desires to lease a project for a grade level maintained by it, shall submit through its governing board an application therefor to the board in the form and number of copies that the board may prescribe. Immediately upon receipt of an application in the prescribed form accompanied by the required estimate of cost, a copy thereof shall be transmitted by the board to the Director of General Services.

Each copy of the application shall be accompanied by a statement of the estimated cost of the project certified by an architect or structural engineer, and by layout plans showing the entire construction project.

Before the board approves an application for a construction project, it shall establish cost standards for all new construction included therein. The cost standards shall not exceed typical comparable new construction by school districts in the same area, or if there has been no new construction by school districts in the area, the cost standards shall not exceed the reasonable current cost of similar construction in the area. The board shall determine such typical current costs or such reasonable current costs. In applying cost standards the board shall take into account the size and type of the construction proposed and may make any deviations that in its judgment are justified. When a standard has been set by the board to cover any individual apportionment, no project shall be approved by the board in excess of the standard, unless the board shall find that in view of a subsequent increase in building costs an adjustment is warranted. No contract shall be let for a construction project which has been approved by the board if the cost exceeds the construction cost standards fixed by the board under this section for the new construction.”

1 application for a construction project, it shall establish cost standards for all new
2 construction included therein. The cost standards shall not exceed typical comparable
3 new construction by school districts in the same area, or if there has been no new
4 construction by school districts in the area, the cost standards shall not exceed the
5 reasonable current cost of similar construction in the area. The board shall determine
6 such typical current costs or such reasonable current costs. In applying cost standards
7 the board shall take into account the size and type of the construction proposed and
8 may make any deviations that in its judgment are justified. When a standard has been
9 set by the board to cover any individual apportionment, no project shall be approved by
10 the board in excess of the standard, unless the board shall find that in view of a
11 subsequent increase in building costs an adjustment is warranted. No contract shall be
12 let for a construction project which has been approved by the board if the cost exceeds
13 the construction cost standards fixed by the board under this section for the new
14 construction.

15 Chapter 893, Statutes of 1997, Section 84, added¹⁶⁴ Education Code Section
16 17017.2¹⁶⁵. Subdivision (a) provides that the board shall, as may be necessary, own,

¹⁶⁴ Former Education Code Section 17717.2, (added by Chapter 1059, Statutes of 1996, Section 3), relating to similar subject matter as new Section 17017.2, was repealed by Chapter 893, Statutes of 1997, Section 100.

¹⁶⁵ Education Code Section 17017.2, added by Chapter 893, Statutes of 1997, Section 84:

“(a) The board may own, have maintained, and lease portable classrooms to any county superintendent of schools who provides a county community school program, as

1 have maintained, and lease portable classrooms to any county superintendent of
2 schools who provides a county community school program, as defined in Section 1986
3 (providing that if a county superintendent of schools elects to operate a community
4 school pursuant to Chapter 6.5 "County Community Schools," he or she shall apply for
5 emergency portable classrooms pursuant to Section 17017.2). These portable
6 classrooms shall be adequately equipped to meet the educational needs of these

defined in Section 1986. These portable classrooms shall be adequately equipped to meet the educational needs of these pupils, including, but not limited to, sinks and restroom facilities.

(b) The board, with the advice of the Superintendent of Public Instruction, may have portable classrooms constructed, furnished, or equipped, and may otherwise require whatever work is necessary to place portable classrooms for county community schools where needed, including the acquisition and preparation of sites. The board shall, in consultation with the Superintendent of Public Instruction, establish standards for the acquisition of land, with land acquisition limited to no more than 10,000 square feet per portable classroom, waivable by the board only as needed to meet local zoning and land use requirements or health and safety considerations.

(c) A county superintendent of schools who desires to lease portable classrooms shall have prepared for the board's use performance specifications for portable classrooms and bids for their construction that can be solicited from more than one responsible bidder.

(d) No portable classroom shall be made available to a county superintendent of schools unless the county superintendent of schools furnishes evidence, satisfactory to the board, that the county superintendent of schools has no other facility available for rental, lease, or purchase in the geographic service area that is economically or otherwise feasible.

(e) If at any time the board determines that a lessee's need for particular portable classrooms that were made available to the lessee pursuant to this chapter has ceased, the board may take possession of the portable classrooms and may lease them to other county superintendents of schools or, if there is no longer a need for portable classrooms, the board may dispose of them to public or private parties in the manner it deems to be in the best interest of the state.

(f) This section does not limit the authority of a county superintendent of schools to provide facilities without assistance from the board for pupils who are enrolled in a county community school."

1 pupils, including, but not limited to, sinks and restroom facilities. Subdivision (b)
2 provides that the board, with the advice of the Superintendent of Public Instruction, may
3 have portable classrooms constructed, furnished, or equipped, and may otherwise
4 require whatever work is necessary to place portable classrooms for county community
5 schools where needed, including the acquisition and preparation of sites. The board
6 shall, in consultation with the Superintendent of Public Instruction, establish standards
7 for the acquisition of land, with land acquisition limited to no more than 10,000 square
8 feet per portable classroom, waivable by the board only as needed to meet local zoning
9 and land use requirements or health and safety considerations. Subdivision (c)
10 provides that a county superintendent of schools who desires to lease portable
11 classrooms shall have prepared for the board's use performance specifications for
12 portable classrooms and bids for their construction that can be solicited from more than
13 one responsible bidder. Subdivision (d) requires that no portable classroom shall be
14 made available to a county superintendent of schools unless the county superintendent
15 of schools furnishes evidence, satisfactory to the board, that the county superintendent
16 of schools has no other facility available for rental, lease, or purchase in the geographic
17 service area that is economically or otherwise feasible. Subdivision (e) provides that if
18 at any time the board determines that a lessee's need for particular portable classrooms
19 that were made available to the lessee pursuant to this chapter has ceased, the board
20 may take possession of the portable classrooms and may lease them to other county
21 superintendents of schools or, if there is no longer a need for portable classrooms, the

1 board may dispose of them to public or private parties in the manner it deems to be in
2 the best interest of the state. Subdivision (f) provides that this section does not limit the
3 authority of a county superintendent of schools to provide facilities without assistance
4 from the board for pupils who are enrolled in a county community school.

5 Chapter 277, Statutes of 1996, Section 2, added¹⁶⁶ Education Code Section
6 17017.5¹⁶⁷. Subdivision (a) provides that the board shall, as may be necessary,

¹⁶⁶ Former Education Code Section 17717.5, (added by Chapter 1354, Statutes of 1980, Section 8.5 and amended extensively) relating to similar subject matter as Section 17017.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁶⁷ Education Code Section 17017.5, added by Chapter 277, Statutes of 1996, Section 2:

“(a) The board may approve, in whole or in part, an application submitted by a school district under Section 17017 or 17020 in an amount not exceeding the amount applied for as the board may deem appropriate.

(b) The board may, upon approval of the application, in whole or in part, and subsequently from time to time, make apportionments of project funding not exceeding in the aggregate the total amount determined by the board under subdivision (a) for the portion or portions of the project for which the board determines the district is ready to proceed. Subsequent to the board's approval of a project, any requirement imposed by the board that the compliance of the project with building cost or area standards and related guidelines adopted by the board be established as a condition of the apportionment of funds under this chapter shall be satisfied, as to a project for a self-certifying district, by the certification by the district of that compliance. In addition, the board shall not require that estimates of average daily attendance be updated as to that project more often than once every 12 months subsequent to the board's approval of the project. The self-certifying district shall maintain documentation of the compliance certified pursuant to this subdivision as may be required by the board, and that compliance shall be subject to subsequent audit as the board may direct.

(c) Whenever a district files an application, the board shall require the district to submit to the board and the State Department of Education a five-year plan for construction and rehabilitation of school facilities, and to obtain the written approval of the department that the plan complies with standards that are established by the department for this purpose to ensure that the applicant district has adequately

1 approve, in whole or in part, an application submitted by a school district under Section
2 17017 (application for projects) or Section 17020 (application for advance purchase of
3 land and preparation plans) in an amount not exceeding the amount applied for as the
4 board may deem appropriate. Subdivision (b) provides that the board shall, as may be
5 necessary, upon approval of the application, in whole or in part, and subsequently from
6 time to time, make apportionments of project funding not exceeding in the aggregate
7 the total amount determined by the board under subdivision (a) for the portion or
8 portions of the project for which the board determines the district is ready to proceed.
9 Subsequent to the board's approval of a project, any requirement imposed by the board
10 that the compliance of the project with building cost or area standards and related
11 guidelines adopted by the board be established as a condition of the apportionment of
12 funds under this chapter shall be satisfied, as to a project for a self-certifying district, by
13 the certification by the district of that compliance. In addition, the board shall not
14 require that estimates of average daily attendance be updated as to that project more

anticipated its school facilities needs and identified funding sources as necessary to meet those needs. The plan may be adjusted to reflect adjusted growth targets.

(d) The board shall not approve any application under this chapter after January 1, 1990, unless accompanied by a study examining the feasibility of implementing in the district a year-round multitrack educational program that is designed to increase pupil capacity in the district or in overcrowded high school attendance areas by at least 20 percent.

(e) The board may waive subdivision (d) or the requirements of Section 17017.7, or both, if a school district demonstrates that these requirements will result in a particular educational or financial hardship to the district. Further, the board shall waive subdivision (d), if it finds that there is clear hardship to a district due to declining enrollment or no growth."

1 often than once every 12 months subsequent to the board's approval of the project.
2 The self-certifying district shall maintain documentation of the compliance certified
3 pursuant to this subdivision as may be required by the board, and that compliance shall
4 be subject to subsequent audit as the board may direct. Subdivision (c) requires that
5 the district, upon filing an application, submit to the board and the State Department of
6 Education a five-year plan for construction and rehabilitation of school facilities, and to
7 obtain the written approval of the department that the plan complies with standards that
8 are established by the department for this purpose to ensure that the applicant district
9 has adequately anticipated its school facilities needs and identified funding sources as
10 necessary to meet those needs. The plan may be adjusted to reflect adjusted growth
11 targets. Subdivision (d) provides that the board shall not approve any application under
12 this chapter after January 1, 1990, unless accompanied by a study examining the
13 feasibility of implementing in the district a year-round multi-track educational program
14 that is designed to increase pupil capacity in the district or in overcrowded high school
15 attendance areas by at least 20 percent. Subdivision (e) provides that the board may
16 waive subdivision (d) or the requirements of Section 17017.7 (relating to the priority of
17 funding allocation for new construction projects), or both, if a school district
18 demonstrates that these requirements will result in a particular educational or financial
19 hardship to the district. Further, the board shall waive subdivision (d), if it finds that
20 there is clear hardship to a district due to declining enrollment or no growth.

1 Chapter 277, Statutes of 1996, Section 2, added¹⁶⁸ Education Code Section
2 17017.6¹⁶⁹ to provide that notwithstanding Section 17017.7 (relating to the priority of
3 funding allocation for new construction projects), the definition of "substantial
4 enrollment" set forth in that section shall apply only to elementary and unified school
5 districts. For a high school district, "substantial enrollment in multitrack year-round
6 schools," for the purposes of Section 17017.7, means that at least 30 percent of the
7 pupils enrolled in the high school district are enrolled in multi-track year-round schools,
8 or that 40 percent of the pupils enrolled in public school in kindergarten and grades 1 to
9 12, inclusive, within the boundaries of the high school attendance area for which the
10 school district is applying for new facilities are enrolled in multi-track year-round
schools. In addition, a high school district shall be deemed to have a substantial

¹⁶⁸ Former Education Code Section 17717.6, (added by Chapter 588, Statutes of 1991, Section 1 and amended by Chapter 759, Statutes of 1992, Section 4) relating to similar subject matter as Section 17017.6, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁶⁹ Education Code Section 17017.6, added by Chapter 277, Statutes of 1996, Section 2:

"Notwithstanding Section 17017.7, the definition of "substantial enrollment" set forth in that section shall apply only to elementary and unified school districts. For a high school district, "substantial enrollment in multitrack year-round schools," for the purposes of Section 17017.7, means that at least 30 percent of the pupils enrolled in the high school district are enrolled in multitrack year-round schools, or that 40 percent of the pupils enrolled in public school in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools. In addition, a high school district shall be deemed to have a substantial enrollment in multitrack year-round schools for purposes of Section 17017.7 if, at the option of the district, the entire high school to be constructed is to operate on a multitrack year-round basis."

1 enrollment in multi-track year-round schools for purposes of Section 17017.7 if, at the
2 option of the district, the entire high school to be constructed is to operate on a multi-
3 track year-round basis.

4 Chapter 277, Statutes of 1996, Section 2, added¹⁷⁰ Education Code Section
5 17017.7¹⁷¹. Subdivision (a) provides that notwithstanding any other provision of this

¹⁷⁰ Former Education Code Section 17717.7, (added by Chapter 1261, Statutes of 1990, Section 2 and last amended by Chapter 1296, Statutes of 1993, Section 2), relating to similar subject matter as new section 17017.7, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁷¹ Education Code Section 17017.7, added by Chapter 277, Statutes of 1996, Section 2:

“(a) Notwithstanding any other provision of this chapter, priority for the approval of project funding for new construction under this chapter, shall be as follows:

(1) First priority for construction funds shall be given to school districts with a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project that would be constructed to operate on a multitrack year-round basis.

(2) Second priority shall be for school districts with a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would be constructed to operate on a multitrack year-round basis.

(3) Third priority shall be for school districts without a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project to operate on a multitrack year-round basis.

(4) Fourth priority shall be for school districts without a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would be constructed to operate on a multitrack year-round basis.

(5) Fifth priority shall be for school districts with a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project that would not operate on a multitrack year-round basis.

(6) Sixth priority shall be for school districts with a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would not operate on a multitrack year-round basis.

1 chapter, priority for the approval of project funding for new construction under this
2 chapter, shall be as follows:

3 (1) First priority for construction funds shall be given to school districts with a
4 substantial enrollment in multi-track year-round schools requesting state funding
5 for 50 percent of the cost of a project that would be constructed to operate on a

(b) The board shall not restrict the availability of funding for construction of multitrack year-round schools, from any funding source available to the State School Building Lease-Purchase Fund, but shall make approval of project funding for those projects the first priority in accordance with this section.

(c) "Substantial enrollment," for the purposes of this section, means enrollment of at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, or 40 percent of pupils in kindergarten and grades 1 to 12, inclusive, in the high school attendance area for which the school district is applying for new facilities. The calculation set forth in this subdivision, as to a self-certifying district, shall be made by the district, in accordance with any standards governing that calculation that are adopted by the board. The calculation shall be certified by the district to the board and used by the board for the purposes of this section. The self-certifying district shall maintain documentation of the calculation as may be required by the board, and the calculation shall be subject to subsequent audit as the board may direct. If a self-certifying district is found by the board to have materially misrepresented its pupil enrollment pursuant to this subdivision, the board may impose either or both of the penalties set forth in paragraphs (1) and (2) of subdivision (b) of Section 17041.2, in accordance with that section.

(d) "Multitrack year-round school," for purposes of this section, means a school for which the applicant district demonstrates that both of the following criteria are satisfied:

(1) The pupils are divided into three or more groups or tracks, which rotate attendance so that, for a majority of schooldays during the school year, at least one group or track is not attending the school while all other groups or tracks are in attendance.

(2) The operation of the school on a multitrack year-round basis has resulted in an increase in enrollment capacity.

(e) Notwithstanding any other provision of this section, the State Allocation Board may continue to implement any year-round school priority provisions for hardships adopted prior to September 1, 1990."

1 multi-track year-round basis;

2 (2) Second priority shall be for school districts with a substantial enrollment in
3 multi-track year-round schools requesting state funding for the entire cost of a
4 project that would be constructed to operate on a multi-track year-round basis;

5 (3) Third priority shall be for school districts without a substantial enrollment in
6 multi-track year-round schools requesting state funding for 50 percent of the cost
7 of a project to operate on a multi-track year-round basis;

8 (4) Fourth priority shall be for school districts without a substantial enrollment in
9 multi-track year-round schools requesting state funding for the entire cost of a
10 project that would be constructed to operate on a multi-track year-round basis;

11 (5) Fifth priority shall be for school districts with a substantial enrollment in multi-
12 track year-round schools requesting state funding for 50 percent of the cost of a
13 project that would not operate on a multi-track year-round basis;

14 (6) Sixth priority shall be for school districts with a substantial enrollment in multi-
15 track year-round schools requesting state funding for the entire cost of a project
16 that would not operate on a multi-track year-round basis.

17 Subdivision (b) requires the board to not restrict the availability of funding for
18 construction of multi-track year-round schools, from any funding source available to the
19 State School Building Lease-Purchase Fund, and make approval of project funding for
20 those projects the first priority in accordance with this section. Subdivision (c) defines
21 "Substantial enrollment," for the purposes of this section, to mean enrollment of at least

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1 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, or 40 percent of
2 pupils in kindergarten and grades 1 to 12, inclusive, in the high school attendance area
3 for which the school district is applying for new facilities. The calculation set forth in this
4 subdivision, as to a self-certifying district, shall be made by the district, in accordance
5 with any standards governing that calculation that are adopted by the board. The
6 calculation shall be certified by the district to the board and used by the board for the
7 purposes of this section. The self-certifying district shall maintain documentation of the
8 calculation as may be required by the board, and the calculation shall be subject to
9 subsequent audit as the board may direct. If a self-certifying district is found by the
10 board to have materially misrepresented its pupil enrollment pursuant to this
11 subdivision, the board may impose either or both of the penalties set forth in
12 paragraphs (1) and (2) of subdivision (b) of Section 17041.2 (providing that if a school
13 district fails to repay project funds to the board with a five year period including
14 appropriate interest, the board may withhold any funds that would otherwise be
15 allocable to the school district and the board may assume control of information that
16 otherwise may be certified under this chapter by a self-certifying district applying for
17 project funding for a period of up to five years). Subdivision (d) defines "Multitrack
18 year-round school," for purposes of this section, to mean a school for which the
19 applicant district demonstrates that both of the following criteria are satisfied: (1) the
20 pupils are divided into three or more groups or tracks, which rotate attendance so that,
21 for a majority of schooldays during the school year, at least one group or track is not

1 attending the school while all other groups or tracks are in attendance, and (2) the
2 operation of the school on a multi-track year-round basis has resulted in an increase in
3 enrollment capacity. Subdivision (e) provides that notwithstanding any other provision
4 of this section, the State Allocation Board may continue to implement any year-round
5 school priority provisions for hardships adopted prior to September 1, 1990.

6 Chapter 957, Statutes of 1998, Section 1, amended¹⁷² Education Code Section
7 17017.9¹⁷³. Subdivision (a) provides that notwithstanding any other provision of law, a

¹⁷² Former Education Code Section 17717.9, (added by Chapter 771, Statutes of 1992, Section 1) relating to similar subject matter as 17017.9, was repealed by chapter 277, Statutes of 1996, Section 2.

¹⁷³ Education Code Section 17017.9, added by Chapter 277, Statutes of 1996, Section 2, as amended by Chapter 957, Statutes of 1998, Section 1:

“(a) Notwithstanding any other provision of law, a project shall be accorded, subject to subdivision (b), the priority status that otherwise is accorded under Section 17017.7 to a project for which state funding is requested for only 50 percent of the cost, if all of the following conditions are met:

(1) The applicant district documents to the satisfaction of the board that it has incurred bonded indebtedness in an amount not less than 95 percent of the bonding capacity of the district. “Bonded indebtedness” for the purposes of this section includes, but is not limited to, funding provided pursuant to Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code.

(2) The applicant district agrees that *** up to 95 percent of the *** unexpended bonding capacity of the district, existing on or after the date of the district's first application for project funding pursuant to this section, shall apply toward the cost of projects.

(3) Either of the following apply:

(A) *** The applicant district agrees that developer fees imposed pursuant to Section 17620 shall apply toward the cost of projects for which the district requests state funding pursuant to this chapter, not to exceed 50 percent of the cost of any project. Fees needed for interim housing for capital outlay purposes for modernization and new

1 project shall be accorded, subject to subdivision (b), the priority status that otherwise is
2 accorded under Section 17017.7 to a project for which state funding is requested for
3 only 50 percent of the cost, if the applicant district: (1) documents to the satisfaction of
4 the board that it has incurred bonded indebtedness in an amount not less than 95
5 percent of the bonding capacity of the district. ("Bonded indebtedness" for the purposes
6 of this section includes, but is not limited to, funding provided pursuant to Chapter 2.5
7 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government
8 Code); (2) agrees that up to 95 percent of the unexpended bonding capacity of the
9 district, existing on or after the date of the district's first application for project funding
10 pursuant to this section, shall apply toward the cost of projects; and (3) either agrees

construction projects, school district administration capital outlay projects, and capital outlay projects for transportation needs, are exempt from this requirement.

(B) * * * The applicant is a school district with an average daily attendance of 2,500 or less.

(b) An applicant district qualifying for the priority status described in subdivision (a) as to any project shall continue to be accorded that status for all subsequent projects under this chapter until the time that the bonding capacity of the district determined for purposes of that subdivision increases by 20 percent.

(c) The condition set forth in paragraph (2) of subdivision (a) shall apply until either the applicant district's eligibility under this section terminates pursuant to subdivision (b), or funding for the district is approved and apportioned under this chapter for a project for which 50 percent or more of the cost is provided by the district from funding sources other than any state program administered by the board, whichever occurs first.

(d) Notwithstanding any other provision of law, as to any project for which priority status is accorded pursuant to subdivision (a), the estimate of average daily attendance for the applicant district may be calculated, upon request of the district, in the manner set forth in subdivision (a) of Section 17040.3.

(e) The board may recalculate program allowances and apportionments pursuant to this section."

1 that developer fees imposed pursuant to Section 17620 (providing for levies against
2 development projects by school districts) shall apply toward the cost of projects for
3 which the district requests state funding pursuant to this chapter, not to exceed 50
4 percent of the cost of any project (fees needed for interim housing for capital outlay
5 purposes for modernization and new construction projects, school district administration
6 capital outlay projects, and capital outlay projects for transportation needs, are exempt
7 from this requirement), or has an average daily attendance of 2,500 or less.

8 Subdivision (b) provides that an applicant district qualifying for the priority status
9 described in subdivision (a) as to any project shall continue to be accorded that status
10 for all subsequent projects under this chapter until the time that the bonding capacity of
11 the district determined for purposes of that subdivision increases by 20 percent.

12 Subdivision (c) states that the condition set forth in paragraph (2) of subdivision (a) shall
13 apply until either the applicant district's eligibility under this section terminates pursuant
14 to subdivision (b), or funding for the district is approved and apportioned under this
15 chapter for a project for which 50 percent or more of the cost is provided by the district
16 from funding sources other than any state program administered by the board,
17 whichever occurs first. Subdivision (d) provides that notwithstanding any other
18 provision of law, as to any project for which priority status is accorded pursuant to
19 subdivision (a), the estimate of average daily attendance for the applicant district may
20 be calculated, upon request of the district, in the manner set forth in subdivision (a) of
21 Section 17040.3. Subdivision (e) provides that the board may recalculate program

1 allowances and apportionments pursuant to this section.

2 Chapter 277, Statutes of 1996, Section 2, added¹⁷⁴ Education Code Section
3 17018 to provide that “in approving applications pursuant to this chapter, the board
4 shall encourage the design and construction of facilities which will conserve
5 unreplenishable energy resources by consideration of alternate design and insulation
6 concepts as well as unconventional energy sources. In so doing, the board may
7 increase cost allowances to reflect the difference between conventional and
8 unconventional concepts when the board is satisfied that the life cycle cost of the
9 project is not expected to exceed the life cycle cost of a conventionally designed
10 project.”

Chapter 277, Statutes of 1996, Section 2, added¹⁷⁵ Education Code Section
12 17018.5¹⁷⁶. Subdivision (a) provides that school districts are encouraged to utilize

¹⁷⁴ Former Education Code Section 19366.1, (added by chapter 1009, Statutes of 1975, Section 1 and renumbered as Section 17718 by Chapter 1010, Statutes of 1976, Section 2), relating to similar subject matter as Section 17018, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁷⁵ Former Education Code Section 17718.5, (added by Chapter 1170, Statutes of 1986, Section 1 and subsequently amended several times), relating to similar subject matter as Section 17018.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁷⁶ Education Code Section 17018.5, added by Chapter 277, Statutes of 1996, Section 2:

“(a) The Legislature intends for the board to encourage school districts to utilize alternative methods to fund school facilities.

(b) The board shall approve applications pursuant to the requirements of this section that request the board to share a portion of the cost of projects constructed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth by Chapter

1 alternative methods to fund school facilities. Subdivision (b) requires that applications
2 pursuant to the requirements of this section that request the board to share a portion of
3 the cost of projects constructed pursuant to the Mello-Roos Community Facilities Act of
4 1982, shall be approved. The fact that structures have been constructed in accordance
5 with that act, shall not be considered. Any application for cost sharing shall not be
6 considered or approved until the time that the applicant school district would have
7 become eligible for approval of its application during the normal process established for
8 considering and approving applications. Subdivision (c) provides that applications for
9 cost sharing shall be approved based upon: (1) estimates of average daily attendance

2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code. The board shall disregard the fact that structures have been constructed in accordance with that act, and neither consider nor approve any application for cost sharing until the time that the applicant school district would have become eligible for approval of its application during the normal process established for considering and approving applications.

(c) The board shall approve applications for cost sharing based on both of the following factors:

(1) Estimates of average daily attendance at the time the application is considered.

(2) The amount of cost sharing requested.

(d) The costs shared by the board shall be an amount equal to the cost that would have been allowed for the project had it been originally approved pursuant to this chapter less 5 percent per year depreciation, exclusive of land, for each year that the project was constructed in advance of the application approval, but no more than the lesser of an amount equal to 75 percent of the allowable cost of the project or the principal amount of any outstanding callable bonds and other debts incurred to finance the project under the Mello-Roos Community Facilities Act of 1982.

(e) If the board utilizes a point system to prioritize applications for funding, the computation of priorities for an application pursuant to this section shall be increased by 4 percent for each year from the date of construction of the project to the date of approval of the cost-sharing application."

1 at the time the application is considered, and (2) the amount of cost sharing requested.
2 Subdivision (d) states that the costs shared by the board shall be an amount equal to
3 the cost that would have been allowed for the project had it been originally approved
4 pursuant to this chapter less 5 percent per year depreciation, exclusive of land, for each
5 year that the project was constructed in advance of the application approval, but no
6 more than the lesser of an amount equal to 75 percent of the allowable cost of the
7 project or the principal amount of any outstanding callable bonds and other debts
8 incurred to finance the project under the Mello-Roos Community Facilities Act of 1982.
9 Subdivision (e) provides that if the board utilizes a point system to prioritize applications
10 for funding, the computation of priorities for an application pursuant to this section shall
11 be increased by 4 percent for each year from the date of construction of the project to
12 the date of approval of the cost-sharing application.

13 Chapter 941, Statutes of 1998, Section 1, added Education Code Section
14 17018.7¹⁷⁷. Subdivision (a) provides that notwithstanding any other provision of law to

¹⁷⁷ Education Code Section 17018.7, added by Chapter 941, Statutes of 1998,
Section 1:

“(a) Notwithstanding any other provision of law to the contrary, a school district that has, within the previous 24-month period, constructed or otherwise acquired school facilities with 100 percent local funding, may apply for funding for the construction of a gymnasium or multipurpose room on the site where it constructed or otherwise acquired school facilities with 100 percent local funding.

(b) If the State Allocation Board determines that the schoolsite does not have adequate gymnasium or multipurpose room facilities, the board may approve the application pursuant to this section.

(c) For an application approved pursuant to this section, the board shall grant the school district a credit against its local matching share requirement of up to 50 percent

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1 the contrary, a school district that has, within the previous 24-month period, constructed
2 or otherwise acquired school facilities with 100 percent local funding, shall, as may be
3 necessary, apply for funding for the construction of a gymnasium or multipurpose room
4 on the site where it constructed or otherwise acquired school facilities with 100 percent
5 local funding. Subdivision (b) provides that if the board determines that the schoolsite
6 does not have adequate gymnasium or multipurpose room facilities, it may approve the
7 application pursuant to this section. Subdivision (c) requires that once an application is
8 approved pursuant to this section, the board shall grant the school district a credit
9 against its local matching share requirement of up to 50 percent of the costs of the
10 project or the total local funds expended by the school district on any school facilities
11 funded by 100 percent local funds within the immediately preceding 24-month period,
12 whichever is less. Subdivision (d) provides that for an application approved under this
13 section, the project shall be accorded the priority status that is otherwise accorded
14 under Section 17017.7 to a project for which state funding is requested for only 50
15 percent of the costs. Subdivision (e) defines "100 percent local funding" to include

of the costs of the project or the total local funds expended by the school district on any school facilities funded by 100 percent local funds within the immediately preceding 24-month period, whichever is less.

(d) For an application approved under this section, the project shall be accorded the priority status that is otherwise accorded under Section 17017.7 to a project for which state funding is requested for only 50 percent of the costs.

(e) As used in this section "100 percent local funding" includes construction or acquisition of a school facility with 40 percent funding from the general fund of the school district and with the remainder of the local funding from the sale of surplus school property."

1 construction or acquisition of a school facility with 40 percent funding from the general
2 fund of the school district and with the remainder of the local funding from the sale of
3 surplus school property.

4 Chapter 277, Statutes of 1996, Section 2, added¹⁷⁸ Education Code Section
5 17019 to provide that "before the board approves any project that includes the
6 acquisition of furniture or equipment, it shall establish current cost and quality standards
7 for furniture and equipment, including, but not limited to, educational technology
8 hardware. The standards shall not exceed the cost and quality of furniture and
9 equipment for comparable facilities purchased by school districts in the same area.

10 The standards shall consist of furniture and equipment costs for each type of classroom
or pupil station having different cost criteria. The standards shall be reviewed quarterly
12 by the board and adjustments made in accordance with actual current costs. When
13 cost and quality standards have been adopted by the board, the standards shall not be
14 exceeded unless a subsequent increase in actual current costs warrants an adjustment.

15 Before the board approves a project for the replacement, reconstruction, or alteration
16 of, or addition to, a school building, full consideration shall be given to all usable
17 furniture and equipment existing in the applicant district. The board may approve all or
18 a portion of the amount applied for."

¹⁷⁸ Former Education Code Section 19367, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17719, by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as 17019, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 Chapter 277, Statutes of 1996, Section 2, added¹⁷⁹ Education Code Section
2 17019.3¹⁸⁰. Subdivision (a) provides that any applicant school district shall, as may be
3 necessary, contract with a firm for construction project management services to assist
4 in the development or implementation of a project for which the district has applied for
5 funding under this chapter. The contract is subject to the requirement that a
6 performance bond be required from all building contractors hired to construct the
7 project in order to ensure the completion of performance under the contract.
8 Subdivision (b) provides that a portion of any contract, as described in subdivision (a),

¹⁷⁹ Former Education Code Section 17719.3, (added by Chapter 1499, Statutes of 1988, Section 2), relating to similar subject matter as Section 17019.3, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁸⁰ Education Code Section 17019.3, added by Chapter 277, Statutes of 1996, Section 2:

“(a) Any applicant school district may contract with a firm, as defined in Section 4525 of the Government Code, for construction project management services to assist in the development or implementation of a project for which the district has applied for funding under this chapter, subject to the requirement that a performance bond be required from all building contractors hired to construct the project in order to ensure the completion of performance under the contract.

(b) That portion of any contract, as described in subdivision (a), concerning the final phase of construction of the project, shall be submitted by the applicant district to the board for approval. If the board does not approve, reject, or recommend modifications to, that contract portion within 15 business days after receiving that contract information, that portion of the contract shall be deemed to be approved by the board.

(c) From the amount of funding approved by the board under this chapter for any project, the board shall authorize the expenditure of funds for the costs of construction project management services provided to the project, as described in subdivision (a), where the board finds that the contracting for those services was necessary and appropriate to the school district's development or implementation of that project.”

1 concerning the final phase of construction of the project, shall be submitted by the
2 applicant district to the board for approval. If the board does not approve, reject, or
3 recommend modifications to, that contract portion within 15 business days after
4 receiving that contract information, that portion of the contract shall be deemed to be
5 approved by the board. Subdivision (c) requires that from the amount of funding
6 approved by the board under this chapter for any project, the board shall authorize the
7 expenditure of funds for the costs of construction project management services
8 provided to the project, as described in subdivision (a), where the board finds that the
9 contracting for those services was necessary and appropriate to the school district's
10 development or implementation of that project.

Chapter 277, Statutes of 1996, Section 2, added¹⁸¹ Education Code Section
12 17019.5 to provide that "for a school district having an average daily attendance of
13 2,500 or less for the prior fiscal year, the board may approve, subject to the building
14 cost standards established under this chapter, a supplemental apportionment up to five
15 thousand five hundred dollars (\$5,500) for any new construction project, and up to one
16 thousand three hundred twenty dollars (\$1,320) for any other project approved under
17 this chapter, as reimbursement for administrative expenses incurred by the district in
18 filing the application for the project. The amount of the supplemental apportionments

¹⁸¹ Former Education Code Section 17719.5, (added by Chapter 886, Statutes of 1986, Section 7, and amended by Chapter 1209, Statutes of 1989, Section 8) relating to similar subject matter as 17019.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 shall be adjusted in 1990, and every two years thereafter, by the board at its January
2 meeting, which adjustment shall be in an amount equal to the amount of the adjustment
3 for inflation set forth in the statewide cost index for class D construction.”

4 Chapter 277, Statutes of 1996, Section 2, added¹⁸² Education Code Section
5 17020¹⁸³. Subdivision (a) provides that notwithstanding other provisions of this chapter,

¹⁸² Former Education Code Section 19368, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as 17720 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17020, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁸³ Education Code Section 17020, added by Chapter 277, Statutes of 1996, Section 2:

“(a) Notwithstanding other provisions of this chapter, in order to expedite a total school facility a school district may first apply for a project which includes only the advance purchase of the land and preparation of plans and specifications. The acquisition of the site and the plans preparation shall be based on the justification documents for the total school facility. The school district may apply for a subsequent project or projects to complete the total school facility.

(b) Any application filed pursuant to this section shall be subject to all provisions of this chapter generally applicable to project applications, to the extent not in conflict with this section.

(c) Any estimate of average daily attendance made by an applicant district for the purpose of justifying an application pursuant to this section may be made for up to and including two years longer than the period of time permitted by Section 17040.

(d) Beginning in the fifth fiscal year following the fiscal year in which any apportionment is made to a school district pursuant to this section, the district shall repay the apportionment, with interest, in 10 equal annual installments, unless and until the district has qualified for an apportionment pursuant to an application for utilization of the site under this chapter. These repayments shall constitute rent, and shall be in addition to any other rents or fees for which the district is obligated under Section 17032. The board may waive any obligation of repayment under this subdivision to the extent that the board finds that the obligation will result in an extreme hardship upon the district.

(e) The school district may apply for a subsequent project or projects to complete the total school facility.”

1 in order to expedite a total school facility a school district may first apply for a project
2 which includes only the advance purchase of the land and preparation of plans and
3 specifications. The acquisition of the site and the plans preparation shall be based on
4 the justification documents for the total school facility. The school district shall, as may
5 be necessary, apply for a subsequent project or projects to complete the total school
6 facility. Subdivision (b) requires that any application filed pursuant to this section be
7 subject to all provisions of this chapter generally applicable to project applications, to
8 the extent not in conflict with this section. Subdivision (c) requires that any estimate of
9 average daily attendance made by an applicant district for the purpose of justifying an
10 application pursuant to this section be made for up to and including two years longer
11 than the period of time permitted by Section 17040. Subdivision (d) requires the district
12 to repay the apportionment, with interest, in 10 equal annual installments, beginning in
13 the fifth fiscal year following the fiscal year in which any apportionment is made to a
14 school district pursuant to this section, unless and until the district has qualified for an
15 apportionment pursuant to an application for utilization of the site under this chapter.
16 These repayments shall constitute rent, and shall be in addition to any other rents or
17 fees for which the district is obligated under Section 17032. If the any obligation of
18 repayment under this subdivision will result in an extreme hardship upon the district, the
19 board shall, at its discretion, waive repayment. Subdivision (e) provides that the school
20 district shall apply, as necessary, for a subsequent project or projects to complete the
21 total school facility.

1 Chapter 277, Statutes of 1996, Section 2, added¹⁸⁴ Education Code Section
2 17021 to provide that "no project shall be approved for the reconstruction,
3 modernization, or replacement of any school building that was constructed or
4 reconstructed less than 30 years, or, in the case of any portable classroom, as defined
5 in subdivision (e) [sic] of Section 17042.5 [subdivision (b) provides that a "portable
6 classroom" means a classroom of modular design and construction that (1) is designed
7 to and constructed to be relocatable and transportable over public streets, (2) is
8 designed and constructed for relocation without the separation of the roof and floor
9 from the building, and (3) when measured at the most exterior walls, has a floor area
10 not in excess of 2,000 square feet], less than 20 years, prior to the date of approval of
11 the project applied for under this chapter."

12 Chapter 277, Statutes of 1996, Section 2, added¹⁸⁵ Education Code Section
13 17021.3¹⁸⁶. Subdivision (a) defines for purposes of this chapter, "modernization" or

¹⁸⁴ Former Education Code Section 19369, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17721 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17021, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁸⁵ Former Education Code Section 17721.3, (added by Chapter 886, Statutes of 1986, Section 8, and amended by Chapter 809, Statutes of 1991, Section 3) relating to similar subject matter as 17021.3, was repealed Chapter 277, Statutes of 1996, Section 1.

¹⁸⁶ Education Code Section 17021.3, added by Chapter 277, Statutes of 1996, Section 2:

"(a) For purposes of this chapter, "modernization" or "renovation" means any modification of an existing structure, the costs of which do not exceed 25 percent of the

1 "renovation" to mean any modification of an existing structure, the costs of which do not
2 exceed 25 percent of the replacement cost of that structure. Subdivision (b) requires
3 that the following conditions are demonstrated to the satisfaction of the board before
4 any modernization project for a school facility is approved: (1) the project will enhance
5 the capacity of the facility to achieve one or more educational purposes, and (2) the
6 resulting pupil capacity of the facility, as measured in units of average daily attendance,
7 will equal or exceed 80 percent of the facility's maximum capacity as determined under
8 the board standards established under this chapter. Subdivision (c) provides that no
9 project shall be approved for the modernization of any school facility that was
10 constructed less than 30 years prior to the date of the approval of the project applied for
1 under this chapter. Subdivision (d) provides that the State Allocation Board shall, as

replacement cost of that structure.

(b) No project shall be approved for the modernization of any school facility unless and until both of the following are demonstrated to the satisfaction of the board:

(1) The project will enhance the capacity of the facility to achieve one or more educational purposes.

(2) The resulting pupil capacity of the facility, as measured in units of average daily attendance, will equal or exceed 80 percent of the facility's maximum capacity as determined under the board standards established under this chapter.

(c) No project shall be approved for the modernization of any school facility that was constructed less than 30 years prior to the date of the approval of the project applied for under this chapter.

(d) The State Allocation Board may waive the requirement in subdivision (c) if the building has been declared by the Office of the State Architect to be, or is in imminent danger of becoming, a health or safety hazard to the pupils. This determination may only be made in the case of a natural disaster, for example, fire, flood, or earthquakes, or as a result of a determination by a qualified engineer, and agreed to in writing by the Office of the State Architect."

1 necessary, waive the requirement in subdivision (c) if the building has been declared by
2 the Office of the State Architect to be, or is in imminent danger of becoming, a health or
3 safety hazard to the pupils. This determination may only be made in the case of a
4 natural disaster, for example, fire, flood, or earthquakes, or as a result of a
5 determination by a qualified engineer, and agreed to in writing by the Office of the State
6 Architect.

7 Chapter 277, Statutes of 1996, Section 2, added¹⁸⁷ Education Code Section
8 17021.4 to provide that "notwithstanding the limitation set forth in subdivision (a) of
9 Section 17021.3, the costs of a modernization or renovation project funded under this
10 chapter may exceed 25 percent of the replacement cost of an existing structure where
11 the costs in excess of that amount are funded by the district exclusively from sources
12 other than any state program administered by the board. For each project, the total
13 costs of the modernization or renovation project, as supplemented pursuant to this
14 section, may not exceed 50 percent of the replacement cost of the existing structure
15 except to the extent of those costs funded by the district, from sources other than any
16 state program administered by the board, that are expended to conform that structure
17 to current building standards, in which event the total costs of the project may not
18 exceed 75 percent of the replacement cost of the structure."

¹⁸⁷ Former Education Code Section 17721.4, (added by Chapter 341, Statutes of 1992, Section 1) relating to similar subject matter as Section 17021.4, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 Chapter 277, Statutes of 1996, Section 2, added¹⁸⁸ Education Code Section
2 17022 to provide that “except as provided in Section 17041 [providing for separate
3 computation of allowable building areas within a district whenever the area of adequate
4 school construction existing in any attendance area is such as to prevent another
5 attendance area from receiving the maximum area of school construction for each unit
6 of attendance as specified for the district as a whole], the board shall not approve any
7 new school facilities for any applicant school district or county superintendent of schools
8 until it first has made a determination that the applicant will utilize all existing facilities
9 and sites to the extent economically and practically feasible. The board may also
10 require the applicant to explore cooperative efforts with adjacent districts or, in the case
11 of county superintendents of schools, with adjacent county superintendents of schools,
12 in order that all existing or planned facilities in the general area of need shall be
13 utilized.”

14 Chapter 277, Statutes of 1996, Section 2, added¹⁸⁹ Education Code Section
15 17022.7¹⁹⁰. Subdivision (a) requires that the funding for any reconstruction project

¹⁸⁸ Former Education Code Section 17722, (added by Chapter 1035, Statutes of 1979, Section 3.3, and subsequently amended several times) relating to similar subject matter 17022, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁸⁹ Former Education Code Section 17722.7, (added by Chapter 886, Statutes 1986, Section 9) relating to similar subject matter as Section 17022.7, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁹⁰ Education Code Section 17022.7, added by Chapter 277, Statutes of 1996, Section 2:

1 approved by the board pursuant to this chapter that meets the requirements set forth in
2 subdivision (b) shall include all of the following, not to exceed the total cost of the
3 reconstruction project or 75 percent of the replacement cost of the facility to be
4 reconstructed, whichever is less:

5 (1) Twenty-five percent of the replacement cost of the facility,

6 (2) A funding entitlement to the extent that the reconstruction will result in an

7 increased capacity of the facility to house pupils, calculated pursuant to the cost

“(a) The funding for any reconstruction project approved by the board pursuant to this chapter that meets the requirements set forth in subdivision (b) shall include all of the following, not to exceed the total cost of the reconstruction project or 75 percent of the replacement cost of the facility to be reconstructed, whichever is less:

(1) Twenty-five percent of the replacement cost of the facility.

(2) A funding entitlement to the extent that the reconstruction will result in an increased capacity of the facility to house pupils, calculated pursuant to the cost standards for new construction established by the board under Section 17017.

(3) Any costs incurred by the district as required to ensure that the facility, as reconstructed, complies with applicable structural safety standards for school buildings pursuant to Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365) of Chapter 2 of Part 10.5, and Article 7 (commencing with Section 81130) and Article 8 (commencing with Section 81160) of Chapter 1 of Part 49.

(b) In order to qualify for the funding entitlement set forth in subdivision (a), a school district reconstruction project shall be required to meet all of the following conditions:

(1) The facility to be reconstructed is at least 30 years old as of the date the application is filed.

(2) The cost of the reconstruction project exceeds 25 percent of the replacement cost of the facility.

(3) The reconstruction will result in an increased capacity of the facility to house pupils.

(c) No reconstruction project shall be approved under this chapter for which the total cost exceeds 75 percent of the replacement cost of the facility to be reconstructed.”

1 standards for new construction established by the board under Section 17017,

2 and

3 (3) Any costs incurred by the district as required to ensure that the facility, as

4 reconstructed, complies with applicable structural safety standards for school

5 buildings.

6 Subdivision (b) provides that in order to qualify for the funding entitlement set forth in

7 subdivision (a), a school district reconstruction project is required to meet all of the

8 following conditions:

9 (1) The facility to be reconstructed is at least 30 years old as of the date the

10 application is filed,

11 (2) The cost of the reconstruction project exceeds 25 percent of the replacement

12 cost of the facility, and

13 (3) The reconstruction will result in an increased capacity of the facility to house

14 pupils.

15 Subdivision (c) provides that no reconstruction project shall be approved under this

16 chapter for which the total cost exceeds 75 percent of the replacement cost of the

17 facility to be reconstructed.

18 Chapter 277, Statutes of 1996, Section 2, added¹⁹¹ Education Code Section

¹⁹¹ Former Education Code Section 19371, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17723 by Chapter 1010, 1976, Section 2) relating to similar subject matter as Section 17023, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17023 to provide that "nothing contained in this chapter shall be construed as changing
2 the powers and duties of the Department of Education or the Department of General
3 Services in respect to schoolsites and the construction of school buildings as contained
4 in Chapter 1 (commencing with Section 17211) and Chapter 2 (commencing with
5 Section 17251) of Part 10.5."

6 Chapter 277, Statutes of 1996, Section 2, added¹⁹² Education Code Section
7 17024¹⁹³. Subdivision (a) requires that the board shall not authorize the selection of any

¹⁹² Former Education Code Section 19372, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17724, by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter Section 17024, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁹³ Education Code Section 17024, added by Chapter 277, Statutes of 1996, Section 2:

"(a) The board shall not authorize the selection of any schoolsite, or a contract for the construction of any new school building, or for any addition to, or alteration of, any existing building, for lease-purchase to any school district, unless the applicant district has obtained the written approval of the State Department of Education that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251.

(b) A self-certifying district shall comply with subdivision (a) by certifying to the State Department of Education and the board that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251. The self-certifying district shall maintain documentation of the determinations made pursuant to this subdivision as required by the board. Those determinations shall be subject to subsequent audit by the State Department of Education in accordance with this section.

(c) The State Department of Education shall conduct random audits of the information certified by self-certifying districts pursuant to subdivision (b), using generally accepted auditing principles, at any time to ensure compliance with the law.

(d) If any information certified by a self-certifying district pursuant to subdivision (b) is found by the department to contain any material inaccuracy, the department shall

1 schoolsite, or a contract for the construction of any new school building, or for any
2 addition to, or alteration of, any existing building, for lease-purchase to any school
3 district, unless the applicant district has obtained the written approval of the State
4 Department of Education that the site selection, and the building plans and

so notify the board. The board shall thereupon impose both of the following penalties:

(1) Pursuant to a repayment schedule approved by the board of no more than five years, the district shall repay to the board, for deposit in the State School Building Lease-Purchase Fund, an amount equal to the amount of project funding allocated under this chapter to acquire any site that was selected in material violation of the standards adopted by the department pursuant to subdivision (b) of Section 17251, together with interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. The amount of any repayment owing under this paragraph for any fiscal year, which is not repaid otherwise by the district, shall be withheld by the board from any project funding that otherwise would be allocated to that district under this chapter in that fiscal year. As to any repayment obligation remaining for that fiscal year, the board shall notify the Superintendent of Public Instruction, who shall withhold the amount of that remaining obligation from the apportionments to be made to the district from the State School Fund in that fiscal year.

(2) The board shall prohibit the district from exercising the self-certifying authority under subdivision (b) under any subsequent applications for project funding for a period of up to five years following the date of the finding of a material inaccuracy, or until the district's repayment of the entire amount owing under paragraph (1), whichever occurs later.

(e) Any school district against which the board imposed the penalties under paragraphs (1) and (2) of subdivision (d) may submit for binding determination by an arbitrator the issue of whether the penalties imposed are disproportionate to the inaccuracy certified by the district. Except as otherwise provided by this chapter, the procedure governing the arbitration shall be as set forth in Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(f) It is the intent of the Legislature that audits as described in this section not interfere with the application and construction process under this chapter unless one or more violations are discovered.”

1 specifications, comply with the standards adopted by the department pursuant to
2 subdivisions (b) and (c), respectively, of Section 17251 (providing that the State
3 Department of Education shall develop standards for use by a school district in the
4 selection of schoolsites; the department shall investigate complaints of noncompliance
5 with the site selection standards and notify the governing board of the results of the
6 investigation; if notification is received prior to acquisition of the site, the board shall
7 discuss the investigative findings in a public hearing. Further the department shall
8 establish standards for use by the school districts to ensure that the design and
9 construction of school facilities are educationally appropriate and promote school
10 safety). Subdivision (b) requires self-certifying districts to comply with subdivision (a) by
11 certifying to the State Department of Education and the board that the site selection,
12 and the building plans and specifications, comply with the standards adopted by the
13 department pursuant to subdivisions (b) and (c), respectively, of Section 17251. The
14 self-certifying district shall maintain documentation of the determinations made
15 pursuant to this subdivision as required by the board. Those determinations shall be
16 subject to subsequent audit by the State Department of Education in accordance with
17 this section. Subdivision (c) provides that the State Department of Education shall
18 conduct random audits of the information certified by self-certifying districts pursuant to
19 subdivision (b), using generally accepted auditing principles, at any time to ensure
20 compliance with the law. Subdivision (d) states that if any information certified by a
21 self-certifying district pursuant to subdivision (b) is found by the department to contain

1 any material inaccuracy, the department shall so notify the board. The board shall
2 thereupon impose both of the following penalties:

3 (1) Pursuant to a repayment schedule approved by the board of no more than
4 five years, the district shall repay to the board, for deposit in the State School
5 Building Lease-Purchase Fund, an amount equal to the amount of project
6 funding allocated under this chapter to acquire any site that was selected in
7 material violation of the standards adopted by the department pursuant to
8 subdivision (b) of Section 17251, together with interest at the rate paid on
9 moneys in the Pooled Money Investment Account or at the highest rate of
10 interest for the most recent issue of state general obligation bonds, whichever is
11 greater. The amount of any repayment owing under this paragraph for any fiscal
12 year, which is not repaid otherwise by the district, shall be withheld by the board
13 from any project funding that otherwise would be allocated to that district under
14 this chapter in that fiscal year. As to any repayment obligation remaining for that
15 fiscal year, the board shall notify the Superintendent of Public Instruction, who
16 shall withhold the amount of that remaining obligation from the apportionments to
17 be made to the district from the State School Fund in that fiscal year;

18 (2) The district shall be prohibited from exercising the self-certifying authority
19 under subdivision (b) under any subsequent applications for project funding for a
20 period of up to five years following the date of the finding of a material
21 inaccuracy, or until the district's repayment of the entire amount owing under

1 paragraph (1), whichever occurs later.

2 Subdivision (e) provides that any school district against which the board imposed the
3 penalties under paragraphs (1) and (2) of subdivision (d) may submit for binding
4 determination by an arbitrator the issue of whether the penalties imposed are
5 disproportionate to the inaccuracy certified by the district. Subdivision (f) states that the
6 audits as described in this section should not interfere with the application and
7 construction process under this chapter unless one or more violations are discovered.

8 Chapter 277, Statutes of 1996, Section 2, added¹⁹⁴ Education Code Section
9 17024.5 to provide that “upon request of any school district, the State Department of
10 Education shall provide assistance in the evaluation and utilization of existing school
11 facilities and the justification of the need for schoolsites, new facilities, and the
12 rehabilitation or replacement of existing facilities, in accordance with board regulations.”

13 Chapter 277, Statutes of 1996, Section 2, added¹⁹⁵ Education Code Section
14 17025¹⁹⁶. Subdivision (a) requires the applicant district to submit plans to the

¹⁹⁴ Former Education Code Section 17724.4, (added by Chapter 1354, Statutes of 1980, Section 8.7) relating to similar subject matter Section 17024.4, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁹⁵ Former Education Code Section 19372.5, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17725 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as 17025, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁹⁶ Education Code Section 17025, added by Chapter 277, Statutes of 1996, Section 2:

“(a) The board shall not authorize a contract for the construction of any new

1 Department of General Services and obtain written approval of the department before
2 the board authorizes a contract for the construction of any new school, or for the
3 addition to, or reconstruction or alteration of, any existing building, for lease-purchase to
4 any school district. Subdivision (b) provides that the board, or the self-certifying district,
5 as applicable, shall certify the compliance of a project with Sections 17212, 17212.5,
6 and 17213 (relating to the investigation of prospective schoolsites in relation to
7 geological and engineering studies), with Division 13 (commencing with Section 21000)
8 of the Public Resources Code, and with any other law that applies to that project, but
9 may require documentation of compliance only as to requirements that are applicable
10 under this chapter. Notwithstanding any other law, the applicant district shall be
11 deemed to be the "lead agency" with regard to any project funded for that district under
12 this chapter.

school, or for the addition to, or reconstruction or alteration of, any existing building, for
lease-purchase to any school district unless the applicant district has submitted plans
therefor to the Department of General Services and obtained the written approval of the
department pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part
10.5.

(b) The board, or the self-certifying district, as applicable, shall certify the
compliance of a project with Sections 17212, 17212.5, and 17213, with Division 13
(commencing with Section 21000) of the Public Resources Code, and with any other
law that applies to that project, but may require documentation of compliance only as to
requirements that are applicable under this chapter. Notwithstanding any other law, for
purposes of Division 13 (commencing with Section 21000) of the Public Resources
Code, the applicant district shall be deemed to be the "lead agency" with regard to any
project funded for that district under this chapter."

1 Chapter 277, Statutes of 1996, Section 2, added¹⁹⁷ Education Code Section
2 17029¹⁹⁸. Subdivision (a) requires the board to authorize the applicant school district to
3 act as its agent in the performance of acts specifically approved by the board and all

¹⁹⁷ Former Education Code Section 19376, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17729 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17029, was repealed by Chapter 277, Statutes of 1996, Section 1.

¹⁹⁸ Education Code Section 17029, added by Chapter 277, Statutes of 1996, Section 2:

“(a) The board shall authorize the applicant school district to act as its agent in the performance of acts specifically approved by the board and all acts required pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5. That authorization shall include, but is not limited to, the selection of schoolsites, the securing of appraisals, the contracting for architectural services, the advertisement for construction bids and the entering into of contracts therefor and the purchase of furniture and equipment.

(b) If, pursuant to the authority granted under subdivision (a), a self-certifying district submits to the board two or more independent appraisals and certifies to the board that the appraisals were performed by appraisers licensed or certified in accordance with Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code and were obtained in accordance with standards and procedures imposed by the board for that purpose, the district shall not be required to document its compliance with those standards and procedures except as specified in Section 17041.2. In addition, the board shall use any of those appraisals, including an appraisal that is not the highest bid appraisal, for the purposes of this section, except that the board may substitute, for the results of those appraisals, the results of one or more independent appraisals, which may include an appraisal performed by the Department of General Services, obtained by the board for that purpose.

(c) If, pursuant to the authority granted under subdivision (a), any bid reported to the board by a self-certifying district as the lowest responsible bid for a construction contract does not exceed the cost limit established by the board for that purpose, and the district certifies to the board that the bid was obtained in accordance with standards and procedures imposed by the board for that purpose, the district shall not be required to document its compliance with those standards and procedures except as specified in Section 17041.2.”

1 acts required pursuant to Article 3 (commencing with Section 17280) of Chapter 3
2 "Construction of School Buildings" of Part 10.5 "School Facilities" (subject of another
3 Test Claim). That authorization shall include, but is not limited to, the selection of
4 schoolsites, the securing of appraisals, the contracting for architectural services, the
5 advertisement for construction bids and the entering into of contracts therefor and the
6 purchase of furniture and equipment. Subdivision (b) provides that if, pursuant to the
7 authority granted under subdivision (a), a self-certifying district submits to the board two
8 or more independent appraisals and certifies to the board that the appraisals were
9 performed by appraisers licensed or certified and were obtained in accordance with
10 standards and procedures imposed by the board for that purpose, the district shall not
11 be required to document its compliance with those standards and procedures except as
12 specified in Section 17041.2 (providing that where 75 percent or more of the total cost
13 of a project is to be funded by the applicant district from sources other than any state
14 program administered by the board, the area of the allowable new building construction
15 for that project, and the amount of the building cost allowed for that project, shall each
16 be increased by 5 percent, plus 1 percent for each 1 percent by which the local
17 contribution exceeds 75 percent). In addition, the board shall use any of those
18 appraisals, including an appraisal that is not the highest bid appraisal, for the purposes
19 of this section, except that the board may substitute, for the results of those appraisals,
20 the results of one or more independent appraisals, which may include an appraisal
21 performed by the Department of General Services, obtained by the board for that

1 purpose. Subdivision (c) provides that if, pursuant to the authority granted under
2 subdivision (a), any bid reported to the board by a self-certifying district as the lowest
3 responsible bid for a construction contract does not exceed the cost limit established by
4 the board for that purpose, and the district certifies to the board that the bid was
5 obtained in accordance with standards and procedures imposed by the board for that
6 purpose, the district shall not be required to document its compliance with those
7 standards and procedures except as specified in Section 17041.2 (relating to the
8 required information that self-certifying districts must accurately provide to the State
9 Allocation Board).

10 Chapter 277, Statutes of 1996, Section 2, added¹⁹⁹ Education Code Section
11 17029.5 to provide that "notwithstanding any other provisions of this chapter, the
12 funding by the board of contracts entered into by a school district pursuant to this
13 chapter shall not, in itself, make the board liable for any tort, breach of contract, or any
14 other action for damages caused by a school district arising from those contracts.
15 These contracts include, but are not limited to, contracts between the school district and
16 its construction contractors, construction managers, architects, or engineers. The
17 school district shall be liable for all torts, breaches of contract, or any other actions for
18 damages caused by the school district."

¹⁹⁹ Former Education Code Section 17729.5, (added by Chapter 693, Statutes of 1994, Section 1) relating to similar subject matter as 17029.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 Chapter 277, Statutes of 1996, Section 2, added²⁰⁰ Education Code Section
2 17030²⁰¹. Subdivision (a) provides that in expending funds for any project under this

²⁰⁰ Former Education Code Section 19377, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17730 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17030, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁰¹ Education Code Section 17030, added by Chapter 277, Statutes of 1996, Section 2:

“(a) In expending funds for any project under this chapter, a school district acts as an agent of the state and all sites purchased and improved, all equipment purchased, and all buildings constructed, altered or added to through the expenditure of funds apportioned under this chapter, are declared to be, and are, the property of the state.

(b) The Director of General Services shall file with the county recorder of the county in which any site purchased or improved through the expenditure of funds under this chapter is located a certificate, properly acknowledged, indicating the state's interest in real property of the district by virtue of this section, without the necessity of particularizing the real property. The recorder shall record and index the certificate in the same manner as abstracts of judgments and the certificate shall constitute constructive notice of the state's interest in the particular real property affected. The certificate shall, as to any party thereafter acquiring real property or any interest therein in the county from the school district, have the same force, effect and priority as if it had been a judgment lien imposed upon real property which was not exempt from execution. That effect shall commence upon recordation and shall continue until the certificate is discharged or released as provided herein.

(c) Upon request, the Director of General Services shall issue either of the following:

(1) A release of the state's interest in any real property or a portion thereof that the district has been authorized by the board to dispose of under Section 17039, provided that delivery of such release may be subject to such conditions as may be prescribed by the board to protect the state's interest.

(2) A disclaimer of the state's interest in any real property or a portion thereof of the district, the disposition of which the board is not required to consent to under the terms of Section 17039, provided that the delivery of such disclaimer may be subject to such conditions as the board deems appropriate to protect the interest of the state, including conditions relating to the amount of consideration to be received from the disposition where the board asserts an

1 chapter, a school district acts as an agent of the state and all sites purchased and
2 improved, all equipment purchased, and all buildings constructed, altered or added to
3 through the expenditure of funds apportioned under this chapter are the property of the
4 state. Subdivision (b) requires that the Director of General Services shall file with the
5 county recorder of the county in which any site purchased or improved through the
6 expenditure of funds under this chapter is located a certificate, properly acknowledged,
7 indicating the state's interest in real property of the district by virtue of this section,
8 without the necessity of particularizing the real property. The recorder shall record and
9 index the certificate in the same manner as abstracts of judgments and the certificate
10 shall constitute constructive notice of the state's interest in the particular real property
11 affected. The certificate shall, as to any party thereafter acquiring real property or any
12 interest therein in the county from the school district, have the same force, effect and
13 priority as if it had been a judgment lien imposed upon real property which was not
14 exempt from execution. That effect shall commence upon recordation and shall

interest in the proceeds of such disposition under other provisions of this chapter. The release or disclaimer shall conclusively protect any third party relying upon the same and shall be acknowledged to permit recordation by the county recorder.

(d) Upon payment by the district of all amounts required to be paid by it, or on its behalf, to the state under this chapter, each of the following shall occur:

(1) The Director of General Services shall file with the county recorder a release of any certificate, which release shall be recorded and indexed in the same index as the certificate.

(2) The title to personal property purchased by the school district with funds apportioned under this chapter shall revert thereto without further action by the state."

1 continue until the certificate is discharged or released as provided herein. Subdivision
2 (c) requires the Director of General Services, upon request, to issue either of the
3 following: (1) a release of the state's interest in any real property or a portion thereof
4 that the district has been authorized by the board to dispose of under Section 17039,
5 provided that delivery of such release may be subject to such conditions as may be
6 prescribed by the board to protect the state's interest, or (2) a disclaimer of the state's
7 interest in any real property or a portion thereof of the district, the disposition of which
8 the board is not required to consent to under the terms of Section 17039, provided that
9 the delivery of such disclaimer may be subject to such conditions as the board deems
10 appropriate to protect the interest of the state, including conditions relating to the
11 amount of consideration to be received from the disposition where the board asserts an
12 interest in the proceeds of such disposition under other provisions of this chapter. The
13 release or disclaimer shall conclusively protect any third party relying upon the same
14 and shall be acknowledged to permit recordation by the county recorder. Subdivision
15 (d) requires that upon payment by the district of all amounts required to be paid by it, or
16 on its behalf, to the state under this chapter, each of the following shall occur: (1) the
17 Director of General Services shall file with the county recorder a release of any
18 certificate, which release shall be recorded and indexed in the same index as the
19 certificate, and (2) the title to personal property purchased by the school district with
20 funds apportioned under this chapter shall revert thereto without further action by the
21 state.

1 Chapter 277, Statutes of 1996, Section 2, added²⁰² Education Code Section
2 17030.2 to provide that “notwithstanding any other provision to the contrary, all lease
3 agreements shall terminate 40 years from the date of execution and title to the property
4 covered therein shall revert to the district as though full payment had been made.”

5 Chapter 277, Statutes of 1996, Section 2, added²⁰³ Education Code Section
6 17030.3 to provide that “notwithstanding any other provision of this chapter, any project
7 funded under this chapter that involves only the identification, assessment, or
8 abatement of hazardous asbestos in school facilities shall not be subject to Section
9 17014 [providing the requirements for all necessary repairs, renewals and replacements
10 of school district projects] or 17032 [providing that the board may fix rents for all
11 projects], nor shall that funding cause the transfer to the state of title or any other
12 property interest in the subject facilities.”

13 Chapter 277, Statutes of 1996, Section 2, added²⁰⁴ Education Code Section
14 17030.5 to provide that “notwithstanding any provision to the contrary, no funds

²⁰² Former Education Code Section 17730.2, (added by Chapter 1354, Statutes of 1980, Section 8.8) relating to similar subject matter as Section 17030.2, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁰³ Former Education Code Section 17730.3, (added by Chapter 1408, Statutes of 1989, Section 1) relating to similar subject matter as Section 17030.3, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁰⁴ Former Education Code Section 17730.5, (added by Chapter 381, Statutes of 1977, Section 4, and amended by Chapter 1035, Statutes of 1979, Section 3.7) relating to similar subject matter as Section 17030.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 authorized by any act for the purpose of this chapter may be expended for any purpose
2 without specific authorization from the board or its designated representatives.”

3 Chapter 277, Statutes of 1996, Section 2, added²⁰⁵ Education Code Section
4 17030.6 to require that “from any moneys in the State School Building Lease-Purchase
5 Fund, the board shall make available to the Director of General Services such amounts
6 as it determines necessary to provide the assistance, pursuant to this chapter, required
7 by Section 15504 of the Government Code.”

8 Chapter 277, Statutes of 1996, Section 2, added²⁰⁶ Education Code Section
9 17031 to require that “the applicant district, acting as agent for the state, shall comply
10 with all laws pertaining to the construction, reconstruction, or alteration of, or addition to
1 school buildings.”

12 Chapter 277, Statutes of 1996, Section 2, added²⁰⁷ Education Code Section
13 17032 to provide that “the board shall fix rents for all projects acquired and may change
14 the rents from time to time as may be needed provided the rents shall not in any year

²⁰⁵ Former Education Code Section 17730.6, (added by Chapter 1035, Statutes of 1979, Section 3.8) relating to similar subject matter as Section 17030.6, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁰⁶ Former Education Code Section 19377.7, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17731 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17031, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁰⁷ Former Education Code Section 19378, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17732 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17032, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 exceed the sum of the following: (a) One dollar (\$1); (b) Any interest earned on funds
2 in the county school lease-purchase fund for the district; (c) Any unencumbered bond
3 funds of the district, exclusive of funds that are used by the district to fund a project
4 pursuant to Section 17040.2; (d) The net proceeds from the sale or lease of any school
5 buildings or land no longer needed for school purposes, exclusive of proceeds that are
6 used for capital outlay expenditures for school construction that conforms to building
7 area standards established under this chapter, for revenue purposes under a joint
8 venture as authorized by Section 17032.3.”

9 Chapter 277, Statutes of 1996, Section 2, added²⁰⁸ Education Code Section
10 17032.3²⁰⁹. Subdivision (a) provides that any school district for which one or more

²⁰⁸ Former Education Code Section 17732.3, (added by Chapter 668, Statutes of 1987, Section 3 and last amended by Chapter 216, Statutes of 1990, Section 12), relating to similar subject matter as new Section 17032.3, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁰⁹ Education Code Section 17032.3, added by chapter 277, Statutes of 1996, Section 2:

“(a) Any school district for which one or more projects has been funded under this chapter may, pursuant to written agreement with any other public or private person or entity, utilize any school buildings, land, or other real property interest that the governing board determines is not needed for school purposes, and will not be needed for school purposes within the next 30 years, in a joint venture with that person or entity to generate revenues for school facilities purposes, pursuant to the following conditions:

(1) The district has developed a school district asset utilization plan, setting forth the information required under subdivision (b), which plan has been the subject of a public hearing, and the governing board of the district has made the finding that the implementation of the plan will benefit the district.

(2) Prior to the execution by the school district governing board of any agreement regarding the utilization of the school buildings or land, or both, under a joint venture pursuant to this section, the school district asset utilization plan

has been submitted for, and has received, the review and approval of the State Allocation Board. No later than 90 days after the receipt of the plan, the board shall determine whether to approve the plan, which approval shall be granted if the board finds the plan to comply with this section.

(3) Once every three years after the approval of any plan pursuant to paragraph (2), the school district shall update the plan with information regarding the disposition of the revenues received by the district from the utilization of the school buildings or land, or both, under the joint venture, including the effect of those revenues upon the school facility needs for which the district may otherwise be eligible under this chapter or under any other school facilities program administered by the board, together with such other information as the board may require, and shall resubmit the plan to the board for its review and approval. In the event that the board refuses to approve the plan on the basis that the district is no longer in substantial compliance with this section, the surplus school buildings or land, or both, utilized under the joint venture shall no longer be exempt from the rental requirements of Section 17032.

(4) Pursuant to a school district asset utilization plan approved under this section, the school district may utilize school buildings or land, or both, in a joint venture, the revenues from which shall be placed by the district in a separate fund. The principal and interest from that separate fund may be expended by the district only for the following school facilities purposes, as authorized under the approved plan, in accordance with the pupil loading and cost standards established pursuant to this chapter: the acquisition of land, new construction, reconstruction, modernization, rehabilitation, and deferred maintenance.

(b) For purposes of this section, a school district asset utilization plan shall include, but not necessarily be limited to, all of the following:

(1) A specific description of the surplus school buildings or land, or both, to be utilized under the joint venture.

(2) The identification of the current educational uses of the surplus school buildings or land, or both, and of the educational uses proposed under the joint venture.

(3) The identification of the current noneducational uses of the surplus school buildings or land, or both, and of the noneducational uses proposed under the joint venture, and a specific assessment of the compatibility of those uses with any applicable general or specific governmental land use plans and with applicable zoning restrictions.

(4) A description of the prospective economic benefits to be derived by the district from the joint venture.

(5) A description of the prospective educational benefits to be derived by the district from the joint venture.

1 projects has been funded under this chapter may, pursuant to written agreement with
2 any other public or private person or entity, utilize any school buildings, land, or other
3 real property interest that the governing board determines is not needed for school
4 purposes, and will not be needed for school purposes within the next 30 years, in a joint
5 venture with that person or entity to generate revenues for school facilities purposes,
6 pursuant to the following conditions:

7 (1) The district has developed a school district asset utilization plan, setting forth
8 the information required under subdivision (b), which plan has been the subject
9 of a public hearing, and the governing board of the district has made the finding
10 that the implementation of the plan will benefit the district;

11 (2) Prior to the execution by the school district governing board of any agreement
12 regarding the utilization of the school buildings or land, or both, under a joint
13 venture pursuant to this section, the school district asset utilization plan has been
14 submitted for, and has received, the review and approval of the State Allocation
15 Board. No later than 90 days after the receipt of the plan, the board shall
16 determine whether to approve the plan, which approval shall be granted if the
17 board finds the plan to comply with this section;

18 (3) Once every three years after the approval of any plan pursuant to paragraph

(6) A comprehensive description of the joint venture, including, but not limited to, a description of the intended means of financing the joint venture.

(7) A plan for the disposition of the revenues received by the district from the joint venture.”

1 (2), the school district shall update the plan with information regarding the
2 disposition of the revenues received by the district from the utilization of the
3 school buildings or land, or both, under the joint venture, including the effect of
4 those revenues upon the school facility needs for which the district may
5 otherwise be eligible under this chapter or under any other school facilities
6 program administered by the board, together with such other information as the
7 board may require, and shall resubmit the plan to the board for its review and
8 approval. In the event that the board refuses to approve the plan on the basis
9 that the district is no longer in substantial compliance with this section, the
10 surplus school buildings or land, or both, utilized under the joint venture shall no
11 longer be exempt from the rental requirements of Section 17032;

12 (4) Pursuant to a school district asset utilization plan approved under this
13 section, the school district may utilize school buildings or land, or both, in a joint
14 venture, the revenues from which shall be placed by the district in a separate
15 fund. The principal and interest from that separate fund may be expended by
16 the district only for the following school facilities purposes, as authorized under
17 the approved plan, in accordance with the pupil loading and cost standards
18 established pursuant to this chapter: the acquisition of land, new construction,
19 reconstruction, modernization, rehabilitation, and deferred maintenance.

20 Subdivision (b) requires that a school district asset utilization plan include, but not
21 necessarily be limited to, all of the following:

1 (1) A specific description of the surplus school buildings or land, or both, to be
2 utilized under the joint venture;

3 (2) The identification of the current educational uses of the surplus school
4 buildings or land, or both, and of the educational uses proposed under the joint
5 venture;

6 (3) The identification of the current noneducational uses of the surplus school
7 buildings or land, or both, and of the noneducational uses proposed under the
8 joint venture, and a specific assessment of the compatibility of those uses with
9 any applicable general or specific governmental land use plans and with
10 applicable zoning restrictions;

11 (4) A description of the prospective economic benefits to be derived by the
12 district from the joint venture;

13 (5) A description of the prospective educational benefits to be derived by the
14 district from the joint venture;

15 (6) A comprehensive description of the joint venture, including, but not limited to,
16 a description of the intended means of financing the joint venture; and

17 (7) A plan for the disposition of the revenues received by the district from the
18 joint venture.

19 Chapter 893, Statutes of 1997, Section 85, added²¹⁰ Education Code Section

²¹⁰ Former Education Code Section 17732.5, (added by Chapter 1059, Statutes of 1996, Section 4) relating to similar subject matter as Section 17032.5, was repealed by Chapter 893, Statutes of 1997, Section 101.

1 17032.5 to provide that “the board shall establish the annual rent and conditions to be
2 met by the lessee of a portable classroom leased pursuant to Section 17717.2 [referring
3 to current Section 17017.2] and shall require lessees to undertake all necessary
4 maintenance, repairs, renewals, and replacements to ensure that a project is at all
5 times kept in good repair, working order, and condition. All costs incurred for this
6 purpose shall be borne by the lessee.”

7 Chapter 277, Statutes of 1996, Section 2, added²¹¹ Education Code Section
8 17033 to provide that “rent, charges, and fees collected in error may be refunded by the
9 board in accordance with regulations prescribed by the board.”

10 Chapter 277, Statutes of 1996, Section 2, added²¹² Education Code Section
1 17034 to provide that “a county school lease-purchase fund is hereby created in the
2 county treasury within each county for each school district project in the county.”

3 Chapter 277, Statutes of 1996, Section 2, added²¹³ Education Code Section

²¹¹ Former Education Code Section 19379, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17733 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter 17033, was repealed Chapter 277, Statutes of 1996, Section 1.

²¹² Former Education Code Section 19380, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17734 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter 17034, was repealed Chapter 277, Statutes of 1996, Section 1.

²¹³ Former Education Code Section 19381, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17735 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter 17035, was repealed Chapter 277, Statutes of 1996, Section 1.

1 17035 to provide that "the board may from time to time authorize the Controller to
2 transfer any funds that the board may deem necessary from the State School Building
3 Lease-Purchase Fund established for a given project to the corresponding county
4 school lease-purchase fund in the county treasury."

5 Chapter 277, Statutes of 1996, Section 2, added²¹⁴ Education Code Section
6 17036²¹⁵. Subdivision (a) provides that except as provided in subdivision (b), funds may
7 be expended from the county school lease-purchase fund by the applicant school
8 district only when specifically authorized by the board for either direct project costs or
9 reimbursements. Subdivision (b) provides that upon specific authorization by the board,
10 applicant school districts may be reimbursed from the county school lease-purchase

²¹⁴ Former Education Code Section 19382, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17736 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter 17036, was repealed Chapter 277, Statutes of 1996, Section 1.

²¹⁵ Education Code section 17036, added by Chapter 277, Statutes of 1996, Section 2:

"(a) Except as provided in subdivision (b), funds may be expended from the county school lease-purchase fund by the applicant school district only when specifically authorized by the board for either direct project costs or reimbursements.

(b) Upon specific authorization by the board, applicant school districts may be reimbursed from the county school lease-purchase fund for expenditures, or commitments therefor, made prior to the approval of a project by the board, subject to all of the following conditions:

(1) The expenditures or commitments were made in accordance with the terms of the approval of a project.

(2) The expenditures or commitments were made not more than four years prior to the approval of a project.

(3) The expenditures or commitments do not include any cost incurred for construction of a project."

1 fund for expenditures, or commitments therefor, made prior to the approval of a project
2 by the board, subject to all of the following conditions: (1) the expenditures or
3 commitments were made in accordance with the terms of the approval of a project, (2)
4 the expenditures or commitments were made not more than four years prior to the
5 approval of a project, and (3) the expenditures or commitments do not include any cost
6 incurred for construction of a project.

7 Chapter 277, Statutes of 1996, Section 2, added²¹⁶ Education Code Section
8 17038 to provide that "the board shall require school districts to insure at their own
9 expense for the benefit of the state, all sites, equipment and buildings which are, under
10 Section 17030, the property of the state, against such risks and in such amounts as the
11 board may deem necessary to protect the interests of the state. No project funds shall
12 be used to pay the premiums on such insurance. All payments resulting from claims
13 made against said insurance shall be made payable to and retained by the board.
14 Funds so received shall be utilized by the board for repair or replacement of the
15 facilities for which claim was made. In no event may the amounts expended from such
16 funds for such repair or replacement exceed the payments received."

17 Chapter 277, Statutes of 1996, Section 2, added²¹⁷ Education Code Section

²¹⁶ Former Education Code Section 19384, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17738 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as new Section 17036, was repealed Chapter 277, Statutes of 1996, Section 1.

²¹⁷ Former Education Code Section 17739, (added by Chapter 410, Statutes of 1982, Section 2 and last amended by Chapter 698, Statutes of 1983, Section 1),

1 17039. Subdivision (a) requires that "not more than one hundred fifty million dollars
2 (\$150,000,000) of the moneys authorized by the State School Building Lease-Purchase
3 Bond Law of 1982 (Sec. 34, Ch. 552, Stats. 1995) shall be reserved for the
4 reconstruction or modernization of facilities within the meaning of this chapter."

5 Subdivision (b) requires that "for purposes of this section, the State Allocation Board
6 shall establish a separate priority system which shall be based on the following factors
7 and any other factors which the board determines are appropriate: (1) structural
8 condition and age of the building, (2) percentage of pupils affected in the district or
9 attendance area, (3) degree of utilization of eligible buildings, and (4) other building
10 code deficiencies, such as health, safety, or electrical problems."

11 Chapter 277, Statutes of 1996, Section 2, added²¹⁸ Education Code Section
12 17039.1 to require that "not more than two hundred million dollars (\$200,000,000) of the
13 moneys authorized by the State School Building Lease-Purchase Bond Law of 1982
14 (Sec. 34, Ch. 552, Stats. 1995) shall be reserved for the reconstruction or
15 modernization of facilities within the meaning of this chapter."

16 Chapter 277, Statutes of 1996, Section 2, added²¹⁹ Education Code Section

relating to similar subject matter as new Section 17039, was repealed by Chapter 277,
Statutes of 1996, Section 1.

²¹⁸ Former Education Code Section 17739.1, (added by Chapter 375, Statutes of
1984, Section 2), relating to similar subject matter as new Section 17039.1, was
repealed by Chapter 277, Statutes of 1996, Section 1.

²¹⁹ Former Education Code Section 17739.2, (added by Chapter 1749, Statutes
of 1984, Section 2 and last amended by Chapter 887, Statutes of 1986, Section 3),

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1 17039.2 to provide that "of the moneys reserved for the rehabilitation or modernization
2 of facilities pursuant to Section 17039.1, the board may reserve not more than
3 twenty-five million dollars (\$25,000,000) for apportionments to school districts that the
4 board has determined to be in severe need of the apportionment. In addition, of the
5 moneys reserved for the reconstruction or modernization of facilities pursuant to
6 Section 17696.96 of the Greene-Hughes School Building Lease-Purchase Bond Law of
7 1986 (Sec. 34, Ch. 552, Stats. 1995), the board may reserve up to and including 10
8 percent for this purpose. In either event, the apportionment shall be for purposes of site
9 acquisition and the construction of school facilities for schoolsites that meet one or
10 more of the conditions established by the board, which shall include, but are not limited
11 to, the following: (a) the schoolsite is not less than 30 years of age, (b) the schoolsite
12 has accommodated a significant increase in enrollment during the last 10-year period,
13 (c) enrollment increases have been accommodated by placing relocatable structures on
14 the schoolsite without expanding the schoolsite, (d) the schoolsite has inadequate
15 playground space for its enrollment, and (e) the schoolsite has inadequate meal
16 facilities, and those facilities are used for more than three times the number of pupils for
17 which the facilities were originally designed."

relating to similar subject matter as new Section 17039.2, was repealed by Chapter
277, Statutes of 1996, Section 1.

1 ARTICLE 3. ALLOWANCES

2 Chapter 277, Statutes of 1996, Section 2, added²²⁰ Education Code Section
3 17040²²¹ to provide that except as provided in Section 17041, no project shall be

²²⁰ Former Education Code Section 19391, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17740 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter 17040, was repealed Chapter 277, Statutes of 1996, Section 1.

²²¹ Education Code Section 17040, added by Chapter 277, Statutes of 1996, Section 2:

"Except as provided in Section 17041, no project shall be approved, the building area of which, when added to the area of adequate school construction existing in the applicant school district at the time of application, will provide a total area of school building construction per unit of estimated average daily attendance in excess of that computed in accordance with Sections 17043, 17044, 17045, and 17046.

As used in Sections 17041.5, 17043, 17044, 17045, and 17046, "maximum area" means maximum area of school building construction and "attendance unit" means unit of estimated average daily attendance.

As used in this section and Sections 17045 and 17046, "attendance center" means a school maintained or to be maintained at a given location within a district. Enrollment projections shall be made for the third fiscal year beyond the fiscal year in which the application is made for a project for kindergarten or any of grades 1 to 6, inclusive, and for the fourth fiscal year beyond the fiscal year in which the application is made for a junior high school or high school project. Except as otherwise provided by the board, the estimates of average daily attendance shall be based upon the number of family dwellings and mobilehome parks, as defined in Section 18214 of the Health and Safety Code, under construction or newly constructed and never occupied in the district and the number of children residing in the district. In no case shall an estimate be given effect unless approved by the board.

For the purposes of this chapter, pupils attending grades 7 and 8 in an elementary district, but residing in a high school district that maintains one or more junior high schools, shall not be considered in determining or estimating the average daily attendance of the elementary district, unless one of the following conditions is met:

(a) The elementary district is maintaining and has continuously maintained grades 7 and 8 since a date prior to January 1, 1975.

(b) The elementary district, by a vote of the electorate at an election held on June 2, 1981, withdrew its 7th and 8th grade pupils from the high school

1 approved, the building area of which, when added to the area of adequate school
2 construction existing in the applicant school district at the time of application, will
3 provide a total area of school building construction per unit of estimated average daily
4 attendance in excess of that computed in accordance with Sections 17043, 17044,
5 17045, and 17046. As used in Sections 17041.5, 17043, 17044, 17045, and 17046,
6 "maximum area" means maximum area of school building construction and "attendance
7 unit" means unit of estimated average daily attendance. As used in this section and
8 Sections 17045 and 17046, "attendance center" means a school maintained or to be
9 maintained at a given location within a district. Enrollment projections shall be made for
10 the third fiscal year beyond the fiscal year in which the application is made for a project
11 for kindergarten or any of grades 1 to 6, inclusive, and for the fourth fiscal year beyond
12 the fiscal year in which the application is made for a junior high school or high school
13 project. Except as otherwise provided by the board, the estimates of average daily
14 attendance shall be based upon the number of family dwellings and mobile home

district.

(c) The elementary district, by a vote of the electorate at an election held on November 4, 1980, withdrew its 7th and 8th grade pupils from the high school district and the high school district continues to qualify for a project, other than a project pursuant to Section 17041, on the basis of the remaining 7th and 8th grade pupils. In no event shall a facility be constructed for the withdrawn 7th and 8th grade pupils at a distance less than one and one-half miles from the nearest proposed or existing junior high facility.

When these pupils are so considered in determining or estimating the average daily attendance of the elementary district, they shall not be considered in determining or estimating average daily attendance of the high school district for junior high school purposes."

1 parks, under construction or newly constructed and never occupied in the district and
2 the number of children residing in the district. In no case shall an estimate be given
3 effect unless approved by the board. For the purposes of this chapter, pupils attending
4 grades 7 and 8 in an elementary district, but residing in a high school district that
5 maintains one or more junior high schools, shall not be considered in determining or
6 estimating the average daily attendance of the elementary district, unless one of the
7 following conditions is met:

8 (a) The elementary district is maintaining and has continuously maintained
9 grades 7 and 8 since a date prior to January 1, 1975;

10 (b) The elementary district, by a vote of the electorate at an election held on
11 June 2, 1981, withdrew its 7th and 8th grade pupils from the high school district;

12 or

13 (c) The elementary district, by a vote of the electorate at an election held on
14 November 4, 1980, withdrew its 7th and 8th grade pupils from the high school
15 district and the high school district continues to qualify for a project, other than a
16 project pursuant to Section 17041, on the basis of the remaining 7th and 8th
17 grade pupils. In no event shall a facility be constructed for the withdrawn 7th and
18 8th grade pupils at a distance less than one and one-half miles from the nearest
19 proposed or existing junior high facility.

20 When these pupils are so considered in determining or estimating the average daily
21 attendance of the elementary district, they shall not be considered in determining or

1 estimating average daily attendance of the high school district for junior high school
2 purposes.

3 Chapter 277, Statutes of 1996, Section 2, added²²² Education Code Section
4 17040.1²²³. Subdivision (a) requires that the allowable building area of any project, as
5 calculated under this article, shall be increased, as necessary, by any applicant school
6 district, where the increase is funded exclusively from sources other than any state

²²² Former Education Code Section 17740.1, (added by Chapter 886, Statutes of 1986, Section 12) relating to similar subject matter Section 17040.1, was repealed by Chapter 277, Statutes of 1996, Section 1.

²²³ Education Code Section 17040.1, added by Chapter 277, Statutes of 1996, Section 2:

“(a) The allowable building area of any project, as calculated under this article, may be increased by any applicant school district, where the increase is funded exclusively from sources other than any state programs administered by the State Allocation Board. Any increase in building area pursuant to this section in a project for which construction commenced on or after January 1, 1987, not to exceed 110 percent of the area that would be allowed under applicable state standards, shall be excluded from the calculation of the area of adequate school construction for the purposes of all subsequent project applications by the district under this chapter.

(b) The maximum building cost permitted for any project under this article may be increased, by not more than 10 percent, by any applicant school district, where the increase is funded by the district exclusively from the proceeds of a general obligation bond measure approved by the voters of the district or of a special tax pursuant to the formation of a community facilities district under Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, or both. In order to qualify for this purpose, any tax or other charge authorized pursuant to that approval or formation, respectively, shall apply uniformly to all taxpayers or all real property within the school district, rather than to a particular class of property or taxpayers, and shall require that the amount of the school facilities fee or other requirement that may be levied by the school district pursuant to Section 17620, in addition to that tax or other charge, not exceed the amount deemed by the governing board to be necessary for the interim school facilities needs of the district.”

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1 programs administered by the State Allocation Board. Any increase in building area
2 pursuant to this section in a project for which construction commenced on or after
3 January 1, 1987, not to exceed 110 percent of the area that would be allowed under
4 applicable state standards, shall be excluded from the calculation of the area of
5 adequate school construction for the purposes of all subsequent project applications by
6 the district under this chapter. Subdivision (b) provides that the maximum building cost
7 permitted for any project under this article may be increased, by not more than 10
8 percent, by any applicant school district, where the increase is funded by the district
9 exclusively from the proceeds of a general obligation bond measure approved by the
10 voters of the district or of a special tax pursuant to the formation of a community
11 facilities district under Chapter 2.5 (commencing with Section 53311) of Part 1 of
12 Division 2 of Title 5 of the Government Code, or both. In order to qualify for this
13 purpose, any tax or other charge authorized pursuant to that approval or formation,
14 respectively, shall apply uniformly to all taxpayers or all real property within the school
15 district, rather than to a particular class of property or taxpayers, and shall require that
16 the amount of the school facilities fee or other requirement that may be levied by the
17 school district pursuant to Section 17620 (providing that the governing board of any
18 school district is authorized to levy a fee, charge, dedication, or other requirement
19 against any construction within the boundaries of the district, for the purpose of funding
20 the construction or reconstruction of school facilities), in addition to that tax or other
21 charge, not exceed the amount deemed by the governing board to be necessary for the

1 interim school facilities needs of the district.

2 Chapter 277, Statutes of 1996, Section 2, added²²⁴ Education Code Section
3 17040.2 to provide that "where 75 percent or more of the total cost of a project
4 approved under this chapter is to be funded by the applicant district from sources other
5 than any state program administered by the board, the area of the allowable new
6 building construction for that project, and the amount of the building cost allowed for
7 that project under this chapter, shall each be increased by 5 percent, plus 1 percent for
8 each 1 percent by which that local contribution exceeds 75 percent."

9 Chapter 277, Statutes of 1996, Section 2, added²²⁵ Education Code Section
10 17040.3²²⁶. Subdivision (a) provides that notwithstanding any other provision of this

²²⁴ Former Education Code Section 17740.2, (added by Chapter 1209, Statutes of 1989, Section 11) relating to similar subject matter as 17040.2, was repealed by Chapter 277, Statutes of 1996, Section 1.

²²⁵ Former Education Code Section 17740.3, (added by Chapter 886, Statutes of 1986, Section 13) relating to similar subject matter as 17040.3, was repealed by Chapter 277, Statutes of 1996, Section 1.

²²⁶ Education Code Section 17040.3, added by Chapter 277, Statutes of 1996, Section 2:

"(a) Notwithstanding any other provision of this part, the estimate of average daily attendance for an applicant school district shall be calculated for up to and including two years longer than the period of time permitted by Section 17040, as requested by the district, where 50 percent or more of the cost of the project is provided by the district from funding sources other than any state program administered by the board. For the purposes of any subsequent project application from that district based upon additional growth in pupil enrollment, the estimate of average daily attendance shall be based on enrollment projections for any period of time, as requested by the district, up to and including that permitted by Section 17040.

(b) The project shall be "fast tracked." For purposes of this section, "fast

1 part, the estimate of average daily attendance for an applicant school district shall be
2 calculated for up to and including two years longer than the period of time permitted by
3 Section 17040, as requested by the district, where 50 percent or more of the cost of the
4 project is provided by the district from funding sources other than any state program
5 administered by the board. For the purposes of any subsequent project application
6 from that district based upon additional growth in pupil enrollment, the estimate of
7 average daily attendance shall be based on enrollment projections for any period of
8 time, as requested by the district, up to and including that permitted by Section 17040.
9 Subdivision (b) requires that the project shall be "fast tracked," meaning that the total
10 amount of project funding eligibility shall be established upon the board's approval of
11 the project, which shall be subsequently disbursed as necessary for the development
12 and construction of the project without the prerequisite of any additional state
13 certification or other state-conducted review of project eligibility. Based upon the results

tracking" means that the total amount of project funding eligibility shall be established upon the board's approval of the project, which shall be subsequently disbursed as necessary for the development and construction of the project without the prerequisite of any additional state certification or other state-conducted review of project eligibility. Based upon the results of an audit to be conducted upon completion of the project, the board or the applicant district, as appropriate, shall pay to the other any amount that is necessary to conform to the allocation of project costs determined upon the board's approval of the project.

In the event that the applicant district has not executed all contractual agreements necessary for the complete construction of the project within a period of 18 months following the board's approval of the project, this subdivision shall cease to apply to the project with regard to any state funding of the project not yet disbursed. Upon request of the applicant district and approval by the board, this 18-month period may be extended for an additional period of up to six months to account for one or more delays resulting from circumstances beyond the district's control."

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1 of an audit to be conducted upon completion of the project, the board or the applicant
2 district, as appropriate, shall pay to the other any amount that is necessary to conform
3 to the allocation of project costs determined upon the board's approval of the project.

4 In the event that the applicant district has not executed all contractual agreements
5 necessary for the complete construction of the project within a period of 18 months
6 following the board's approval of the project, this subdivision shall cease to apply to the
7 project with regard to any state funding of the project not yet disbursed. However,
8 upon request of the applicant district and approval by the board, this 18-month period
9 may be extended for an additional period of up to six months to account for one or
10 more delays resulting from circumstances beyond the district's control.

1 Chapter 277, Statutes of 1996, Section 2, added²²⁷ Education Code Section
12 17040.4 to provide that "notwithstanding any other provision of this part, the board may
13 use, for purposes of determining the estimate of average daily attendance for an
14 applicant school district, a master plan that has been prepared by a district that includes
15 the additional pupils due to increases in housing units within the boundaries of the
16 district or attendance area. Before a master plan may be used, both of the following
17 conditions shall be satisfied: (a) the city, county, or city and county has obtained
18 approval of a local general obligation bond or has obtained funds pursuant to the
19 Mello-Roos Community Facilities Act of 1982, as set forth by Chapter 2.5 (commencing

²²⁷ Former Education Code Section 17740.4, (added by Chapter 1184, Statutes of 1994, Section 1) relating to similar subject matter as 17040.4, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, to
2 provide local matching funds for school facility projects for which approval is being
3 sought pursuant to this section; and (b) at least 60 percent of the total cost of the
4 project for which approval is being sought shall be provided by funding sources other
5 than any state program administered by the board.”

6 Chapter 277, Statutes of 1996, Section 2, added²²⁸ Education Code Section
7 17040.5 to require that “notwithstanding any other provision of this article, the board
8 shall exclude the area of enclosed stairs and appropriate landings for each floor level
9 served from the computation of the allowable building area of multistory buildings for
10 any applicant school district.”

11 Chapter 277, Statutes of 1996, Section 2, added²²⁹ Education Code Section
12 17040.6²³⁰. Subdivision (a) requires that “for any school of two or more stories, the

²²⁸ Former Education Code Section 17740.5, (added by Chapter 1053, Statutes of 1983, Section 2) relating to similar subject matter as 17040.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

²²⁹ Former Education Code Section 17740.6, (added by Chapter 1154, Statutes of 1987, Section 2) relating to similar subject matter as 17040.6, was repealed by Chapter 277, Statutes of 1996, Section 1.

²³⁰ Education Code Section 17040.6, added by Chapter 277, Statutes of 1996, Section 2:

“(a) For any school of two or more stories, the project funding provided under this chapter shall include, at the request of the applicant district, the costs of any or all of the following:

(1) Compliance with applicable requirements of law for fire safety, and for handicapped access, as a result of the multistory design.

(2) Playground apparatus.

1 project funding provided under this chapter shall include, at the request of the applicant
2 district, the costs of any or all of the following: (1) compliance with applicable
3 requirements of law for fire safety, and for handicapped access, as a result of the
4 multistory design; (2) playground apparatus; (3) duct shafts, utility tunnels, and pipe
5 conduit chases; (4) security items required as a result of the multistory design."

6 Subdivision (b) provides that "in calculating the maximum project funding that may be
7 allocated for parking, landscaping, and other general schoolsite improvements, which
8 calculation is determined in proportion to the total building cost or area approved for
9 funding under the project, the total building cost or area approved for funding under the
10 project shall be computed by the board to include any increase in project building area,
11 as authorized under Section 17041.8. The applicant district shall provide the board
12 information on how the supplemental project funding will be allocated to relieve the

(3) Duct shafts, utility tunnels, and pipe conduit chases.

(4) Security items required as a result of the multistory design.

(b) In calculating the maximum project funding that may be allocated for parking, landscaping, and other general schoolsite improvements, which calculation is determined in proportion to the total building cost or area approved for funding under the project, the total building cost or area approved for funding under the project shall be computed by the board to include any increase in project building area, as authorized under Section 17041.8. The applicant district shall provide the board information on how the supplemental project funding will be allocated to relieve the effects resulting from less than the specified land area for the schoolsite.

(c) This section shall apply to any application for project funding under this chapter for which the final apportionment for construction of the project had not been made on or prior to December 1, 1987.

(d) For any project approved under this chapter, the amount of project funding granted by the board shall include the actual and reasonable costs incurred by any applicant district for the revision of its project application for the purpose of qualifying for supplemental project funding as authorized by this section."

1 effects resulting from less than the specified land area for the schoolsite." Subdivision
2 (c) provides that "this section shall apply to any application for project funding under this
3 chapter for which the final apportionment for construction of the project had not been
4 made on or prior to December 1, 1987." Subdivision (d) requires that "for any project
5 approved under this chapter, the amount of project funding granted by the board shall
6 include the actual and reasonable costs incurred by any applicant district for the
7 revision of its project application for the purpose of qualifying for supplemental project
8 funding as authorized by this section."

9 Chapter 277, Statutes of 1996, Section 2, added²³¹ Education Code Section
10 17040.7 to require that "notwithstanding any other provision of this article, the board
11 shall provide that building area for enclosed hallways in the second or higher story of
12 any building shall be counted as two-thirds of the actual area. For purposes of this
13 section "enclosed hallways" includes, but is not limited to, all of the following: (a)
14 Covered passages, arcades, shelters, porches, and planting areas; (b) Enclosed
15 covered areas that provide shelter between buildings that are 20 feet or more apart; (c)
16 Sun control devices designed and located to function in lieu of covered walks or other
17 shelters; and (d) Mezzanines used for storage purposes."

²³¹ Former Education Code Section 17740.7, (added by Chapter 1154, Statutes of 1987, Section 3) relating to similar subject matter as 17040.7, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 Chapter 277, Statutes of 1996, Section 2, added²³² Education Code Section
2 17040.8 to provide that “where an applicant district that is eligible under this chapter for
3 project funding of new construction of school facilities on an existing schoolsite, which
4 site has less than 50 percent of the land recommended under State Department of
5 Education guidelines, as published in the School Site Analysis and Development
6 Handbook in effect on January 1, 1987, the area of allowable new building construction
7 for that project shall be increased by the square footage of any existing one-story
8 school facility or facilities to be replaced under the project by one or more multistory
9 school facilities.”

10 Chapter 277, Statutes of 1996, Section 2, added²³³ Education Code Section
1 17040.9²³⁴. Subdivision (a) requires that the board allocate the amount calculated

²³² Former Education Code Section 17740.8, (added by Chapter 1154, Statutes of 1987, Section 4) relating to similar subject matter as 17040.8, was repealed by Chapter 277, Statutes of 1996, Section 1.

²³³ Former Education Code Section 17740.9, (added by Chapter 1154, Statutes of 1987, Section 5) relating to similar subject matter as 17040.9, was repealed by Chapter 277, Statutes of 1996, Section 1.

²³⁴ Education Code Section 17040.9, added by Chapter 277, Statutes of 1996, Section 2:

“(a) (1) the board shall allocate the amount calculated under subdivision (b), in addition to any other project funding authorized under this chapter, to each project funded under this chapter for which the resulting pupil density will exceed the following:

(A) For a project for kindergarten or any of the grades 1 to 6, inclusive, 90 pupils per acre.

(B) For a project for a junior high school project, 80 pupils per acre.

(c) For a project for a senior high school project, 70 pupils per acre.

1 under subdivision (b), in addition to any other project funding authorized under this
2 chapter, to each project funded under this chapter for which the resulting pupil density
3 will exceed the following: (A) for a project for kindergarten or any of the grades 1 to 6,
4 inclusive, 90 pupils per acre; (B) for a project for a junior high school project, 80 pupils
5 per acre; (c) for a project for a senior high school project, 70 pupils per acre. For any
6 new construction project, pupil density shall be computed by dividing the number of
7 units of estimated average daily attendance for the project, including those to be served
8 by relocatable structures, by the acreage of the project site. For any project for the
9 construction of additional facility space on an existing schoolsite or on land acquired
10 that is adjacent to an existing schoolsite, pupil density shall be computed by adding the
11 number of units of estimated average daily attendance for the project to the number of

(2) For any new construction project, pupil density shall be computed, for purposes of paragraph (1), by dividing the number of units of estimated average daily attendance for the project, including those to be served by relocatable structures, by the acreage of the project site.

(3) For any project for the construction of additional facility space on an existing schoolsite or on land acquired that is adjacent to an existing schoolsite, pupil density shall be computed, for purposes of paragraph (1), by adding the number of units of estimated average daily attendance for the project to the number of units of average daily attendance for the existing school facilities, and dividing that sum by the total site acreage for the project and the existing school facilities.

(b) The supplemental project funding authorized under this section shall be calculated by dividing the actual pupil density for the project, as calculated under subdivision (a), by the threshold pupil density for the project as set forth in that subdivision, and multiplying the resulting fraction by an amount equal to the average cost per acre of the land approved for acquisition by the board under this chapter for the project, or that would have been approved for acquisition if the applicant school district had not had an existing schoolsite available for the project."

1 units of average daily attendance for the existing school facilities, and dividing that sum
2 by the total site acreage for the project and the existing school facilities. Subdivision (b)
3 requires that the supplemental project funding authorized under this section shall be
4 calculated by dividing the actual pupil density for the project, as calculated under
5 subdivision (a), by the threshold pupil density for the project as set forth in that
6 subdivision, and multiplying the resulting fraction by an amount equal to the average
7 cost per acre of the land approved for acquisition by the board under this chapter for
8 the project, or that would have been approved for acquisition if the applicant school
9 district had not had an existing schoolsite available for the project.

10 Chapter 277, Statutes of 1996, Section 2, added²³⁵ Education Code Section
11 17041 to provide that "whenever the area of adequate school construction existing in
12 any attendance area is such as to prevent another attendance area from receiving the
13 maximum area of school construction for each unit of attendance as specified for the
14 district as a whole, the allowable building area may be computed separately for each
15 attendance area. For the purposes of this section and Section 17041.5, an "attendance
16 area" is defined as the geographical area serving an existing or proposed high school
17 and those junior high schools and elementary schools included therein."

²³⁵ Former Education Code Section 19392, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17741 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as 17040.9, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 Chapter 277, Statutes of 1996, Section 2, added²³⁶ Education Code Section
2 17041.1²³⁷. Subdivision (a) requires that notwithstanding any other provision of this

²³⁶ Former Education Code Section 17741.1, (added by Chapter 846, Statutes of 1991, Section 10) relating to similar subject matter as 17041.1, was repealed by Chapter 277, Statutes of 1996, Section 1.

²³⁷ Education Code Section 17041.1, added by Chapter 277, Statutes of 1996, Section 2:

“(a) Notwithstanding any other provision of this chapter, the following determinations shall be made by a self-certifying district, in the manner specified in this chapter and in accordance with the standards governing those determinations that are adopted by the board, for the purpose of calculating the district's eligibility for project funding under this chapter:

(1) The total allowable building area for which the district is eligible for project funding under this chapter.

(2) The district's area of existing adequate school construction, including, but not limited to, the conducting of field inspections for this purpose.

If requested by the applicant district, the board shall provide assistance to the district in preparing the necessary documents for self-certification pursuant to this chapter.

(b) The area determinations made by a self-certifying district pursuant to subdivision (a) shall be certified by the district in its application for project funding and shall be used by the board as the basis for project funding eligibility, except to the extent of any information that the board finds is demonstrated, pursuant to the information certified and any other documentation available to the board from prior project funding applications for that district, to be materially inaccurate, regardless of whether the inaccuracy was intended. No later than 30 calendar days after receipt of the determinations certified pursuant to subdivision (a), the board shall notify the district of any inaccuracies identified under this subdivision.

(c) Each self-certifying district shall maintain documentation of the determinations described in subdivision (a) as required by the board. Those determinations shall be subject to subsequent audit as the board may direct.

(d) All estimates of average daily attendance for a self-certifying district for the purposes of this article shall be made by the district in accordance with the standards governing those estimates that are adopted by the board. Each determination made by a self-certifying district pursuant to this subdivision shall be reviewed for accuracy by the board or by the county office of education in the county in which the district is located. In the event that the review is performed by the board, that review shall be

1 chapter, the following determinations be made by a self-certifying district, in the manner
2 specified in this chapter and in accordance with the standards governing those
3 determinations that are adopted by the board, for the purpose of calculating the
4 district's eligibility for project funding under this chapter: (1) The total allowable building
5 area for which the district is eligible for project funding under this chapter; (2) The
6 district's area of existing adequate school construction, including, but not limited to, the
7 conducting of field inspections for this purpose. If requested by the applicant district,
8 the board shall provide assistance to the district in preparing the necessary documents
9 for self-certification pursuant to this chapter. Subdivision (b) requires that the area
10 determinations made by a self-certifying district shall be certified by the district in its
11 application for project funding and shall be used by the board as the basis for project
12 funding eligibility, except to the extent of any information that the board finds is
13 demonstrated, pursuant to the information certified and any other documentation
14 available to the board from prior project funding applications for that district, to be
15 materially inaccurate, regardless of whether the inaccuracy was intended. No later than
16 30 calendar days after receipt of the determinations certified pursuant to subdivision
17 (a), the board shall notify the district of any inaccuracies identified under this
18 subdivision. Subdivision (c) requires that each self-certifying district shall maintain
19 documentation of the determinations described above as required by the board. Those

completed no later than 45 calendar days subsequent to the board's receipt from the
district of all documentation necessary for that purpose.”

1 determinations shall be subject to subsequent audit as the board may direct.

2 Subdivision (d) requires that all estimates of average daily attendance for a
3 self-certifying district for the purposes of this article shall be made by the district in
4 accordance with the standards governing those estimates that are adopted by the
5 board. Each determination made by a self-certifying district pursuant to this subdivision
6 shall be reviewed for accuracy by the board or by the county office of education in the
7 county in which the district is located. In the event that the review is performed by the
8 board, that review shall be completed no later than 45 calendar days subsequent to the
9 board's receipt from the district of all documentation necessary for that purpose.

10 Chapter 277, Statutes of 1996, Section 2, added²³⁸ Education Code Section
11 17041.2²³⁹. Subdivision (a) requires the board to conduct random audits of the

²³⁸ Former Education Code Section 17741.2, (added by Chapter 846, Statutes of 1991, Section 10.5) relating to similar subject matter as 17041.2, was repealed by Chapter 277, Statutes of 1996, Section 1.

²³⁹ Education Code Section 17041.2, added by Chapter 277, Statutes of 1996, Section 2:

“(a) The State Allocation Board shall conduct random audits of the information certified by self-certifying districts pursuant to this chapter, except as to any determinations that are made under subdivision (d) of Section 17041.1 or that are subject to audit by the State Department of Education pursuant to Section 17024, using generally accepted auditing principles, at any time to ensure compliance with the law.

(b) If any information submitted by a self-certifying district in its certification of funding eligibility for any project is found by the board to contain any material inaccuracy, any building area constructed as a result, in excess of the building area to which the district was entitled for purposes of that project, shall be included in the calculation of the area of adequate school construction for the purposes of all subsequent project applications by the district under this chapter. In addition, the board shall impose both of the following penalties:

1 information certified by self-certifying districts pursuant to this chapter, except as to any
2 determinations that are made under subdivision (d) of Section 17041.1 or that are
3 subject to audit by the State Department of Education pursuant to Section 17024, using
4 generally accepted auditing principles, at any time to ensure compliance with the law.
5 Subdivision (b) requires that if any information submitted by a self-certifying district in its

(1) pursuant to a repayment schedule approved by the board, the district shall repay to the board of no more than five years, for deposit in the State School Building Lease-Purchase Fund, an amount equal to the amount of project funding allocated under this chapter to construct that excess building area, together with interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. The amount of any repayment owing under this paragraph for any fiscal year, which is not repaid otherwise by the district, shall be withheld by the board from any project funding that otherwise would be allocated to that district under this chapter in that fiscal year. As to any repayment obligation remaining for that fiscal year, the board shall notify the Superintendent of Public Instruction, who shall withhold the amount of that remaining obligation from the apportionments to be made to the district from the State School Fund in that fiscal year.

(2) The information that otherwise may be certified under this chapter by a self-certifying district shall be made by the board under any subsequent applications for project funding, rather than by the applicant district, for a period of up to five years following the date of the finding of a material inaccuracy, or until the district's repayment of the entire amount owing under paragraph (1), whichever occurs later.

(c) Any school district against which the board imposes the penalties under paragraphs (1) and (2) of subdivision (b) may submit for binding determination by an arbitrator the issue of whether the penalties imposed are disproportionate to the inaccuracy certified by the district. Except as otherwise provided by this chapter, the procedure governing the arbitration shall be as set forth in Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(d) It is the intent of the Legislature that audits as described in this section not interfere with the application and construction process under this chapter unless one or more violations are discovered."

1 certification of funding eligibility for any project is found by the board to contain any
2 material inaccuracy, any building area constructed as a result, in excess of the building
3 area to which the district was entitled for purposes of that project, shall be included in
4 the calculation of the area of adequate school construction for the purposes of all
5 subsequent project applications by the district under this chapter. In addition, the board
6 shall impose both of the following penalties: (1) pursuant to a repayment schedule
7 approved by the board, the district shall repay to the board of no more than five years,
8 for deposit in the State School Building Lease-Purchase Fund, an amount equal to the
9 amount of project funding allocated under this chapter to construct that excess building
10 area, together with interest at the rate paid on moneys in the Pooled Money Investment
11 Account or at the highest rate of interest for the most recent issue of state general
12 obligation bonds as established pursuant to Chapter 4 (commencing with Section
13 16720) of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater.
14 The amount of any repayment owing under this paragraph for any fiscal year, which is
15 not repaid by the district, shall be withheld by the board from any project funding that
16 otherwise would be allocated to that district under this chapter in that fiscal year. As to
17 any repayment obligation remaining for that fiscal year, the board shall notify the
18 Superintendent of Public Instruction, who shall withhold the amount of that remaining
19 obligation from the apportionments to be made to the district from the State School
20 Fund in that fiscal year; (2) the information that otherwise may be certified under this
21 chapter by a self-certifying district shall be made by the board under any subsequent

1 applications for project funding, rather than by the applicant district, for a period of up to
2 five years following the date of the finding of a material inaccuracy, or until the district's
3 repayment of the entire amount owing under paragraph (1), whichever occurs later.

4 Subdivision (c) provides that any school district against which the board imposes the
5 penalties under paragraphs (1) and (2) of subdivision (b) may submit for binding
6 determination by an arbitrator the issue of whether the penalties imposed are
7 disproportionate to the inaccuracy certified by the district. Except as otherwise provided
8 by this chapter, the procedure governing the arbitration shall be as set forth in Title 9
9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. Subdivision
10 (d) provides that the audits as described in this section shall not interfere with the
11 application and construction process under this chapter unless one or more violations
12 are discovered.

13 Chapter 277, Statutes of 1996, Section 2, added²⁴⁰ Education Code Section
14 17041.3 to provides that "for the purposes of Sections 17041 and 17041.5, allowable
15 building area may be computed, in the alternative to the methods prescribed by Section
16 17041, for any combination of two or more adjacent high school attendance areas
17 pursuant to the following conditions: (a) the project to be funded is for the construction
18 of a high school, junior high school, or elementary school located or to be located in any
19 of those high school attendance areas; (b) the high school, junior high school, or

²⁴⁰ Former Education Code Section 17741.3, (added by Chapter 552, Statutes of 1988, Section 1) relating to similar subject matter as 17041.3, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 elementary school to be constructed is to serve pupils residing in each of those high
2 school attendance areas; (c) the combined computation of allowable building area
3 reflects the allowable building area to which each of the high school attendance areas
4 would otherwise be entitled, reflecting the proportion of projected pupil enrollment in the
5 school to be constructed, as calculated under this chapter, from each of those
6 attendance areas.”

7 Chapter 277, Statutes of 1996, Section 2, added²⁴¹ Education Code Section
8 17041.5 to require that “(a) whenever the area of adequate school construction existing
9 in an attendance area is less than the maximum area computed for that attendance
10 area, any portion of the remaining computed allowable building area may be used for
11 the construction of district administration and maintenance facilities; (b) if the allowable
12 building area is computed separately by attendance area, the board shall include within
13 the computation of the maximum area for that attendance area the proposed building
14 area of a project for the construction of district administration and maintenance
15 facilities.”

16 Chapter 277, Statutes of 1996, Section 2, added²⁴² Education Code Section
17 17041.6 to require that “the board shall, in allocating funds for school facilities

²⁴¹ Former Education Code Section 17741.5, (added by Chapter 1113, Statutes of 1981, Section 4) relating to similar subject matter as 17041.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁴² Former Education Code Section 17741.6, (added by Chapter 1113, Statutes of 1981, Section 5) relating to similar subject matter as 17041.6, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 construction pursuant to this chapter, give first priority to applicant districts proposing
2 additional classrooms within their maximum allowable building area before allocating
3 funds to applicant districts proposing administration and maintenance facilities.”

4 Chapter 277, Statutes of 1996, Section 2, added²⁴³ Education Code Section
5 17041.8²⁴⁴. Subdivision (a) requires that notwithstanding any other provision of law,
6 any applicant school district that receives supplemental project funding under Sections

²⁴³ Former Education Code Section 17741.8, (added by Chapter 1154, Statutes of 1987, Section 6) relating to similar subject matter as 17041.8, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁴⁴ Education Code Section 17041.8, added by Chapter 277, Statutes of 1996, Section 2:

“(a) Notwithstanding any other provision of law, any applicant school district that receives supplemental project funding under Sections 17040.6, 17040.7, 17040.8, and 17041.8 shall apply that funding to the purposes of the project funded, in compliance with any requirements set forth in those sections, but need not comply in that regard with the allowable building area of that project as otherwise calculated under this chapter. The expenditure of the supplemental project funds authorized under those sections is exempt from the total building cost standards applicable to the project. In addition, the increase in building area authorized under this subdivision is exempt, for purposes of any subsequent application for project funding under this chapter, from the calculation of existing adequate school construction of the district.

(b) Notwithstanding any other provision of law, the total amount of supplemental project funding that an applicant district is entitled to receive under Sections 17040.6, 17040.7, 17040.8, and 17040.9 may not exceed the lesser of the following:

(1) An amount equal to that calculated under subdivision (b) of Section 17040.9.

(2) An amount equal to the sum of four thousand dollars (\$4,000) for each of the first 500 units of estimated average daily attendance for the project, and two thousand dollars (\$2,000) for each additional unit of estimated average daily attendance. The monetary rates set forth in this paragraph shall be increased annually for inflation for the prior calendar year on the basis of the cost index for class B construction as determined in the January meeting of the board.”

1 17040.6 (multistory buildings), 17040.7 (enclosed hallways), 17040.8 (existing sites with
2 less than 50 percent of recommended land), and 17041.8 shall apply that funding to the
3 purposes of the project funded, in compliance with any requirements set forth in those
4 sections, but need not comply in that regard with the allowable building area of that
5 project as otherwise calculated under this chapter. The expenditure of the
6 supplemental project funds authorized under those sections is exempt from the total
7 building cost standards applicable to the project. In addition, the increase in building
8 area authorized under this subdivision is exempt, for purposes of any subsequent
9 application for project funding under this chapter, from the calculation of existing
10 adequate school construction of the district. Subdivision (b) provides that
11 notwithstanding any other provision of law, the total amount of supplemental project
12 funding that an applicant district is entitled to receive under Sections 17040.6, 17040.7,
13 17040.8, and 17040.9 (supplemental project funding for projects with high pupil density)
14 may not exceed the lesser of the following:

- 15 (1) An amount equal to that calculated under subdivision (b) of Section 17040.9
16 (providing that the supplemental project funding authorized under this section
17 shall be calculated by dividing the actual pupil density for the project by the
18 threshold pupil density for the project, and multiplying the resulting fraction by an
19 amount equal to the average cost per acre of the land approved for acquisition
20 by the board, or that would have been approved for acquisition if the applicant
21 school district had not had an existing schoolsite available for the project); or

1 (2) an amount equal to the sum of four thousand dollars (\$4,000) for each of the
2 first 500 units of estimated average daily attendance for the project, and two
3 thousand dollars (\$2,000) for each additional unit of estimated average daily
4 attendance. The monetary rates set forth in this paragraph shall be increased
5 annually for inflation for the prior calendar year on the basis of the cost index for
6 class B construction as determined in the January meeting of the board.

7 Chapter 893, Statutes of 1997, Section 86, added²⁴⁵ Education Code Section
8 17042²⁴⁶. Subdivision (a) requires the board, by the adoption of rules, to provide for the

²⁴⁵ Former Education Code Section 19393, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as 17742 by Chapter 1010, Statutes of 1976, Section 2, and amended in proceeding years) relating to similar subject matter as Section 17042, was repealed by Chapter 893, Statutes of 1997, Section 102.

²⁴⁶ Education Code Section 17042, added by Chapter 893, Statutes of 1997, Section 86:

“(a) The board, by the adoption of rules, shall provide for the manner of determining the area of adequate school construction existing in an applicant school district at the time of application. Those rules shall define and provide for the method of determining building areas that are to be included in, in whole or in part, or to be excluded from, the area of existing adequate school construction.

Any building to which Article 3 (commencing with Section 39140) of Chapter 1 of Part 23 of Division 3 of Title 2 does not apply shall not be considered adequate school construction for the purpose of determining the maximum total building area per attendance unit.

The board may make exceptions to the provisions of this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

(b) For the purposes of this chapter, the area of adequate school construction existing in an applicant school district does not include any of the following:

(1) Any portable classroom made available to the district under Chapter 25 (commencing with Section 17785).

(2) In any school operated on a year-round schedule, any building area

1 manner of determining the area of adequate school construction existing in an applicant
2 school district at the time of application. Those rules shall define and provide for the
3 method of determining building areas that are to be included in, in whole or in part, or to
4 be excluded from, the area of existing adequate school construction. Any building to
5 which Article 3 (commencing with Section 39140) of Chapter 1 of Part 23 of Division 3
6 of Title 2 does not apply shall not be considered adequate school construction for the
7 purpose of determining the maximum total building area per attendance unit. The
8 board may make exceptions to the provisions of this section, or to the rules adopted
9 pursuant thereto, if it determines that the exception or exceptions will be for the benefit
10 of pupils affected. Subdivision (b) provides that the area of adequate school

that has been in continuous use during the preceding five-year period primarily for the operation of any preschool program or programs.

(3) Any building area, not to exceed the area that is equivalent to one classroom per schoolsite, used to provide support services pursuant to Chapter 5 (commencing with Section 8800) of Part 6 or to provide integrated children's services pursuant to Section 18986.40 of the Welfare and Institutions Code. A school shall meet the definition of a "qualifying school" under paragraph (1) of subdivision (h) of Section 8802 to qualify for this exemption from the area of adequate school construction.

(4) Any classroom acquired or constructed and continuously used by the school district primarily for the purpose of reducing class size in kindergarten or in any of grades 1 to 3, inclusive, pursuant to the school district's participation in the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28.

(5) Any classroom acquired or constructed for the purpose of operating a community day school pursuant to Section 48660, if the classroom is not located on a regular elementary, middle, junior high, or senior high school site.

(c) The board may make exceptions to this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected."

1 construction existing in an applicant school district does not include any of the following:

2 (1) any portable classroom made available to the district under Chapter 14

3 (commencing with Section 17085), "The State Relocatable Classroom Law of 1979"; (2)

4 in any school operated on a year-round schedule, any building area that has been in

5 continuous use during the preceding five-year period primarily for the operation of any

6 preschool program or programs; (3) any building area, not to exceed the area that is

7 equivalent to one classroom per schoolsite, used to provide support services pursuant

8 to Chapter 5 "Healthy Start Support Services for Children Act" (commencing with

9 Section 8800) of Part 6 or to provide integrated children's services pursuant to Section

10 18986.40 of the Welfare and Institutions Code. A school shall meet the definition of a

11 "qualifying school" under paragraph (1) of subdivision (h) of Section 8802 (providing

12 that a school that maintains kindergarten or any of grade 1 to 6, inclusive, in which 50

13 percent or more of the enrolled pupils are ether from families that receive benefits from

14 the Aid to families with Dependent Children program or any successor program, have

15 limited English proficiency, or both, or are eligible to receive free or reduced-price meals

16 is a "qualifying school" for the purposes of the "Healthy Start Support Services for

17 Children Act") qualify for this exemption from the area of adequate school construction;

18 (4) any classroom acquired or constructed and continuously used by the school district

19 primarily for the purpose of reducing class size in kindergarten or in any of grades 1 to

20 3, inclusive, pursuant to the school district's participation in the Class Size Reduction

21 Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28; and

1 (5) any classroom acquired or constructed for the purpose of operating a community
2 day school pursuant to Section 48660 (providing that community day schools may be
3 established for pupils who have been expelled for any reason, who are on probation, or
4 who have been referred by a school attendance review board or other district level
5 referral process), if the classroom is not located on a regular elementary, middle, junior
6 high, or senior high school site. Subdivision (c) provides that the board may make
7 exceptions to this section, or to the rules adopted pursuant thereto, if it determines that
8 the exception or exceptions will be for the benefit of pupils affected.

9 Chapter 277, Statutes of 1996, Section 2, added²⁴⁷ Education Code Section
10 17042.5²⁴⁸. Subdivision (a) requires that in determining the area of adequate school

²⁴⁷ Former Education Code Section 17742.5, (added by Chapter 1466, Statutes of 1985, Section 1), relating to similar subject matter as Section 17042.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁴⁸ Education Code Section 17042.5, added by Chapter 277, Statutes of 1996, Section 2:

“(a) For purposes of determining the area of adequate school construction existing in an applicant school district pursuant to Section 17042.7, all portable classrooms, whether owned or leased, shall be included, except as otherwise provided in paragraphs (1) to (3), inclusive.

(1) Leased portable classrooms acquired by a school district shall not be included in the area of existing adequate school construction until January 1, 1991.

(2) Portable classrooms leased pursuant to Chapter 14 (commencing with Section 17085) shall be excluded from the area of adequate school construction. Portable classrooms obtained by an applicant district pursuant to subdivision (b) of Section 17088.5 also shall be excluded from the area of adequate school construction, except as to any portable classroom or classrooms for which the district rejected the board's offer to purchase pursuant to that subdivision.

(3) Portable classrooms that have been leased or owned by the district for

1 construction existing in an applicant school district pursuant to Section 17042.7, all
2 portable classrooms, whether owned or leased, shall be included, except:

3 (1) Leased portable classrooms acquired by a school district shall not be
4 included in the area of existing adequate school construction until January 1,
5 1991;

6 (2) Portable classrooms leased pursuant to Chapter 14 "State Relocatable
7 Classroom of 1979" (commencing with Section 17085) shall be excluded from
8 the area of adequate school construction. Portable classrooms obtained by an

20 years or more shall be excluded from the area of adequate school construction.

(4) Leased portable classrooms shall not be included in the area of adequate school construction for a period of five years from the date first leased by the district. That exclusion shall be extended by the board for one additional five-year period where the board finds that the continued use of the leased portable classrooms for classroom purposes is justified by additional growth in average daily attendance pursuant to the standards established by this part. If the board finds continued use to be no longer justified, it may extend the exclusion for a period of up to two years as necessary to maintain the eligibility of the applicant district for project funding pursuant to this chapter if the board finds that the district has made a good faith effort to obtain that funding in a timely manner. The additional five-year exclusion shall not apply to any portable classroom for which, under the lease agreement, the district is to take title, or the total consideration paid by the district for the lease and an option to purchase is determined by the board to be substantially equivalent to the cost of acquiring title.

(b) For purposes of this section, "portable classroom" means a classroom building of modular design and construction that meets all of the following criteria:

(1) Is designed and constructed to be relocatable and transportable over public streets.

(2) Is designed and constructed for relocation without the separation of the roof or floor from the building.

(3) When measured at the most exterior walls, has a floor area not in excess of 2,000 square feet."

1 applicant district pursuant to subdivision (b) of Section 17088.5 (whereby a
2 school district is eligible to lease a portable classroom, but funds are not at the
3 time available, the board may authorize the school district to purchase a portable
4 classroom if purchased under a procedure determined by the board, and when
5 funds are made available, the board shall purchase the portable classroom from
6 the school district and shall then lease the portable classroom back the school
7 district) also shall be excluded from the area of adequate school construction,
8 except as to any portable classroom or classrooms for which the district rejected
9 the board's offer to purchase pursuant to that subdivision;

10 (3) Portable classrooms that have been leased or owned by the district for 20
11 years or more shall be excluded from the area of adequate school construction;

12 (4) Leased portable classrooms shall not be included in the area of adequate
13 school construction for a period of five years from the date first leased by the
14 district. That exclusion shall be extended by the board for one additional
15 five-year period where the board finds that the continued use of the leased
16 portable classrooms for classroom purposes is justified by additional growth in
17 average daily attendance pursuant to the standards established by this part. If
18 the board finds continued use to be no longer justified, it may extend the
19 exclusion for a period of up to two years as necessary to maintain the eligibility of
20 the applicant district for project funding pursuant to this chapter if the board finds
21 that the district has made a good faith effort to obtain that funding in a timely

1 manner. The additional five-year exclusion shall not apply to any portable
2 classroom for which, under the lease agreement, the district is to take title, or the
3 total consideration paid by the district for the lease and an option to purchase is
4 determined by the board to be substantially equivalent to the cost of acquiring
5 title.

6 Subdivision (b) defines for purposes of this section, "portable classroom" to mean a
7 classroom building of modular design and construction that meets all of the following
8 criteria: (1) designed and constructed to be relocatable and transportable over public
9 streets; (2) designed and constructed for relocation without the separation of the roof or
10 floor from the building; and (3) when measured at the most exterior walls, has a floor
' area not in excess of 2,000 square feet.

12 Chapter 893, Statutes of 1997, Section 88, added²⁴⁹ Education Code Section
13 17042.7²⁵⁰. Subdivision (a) requires that for any project application filed or amended on

²⁴⁹ Former Education Code Section 17742.7, (added by Chapter 886, Statutes of 1986, Section 18, and amended in proceeding years) relating to similar subject matter as Section 17042.7, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁵⁰ Education Code Section 17042.7, added by Chapter 893, Statutes of 1997, Section 88:

"(a) For any project application filed or amended on or after January 1, 1993, the area of adequate school construction existing in the applicant school district or, where appropriate, in the attendance area, at the time of application shall be calculated pursuant to the following formula:

(1) Identify by grade level all teaching stations existing in the school district or, where appropriate, the attendance area, as of January 1, 1993. For the purposes of this section, "teaching station" means any space that was constructed or reconstructed to serve as an area in which to provide pupil

1 or after January 1, 1993, the area of adequate school construction existing in the
2 applicant school district or, where appropriate, in the attendance area, at the time of
3 application shall be calculated pursuant to a specific formula. Subdivision (b) provides
4 that a school district that is participating in a class size reduction program set forth in
5 this code, other than the Class Size Reduction Program (Ch. 6.10 (commencing with
6 Section 52120) of Part 28), shall use the pupil loading standard established pursuant to
7 that program. Subdivision (c) provides that the area of existing adequate school

instruction.

(2) Determine the maximum pupil loading figure for each grade level pursuant to the district pupil loading standards in effect on January 1, 1993. For the purposes of this section, the "district pupil loading standards" are those pupil loading standards in effect in a school district on July 1, 1992, as a result of actions including, but not necessarily limited to, the execution of a collective bargaining agreement or the adoption of a district policy by the governing board of the school district. In no event may this figure be more than the maximum pupil loading standards established by the board, or less than three pupil units lower than those maximum pupil loading standards.

(3) Multiply the figure determined under paragraph (2) for each grade level by the number of teaching stations for the particular grade level, as determined under paragraph (1).

(4) Multiply the product determined under paragraph (3) by the maximum area allowance established for that grade level under this article.

(5) The sum of these computations for each grade level, as determined under paragraphs (1) to (4), inclusive, shall be the total area of adequate school construction existing in the district or attendance area pursuant to this formula.

(b) For purposes of this section, a school district that is participating in a class size reduction program set forth in this code, other than the Class Size Reduction Program (Ch. 6.10 (commencing with Section 52120) of Part 28), shall use the pupil loading standard established pursuant to that program.

(c) The area of existing adequate school construction calculated under this section shall not include, in any school operated on a year-round schedule, any teaching station that has been in continuous use during the preceding five-year period primarily for the operation of a preschool program or programs."

1 construction calculated under this section shall not include, in any school operated on a
2 year-round schedule, any teaching station that has been in continuous use during the
3 preceding five-year period primarily for the operation of a preschool program or
4 programs.

5 Chapter 893, Statutes of 1997, Section 89, added²⁵¹ Education Code Section
6 17042.9. Subdivision (a) provides that “ notwithstanding any other provision of law, a
7 school district that complies with the requirements of subdivision (b) may replace a
8 portable classroom, as defined in Section 17742.5 [referring to current section
9 17042.5], that has been leased or owned by the district for 20 years or more, with a
10 permanent building if the resulting area of new building construction is no greater than
11 the area that would be authorized under this chapter for the lease or purchase of a
12 portable classroom.” Subdivision (b) requires that “a school district that utilizes
13 subdivision (a) shall fund its expenses incurred thereby through the issuance of general
14 obligation bonds by the district or by the issuance of bonds pursuant to the Mello-Roos
15 Community Facilities Act of 1982 or by any other financing mechanism that does not
16 encumber the school district's general fund.”

17 Chapter 277, Statutes of 1996, Section 2, added²⁵² Education Code Section

²⁵¹ Former Education Code Section 17742.9, (added by Chapter 470, Statutes of 1996, Section 1) relating to similar subject matter as new Section 17042.9, was repealed by Chapter 893, Statutes of 1997, Section 103.

²⁵² Former Education Code Section 19394, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17743 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as new Section 17043, was repealed by

Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1 17043 to provide that "(a) there shall be allowed to each district with attendance units of
2 300 or more in kindergarten and grades 1 to 6, inclusive, a maximum area of 55 square
3 feet for each attendance unit of the district in kindergarten and grades 1 to 6, inclusive;
4 and (b) the maximum total building area per attendance unit allowed to applicant
5 districts with attendance units of less than 300 in kindergarten and grades 1 to 6,
6 inclusive, for such attendance units shall be determined by the board, and shall be
7 building area to provide comparable facilities to those provided by subdivision (a) of this
8 section, and shall be the least building area required to house adequately the estimated
9 average daily attendance and the normal instructional and other services."

10 Chapter 277, Statutes of 1996, Section 2, added²⁵³ Education Code Section
11 17044 to state that "there shall be allowed to each district a maximum area of 75
12 square feet for each attendance unit of the district in grades 7 and 8."

13 Chapter 277, Statutes of 1996, Section 2, added²⁵⁴ Education Code Section
14 17045 to provide that "the maximum area allowed to a district for attendance units in
15 junior high schools composed of grades 7 to 9, inclusive, or 7 to 10, inclusive, as the

Chapter 277, Statutes of 1996, Section 1.

²⁵³ Former Education Code Section 19395, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17744 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as 17044, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁵⁴ Former Education Code Section 19396, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17745 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as 17045, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 case may be, shall be determined pursuant to this section, rather than Sections 17044
2 and 17046. This section shall not apply to junior high schools composed of grades 7
3 and 8 only. The maximum area allowed for attendance units in junior high schools shall
4 be determined by computing, in accordance with this section, the number of square feet
5 for the attendance units at each junior high school attendance center of the district, and
6 totaling the number of square feet so determined for all attendance units in all such
7 junior high school attendance centers of the district. There shall be allowed a maximum
8 area of 75 square feet for each attendance unit of the junior high school attendance
9 center in grades 7 and 8. For each attendance unit in grade 9, or grades 9 and 10, as
10 the case may be, at each junior high school attendance center, there shall be allowed a
11 maximum area equal to the number of square feet which would be allowed under
12 Section 17046 for each attendance unit of an attendance center having a total number
13 of attendance units equal to the total number of attendance units in grades 7 to 9,
14 inclusive, or 7 to 10, inclusive, as the case may be, at such junior high school
15 attendance center. The number of square feet which would be allowed under Section
16 17046 for each attendance unit of an attendance center shall be computed by
17 determining in accordance with that section the total number of square feet which would
18 be allowed at an attendance center and dividing such total number of square feet by the
19 total number of attendance units at such attendance center.”

Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1 Chapter 277, Statutes of 1996, Section 2, added²⁵⁵ Education Code Section
2 17046²⁵⁶ to require that each district be allowed a maximum area for the attendance
3 units of the district in grades 9 to 12, inclusive, determined by computing, for the
4 attendance units in grades 9 to 12, inclusive, at each attendance center of the district, a
5 number of square feet for the number of attendance units in such grades at each

²⁵⁵ Former Education Code Section 19397, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17746 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as 17046, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁵⁶ Education Code Section 17046, added by Chapter 277, Statutes of 1996, Section 2:

"There shall be allowed to each district a maximum area for the attendance units of the district in grades 9 to 12, inclusive, determined by computing, for the attendance units in grades 9 to 12, inclusive, at each attendance center of the district, a number of square feet for the number of attendance units in such grades at each attendance center, in accordance with the following table, and totaling the number of square feet so determined for all attendance units in such grades of all attendance centers of the district:

Attendance units of attendance center	Maximum number of square feet of building area
1-50.....	18,000
51-100.....	18,000 plus 162 for each attendance unit over 50
101-200.....	26,100 plus 99 for each attendance unit over 100
201-300.....	36,000 plus 60 for each attendance unit over 200
301-600.....	42,000 plus 54 for each attendance unit over 300
601-1,800.....	58,200 plus 80 for each attendance unit over 600
Over 1,800.....	154,200 plus 85 for each attendance unit over 1,800"

1 attendance center, in accordance with the following table, and totaling the number of
2 square feet so determined for all attendance units in such grades of all attendance
3 centers of the district.

4 Chapter 277, Statutes of 1996, Section 2, added²⁵⁷ Education Code Section
5 17046.7 to require that "notwithstanding any other provision of law, the determination of
6 the area of allowable new building construction for any project for an applicant school
7 district for which original construction commenced on or after January 1, 1987, shall be
8 made on the basis of 107 percent of the area that would otherwise be determined for
9 that purpose under this chapter, calculated to the nearest whole number."

10 Chapter 277, Statutes of 1996, Section 2, added²⁵⁸ Education Code Section
1 17046.8 to require that "notwithstanding any other provisions of law, the maximum
12 allowable building area for each applicant district shall be reduced by the product of the
13 maximum area per attendance unit calculated for each appropriate grade level and the
14 number of pupils reported by the Superintendent of Public Instruction for that grade
15 level pursuant to Section 42268. This reduction shall be calculated on the basis, at the
16 district's option, of either the district as a whole or the appropriate attendance area, as
17 defined in Section 17041."

²⁵⁷ Former Education Code Section 17746.7, (added by Chapter 886, Statutes of 1986, Section 19) relating to similar subject matter as Section 17046.7, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁵⁸ Former Education Code Section 17746.8, (added by Chapter 1261, Statutes of 1990, Section 3) relating to similar subject matter as Section 17046.8, was repealed by Chapter 277, Statutes of 1996, Section 1.

Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1 Chapter 691, Statutes of 1998, Section 2, amended²⁵⁹ Education Code Section
2 17047²⁶⁰. Subdivision (a) requires that the allowable new building area for the

²⁵⁹ Former Education Code Section 19397.5, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17747 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17047, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁶⁰ Education Code Section 17047, added by Chapter 277, Statutes of 1996, Section 2, as amended by Chapter 691, Statutes of 1998, Section 2:

"(a) The allowable new building area for the purpose of providing special day class and Resource Specialist Program facilities for special education pupils shall be negotiated and approved by the State Allocation Board, with any necessary assistance to be provided by the Special Education Division of the State Department of Education. The square footage allowances shall be computed within the maximum square footage set forth in the following schedule:

Special Day Class Basic Need	Grade Levels	Loading*	Square Footage
Nonsevere Disability			
--Specific Learning Disability	All	12	1080
--Mildly Mentally Retarded	All	12	1080
--Severe Disorder of Language	All	10	1080
Severe Disability			
--Deaf and Hard of Hearing	All	10	1080
--Visually Impaired	All	10	1330 (1080 + 250 storage)
--Orthopedically and Other Health Impaired	All	12	2000 (1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy + 750 therapy per additional classroom)
--Autistic	All	6	1160

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Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1

			(1080 + 80 toilets)
--Severely Emotionally Disturbed	All	6	1160
			(1080 + 80 toilets)
--Severely Mentally Retarded	Elem.	12	1750
			(1080 + 400 toilets + 270 daily living skills)
	Secon.		2150
			(1080 + 400 toilets + 270 daily living skills + 400 vocational)
--Developmentally Disabled	All	10	2000
			(1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy** + 750 therapy per additional CR)
--Deaf-Blind/Multi	All	5	1400
			(1080 + 200 storage + 150 toilets)

			Pupils	Square Feet
Resource Specialist Program for those pupils with disabling conditions whose needs have been identified by the Individualized Education Program (IEP) Team, who require special education for a portion of the day, and who are assigned to a regular classroom for a majority of the schoolday.***	All	Maximum caseload for RS is 28, not all served at same time.	1-8 9-28 29-37 38-56 57-65 66-85 86-94 95-112	240 480 720 960 1200 1440 1680 1920

* Special pupils may usually be grouped without accordance to type, especially in smaller districts or where attendance zones may indicate, to maximize loadings per classroom where there are children with similar educational needs (Sec. 56364 or 56364.2, as applicable).

** Therapy add-ons not to be provided if on same site as orthopedically impaired.

1 purpose of providing special day class and Resource Specialist Program facilities for
2 special education pupils shall be negotiated and approved by the State Allocation
3 Board, with any necessary assistance to be provided by the Special Education Division
4 of the State Department of Education. Subdivision (b) provides that the allowable new
5 building area shall be computed by dividing the number of eligible pupils by the
6 minimum required loading per classroom for special day classes for the type of pupils to
7 be enrolled. No new or additional facility shall be provided for special day classes
8 unless the number of additional eligible pupils equals one-third or more of the minimum
9 required loading.

10 Chapter 277, Statutes of 1996, Section 2, added²⁶¹ Education Code Section
11 17047.5²⁶². Subdivision (a) requires all school facilities purchased or newly

*** To a maximum of 4 percent of the unhoused average daily attendance of the district, per new school or addition, to a maximum of 1920 square feet.

(b) The allowable new building area shall be computed by dividing the number of eligible pupils by the minimum required loading per classroom for special day classes for the type of pupils to be enrolled. No new or additional facility shall be provided for special day classes unless the number of additional eligible pupils equals one-third or more of the minimum required loading.”

²⁶¹ Former Education Code Section 17747.5, (added by Chapter 1050, Statutes of 1986, Section 2) relating to similar subject matter as Section 17047.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁶² Education Code Section 17047.5, added by Chapter 277, Statutes of 1996, Section 2:

“(a) All school facilities purchased or newly constructed pursuant to this chapter for use, in whole or in part, by pupils who are individuals with exceptional needs, as defined in Section 56026, shall be designed and located on the schoolsite so as to maximize interaction between those individuals with exceptional needs and other pupils

as appropriate to the needs of both.

(b) School district governing boards and county offices of education shall ensure that school facilities for pupils who are individuals with exceptional needs are integrated with other school facilities in applying for the purchase or new construction of school facilities pursuant to this chapter.

(c) The State Allocation Board, after consultation with the State Department of Education and representatives from county offices of education, special education services regions, and school districts, shall develop and adopt any regulations necessary to implement this section.

(d) Notwithstanding any other law, the requirement set forth in subdivision (a) may be waived, by the Superintendent of Public Instruction, only upon compliance with the following procedure:

(1) The applicant school district or county superintendent of schools shall file a written request for waiver that documents the reasons for its inability to comply with the requirement.

(2) The State Department of Education shall verify the reasons set forth pursuant to paragraph (1), including the documentation submitted, which verification shall be completed no later than 30 days after the filing of the request for waiver with the Superintendent of Public Instruction.

(3) The Advisory Commission on Special Education, as established under Section 33590, at its first scheduled meeting following the verification conducted pursuant to paragraph (2), shall review the request for waiver, accompanying documentation, and the verification findings of the State Department of Education. No later than 15 days following the date of that meeting, the commission shall submit its written comments and recommendations regarding the request for waiver to the Superintendent of Public Instruction.

(4) The Superintendent of Public Instruction shall review the comments and recommendations submitted by the Advisory Commission on Special Education prior to approving or rejecting the request for waiver.

(5) Any request for waiver, submitted in accordance with this section, that is not rejected within 60 days of its receipt by the State Department of Education, shall be deemed approved.

(e) This section does not apply to any application for project funding under this chapter that meets one of the following conditions:

(1) The application was submitted to the board prior to January 1, 1987, and all of the facilities under the project for use, in whole or in part, by pupils who are individuals with exceptional needs are located on a schoolsite on which facilities for use by other pupils are also located.

(2) The application is for any other project, for which, prior to January 1, 1987, the board approved the drawing of final plans and the preparation of final

1 constructed pursuant to this chapter for use, in whole or in part, by pupils who are
2 individuals with exceptional needs, shall be designed and located on the schoolsite so
3 as to maximize interaction between those individuals with exceptional needs and other
4 pupils as appropriate to the needs of both. Subdivision (b) requires the school district
5 governing boards and county offices of education to ensure that school facilities for
6 pupils who are individuals with exceptional needs are integrated with other school
7 facilities in applying for the purchase or new construction of school facilities pursuant to
8 this chapter. Subdivision (c) provides that the State Allocation Board, after consultation
9 with the State Department of Education and representatives from county offices of
10 education, special education services regions, and school districts, shall develop and
11 adopt any regulations necessary to implement this section. Subdivision (d) provides
12 that notwithstanding any other law, the requirement set forth in subdivision (a) may be
13 waived, by the Superintendent of Public Instruction, only upon compliance with the
14 following procedure whereby:

15 (1) The applicant school district or county superintendent of schools shall file a
16 written request for waiver that documents the reasons for its inability to comply
17 with the requirement;

18 (2) The State Department of Education shall verify the reasons set forth pursuant
19 to paragraph (1), including the documentation submitted, which verification shall
20 be completed no later than 30 days after the filing of the request for waiver with

specifications.”

1 the Superintendent of Public Instruction;

2 (3) The Advisory Commission on Special Education at its first scheduled meeting
3 following the verification conducted pursuant to paragraph (2), shall review the
4 request for waiver, accompanying documentation, and the verification findings of
5 the State Department of Education. No later than 15 days following the date of
6 that meeting, the commission shall submit its written comments and
7 recommendations regarding the request for waiver to the Superintendent of
8 Public Instruction;

9 (4) The Superintendent of Public Instruction shall review the comments and
10 recommendations submitted by the Advisory Commission on Special Education
11 prior to approving or rejecting the request for waiver; and

12 (5) Any request for waiver, submitted in accordance with this section, that is not
13 rejected within 60 days of its receipt by the State Department of Education, shall
14 be deemed approved.

15 Subdivision (e) provides that this section does not apply to any application for project
16 funding under this chapter that meets one of the following conditions: (1) the
17 application was submitted to the board prior to January 1, 1987, and all of the facilities
18 under the project for use, in whole or in part, by pupils who are individuals with
19 exceptional needs are located on a schoolsite on which facilities for use by other pupils
20 are also located; or (2) the application is for any other project, for which, prior to
21 January 1, 1987, the board approved the drawing of final plans and the preparation of

1 final specifications.

2 Chapter 893, Statutes of 1997, Section 90, added²⁶³ Education Code Section
3 17047.6 which provides that “the board, with the advice of the Superintendent of Public
4 Instruction, may determine the eligibility of county superintendents of schools to lease
5 portable classrooms provided that a county superintendent of schools is eligible to
6 receive one portable classroom pursuant to this section and Section 17717.2 for each
7 15 units of average daily attendance at county community schools in excess of the
8 amount of average daily attendance claimed by the county superintendent of schools in
9 the prior fiscal year except that, for pupils who are enrolled in a county community
10 school and on independent study, only time spent in the classroom shall be included in
11 the calculation of average daily attendance.”

12 Chapter 277, Statutes of 1996, Section 2, added²⁶⁴ by Education Code Section
13 17048 to require that “whenever an existing building is to be reconstructed, rather than
14 replaced, under an application pursuant to this chapter, there shall be allowed, for those
15 attendance units to be housed in such reconstructed building, an additional five square
16 feet of building area beyond the amounts set forth in Section 17043, 17044, 17045, or

²⁶³ Former Education Code Section 17747.6, (added by Chapter 1059, Statutes of 1996, Section 6) relating to similar subject matter as Section 17047.6, was repealed by Chapter 893, Statutes of 1997, Section 104.

²⁶⁴ Former Education Code Section 19398, (added by Chapter 1009, Statutes of 1975, Section 1, and renumbered as Section 17748 by Chapter 1010, Statutes of 1976, Section 2) relating to similar subject matter as Section 17048, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17046.”
2 Chapter 277, Statutes of 1996, Section 2, added²⁶⁵ by Education Code Section
3 17049²⁶⁶. Subdivision (a) requires that, as a condition for any project funding under this

²⁶⁵ Former Education Code Section 17749, (added by Chapter 886, Statutes 1986, Section 44) relating to similar subject matter as Section 17049, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁶⁶ Education Code Section 17049, added by Chapter 277, Statutes of 1996, Section 2:

“(a) The board shall require, as a condition of providing funding for any project under this chapter, that, for any facilities for kindergarten or any of grades 1 to 12, inclusive, or for any facilities for special education or continuation high school purposes, at least 30 percent of allowable new building construction for classrooms under the project be utilized for relocatable structures.

(b) The board may reduce the percentage requirement set forth in subdivision (a), as to any applicant, in the event that the quantity of relocatable structures necessary to comply with those requirements is unavailable from the manufacturers of those structures.

(c) The board may reduce or eliminate the percentage requirements set forth in subdivision (a), as to any applicant, under either of the following circumstances:

(1) Where the board finds that special conditions of terrain, climate, or unavailability of space within the attendance area make the use of relocatable structures impractical or inappropriate.

(2) Under the condition that, as the result of a future project for which the district receives funding under this chapter, located on the same schoolsite on which the current project is located, at least 30 percent of total building construction for classrooms on that schoolsite will be utilized for relocatable structures.

(d) Relocatable structures acquired by an applicant school district up to two years preceding the final approval by the board of the project application submitted by the district shall apply to the percentage requirements set forth in subdivision (a).

(e) Notwithstanding subdivision (d), relocatable structures acquired by an applicant school district up to 10 years preceding the final approval by the board of the project application submitted by the district shall apply to the percentage requirements set forth in subdivision (a) if the relocatable structures are to be situated on the site of a new school to be constructed under the project and all of the following conditions are met:

1 chapter, that, for any facilities for kindergarten or any of grades 1 to 12, inclusive, or for
2 any facilities for special education or continuation high school purposes, at least 30
3 percent of allowable new building construction for classrooms under the project must be
4 utilized for relocatable structures. Subdivision (b) provides that reduce the percentage
5 requirement set forth in subdivision (a) shall be reduced, as to any applicant, in the
6 event that the quantity of relocatable structures necessary to comply with those
7 requirements is unavailable from the manufacturers of those structures. Subdivision (c)
8 requires that the percentage requirements set forth in subdivision (a), as to any
9 applicant, shall, as necessary, be reduced or eliminated under either of the following
10 circumstances: (1) where the board finds that special conditions of terrain, climate, or
11 unavailability of space within the attendance area make the use of relocatable
12 structures impractical or inappropriate, and (2) under the condition that, as the result of

(1) The relocatable structures were not previously used to satisfy the 30 percent requirement set forth in subdivision (a) under any other project constructed pursuant to this chapter.

(2) The board determines that the relocatable structures are in satisfactory condition upon being moved to the new schoolsite, and are usable for classroom purposes without requiring major repair or renovation for a period of not less than 20 years subsequent to that relocation.

(3) Subsequent to moving the relocatable structures to the new schoolsite, at least 30 percent of the classroom space at the schoolsite where the structures were previously located consists of relocatable structures.

The cost of moving the relocatable structures to the new schoolsite shall be at the school district's sole expense.

(f) Whenever at least 10 percent of the allowable new building construction contained in an application is to be utilized for relocatable structures, an additional three square feet of building area for each pupil to be housed under the approved project shall be allowed."

1 a future project for which the district receives funding under this chapter, located on the
2 same schoolsite on which the current project is located, at least 30 percent of total
3 building construction for classrooms on that schoolsite will be utilized for relocatable
4 structures. Subdivision (d) requires that the relocatable structures acquired by an
5 applicant school district up to two years preceding the final approval by the board of the
6 project application submitted by the district shall apply to the percentage requirements
7 set forth in subdivision (a). Subdivision (e) provides that notwithstanding subdivision
8 (d), relocatable structures acquired by an applicant school district up to 10 years
9 preceding the final approval by the board of the project application submitted by the
10 district shall apply to the percentage requirements set forth in subdivision (a) if the
11 relocatable structures are to be situated on the site of a new school to be constructed
12 under the project and all of the following conditions are met:

13 (1) The relocatable structures were not previously used to satisfy the 30 percent
14 requirement set forth in subdivision (a) under any other project constructed
15 pursuant to this chapter;

16 (2) The board determines that the relocatable structures are in satisfactory
17 condition upon being moved to the new schoolsite, and are usable for classroom
18 purposes without requiring major repair or renovation for a period of not less than
19 20 years subsequent to that relocation; and

20 (3) Subsequent to moving the relocatable structures to the new schoolsite, at
21 least 30 percent of the classroom space at the schoolsite where the structures

1 were previously located consists of relocatable structures. The cost of moving
2 the relocatable structures to the new schoolsite shall be at the school district's
3 sole expense.

4 Subdivision (f) provides that whenever at least 10 percent of the allowable new building
5 construction contained in an application is to be utilized for relocatable structures, an
6 additional three square feet of building area for each pupil to be housed under the
7 approved project shall be allowed.

8 Chapter 277, Statutes of 1996, Section 2, added²⁶⁷ by Education Code Section
9 17050²⁶⁸. Subdivision (a) provides that a district shall, as may be necessary, enter into

²⁶⁷ Former Education Code Section 17750, (added by Chapter 649, Statutes 1981, Section 2) relating to similar subject matter as Section 17050, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁶⁸ Education Code Section 17050, added by Chapter 277, Statutes of 1996, Section 2:

"(a) A district may enter into a contract with the county, or other appropriate entity having responsibility for the provision of public library services, in which the district is located for the purpose of operating a joint-use library facility at a schoolsite owned by the district.

(b) The district may apply for the lease-purchase of a project which includes a library facility, pursuant to Section 17017, which facility, if constructed, would be of sufficient size to accommodate the requirements of a joint-use library for which the district has entered into a contract, pursuant to subdivision (a).

(c) Should the board receive an application for a project which includes space for a joint-use library, the board shall evaluate the application disregarding any space in the proposed library facility which is beyond the needs of the district, provided the application contains a copy of the contract specified in subdivision (a), and provided that the contract contains at least the following:

- (1) Agreement that the county or other appropriate entity shall deposit in the county school lease-purchase fund, created pursuant to Section 17034, an amount equal to the total cost of any space in the proposed library facility which

1 a contract with the county, or other appropriate entity having responsibility for the
2 provision of public library services, in which the district is located for the purpose of
3 operating a joint-use library facility at a schoolsite owned by the district. Subdivision (b)
4 provides that the district shall, as may be necessary, apply for the lease-purchase of a
5 project which includes a library facility, pursuant to Section 17017 (providing that each
6 school district seeking to lease a project shall, through its governing board, apply to the
7 board providing them with a statement of the estimated cost of the project certified by
8 an architect or structural engineer, and layout plans should the entire construction
9 project), which facility, if constructed, would be of sufficient size to accommodate the
10 requirements of a joint-use library for which the district has entered into a contract,
1 pursuant to subdivision (a). Subdivision (c) provides that an application for a project
12 which includes space for a joint-use library, shall be evaluated disregarding any space

is beyond the needs of the district, prior to the signing of the construction contract for the project. The deposit shall not be refundable, except to the extent that it may prove subsequently to be in excess of the actual total cost of the space which is beyond the needs of the district.

(2) Agreement between the district and the county or other appropriate entity regarding staffing, maintenance, materials acquisition, and other matters related to the administration and operating costs of the joint-use facility.

(3) Agreement between the district and the county or other appropriate entity regarding the procedure for amendment or termination of the contract, including the disposition of materials housed in the joint-use facility should termination of the contract occur.

(d) Any space in a joint-use library which is beyond the needs of the district shall not be included by the board in any calculations made for any other purposes provided for in this article for the period of time that the contract for that joint-use facility remains in effect. Should the contract be terminated, the board shall include the additional space in any calculations made after the termination for any other purposes provided for in this article."

1 in the proposed library facility which is beyond the needs of the district, provided the
2 application contains a copy of the contract specified in subdivision (a), and provided
3 that the contract contains at least the following:

4 (1) Agreement that the county or other appropriate entity shall deposit in the
5 county school lease-purchase fund, created pursuant to Section 17034, an
6 amount equal to the total cost of any space in the proposed library facility which
7 is beyond the needs of the district, prior to the signing of the construction
8 contract for the project. The deposit shall not be refundable, except to the extent
9 that it may prove subsequently to be in excess of the actual total cost of the
10 space which is beyond the needs of the district;

11 (2) Agreement between the district and the county or other appropriate entity
12 regarding staffing, maintenance, materials acquisition, and other matters related
13 to the administration and operating costs of the joint-use facility; or

14 (3) Agreement between the district and the county or other appropriate entity
15 regarding the procedure for amendment or termination of the contract, including
16 the disposition of materials housed in the joint-use facility should termination of
17 the contract occur.

18 Subdivision (d) requires that any space in a joint-use library which is beyond the needs
19 of the district shall not be included in any calculations made for any other purposes
20 provided for in this article for the period of time that the contract for that joint-use facility
21 remains in effect. Should the contract be terminated, the board shall include the

1 additional space in any calculations made after the termination for any other purposes
2 provided for in this article.

3 Chapter 277, Statutes of 1996, Section 2, added²⁶⁹ by Education Code Section
4 17051²⁷⁰. Subdivision (a) provides that a district shall, as may be necessary, enter into

²⁶⁹ Former Education Code Section 17751, (added by Chapter 498, Statutes of 1983, Section 13) relating to similar subject matter as Section 17051, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁷⁰ Education Code Section 17051, added by Chapter 277, Statutes of 1996, Section 2:

“(a) A district may enter into an agreement with another governmental entity that includes some or all of the territory of the district for the purpose of the joint use of park and recreation facilities, including an auditorium, or commercial or industrial facilities.

(b) If the board receives an application for a project that includes some or all of the territory of the district for the purpose of the joint use of park and recreation facilities or commercial or industrial facilities, the board shall evaluate the application disregarding any space in the proposed joint-use facility that is beyond the needs of the district if the application contains a copy of the agreement specified in subdivision (a) and if the contract contains at least the following:

(1) An agreement that the county or other appropriate entity shall deposit in the county school lease-purchase fund, created pursuant to Section 17034, an amount equal to the total cost of any space in the proposed joint-use facility that is beyond the needs of the district, prior to the signing of the construction contract for the project. The deposit shall not be refundable, except to the extent that it may prove subsequently to be in excess of the actual total cost of the space that is beyond the needs of the district.

(2) An agreement between the district and the county or other appropriate entity regarding staffing, maintenance, materials acquisition, and other matters related to the administration and operating costs of the joint-use facility.

(3) An agreement between the district and the county or other appropriate entity regarding the procedure for amendment or termination of the contract, including the disposition of materials housed in the joint-use facility should termination of the contract occur.

(c) Any space in a joint-use facility that is beyond the needs of the district shall not be included by the board in any calculations made for any other purposes provided for in this article for the period of time that the contract for that joint-use facility remains

1 an agreement with another governmental entity that includes some or all of the territory
2 of the district for the purpose of the joint use of park and recreation facilities, including
3 an auditorium, or commercial or industrial facilities. Subdivision (b) requires that an
4 application for a project that includes some or all of the territory of the district for the
5 purpose of the joint use of park and recreation facilities or commercial or industrial
6 facilities, shall be evaluated disregarding any space in the proposed joint-use facility
7 that is beyond the needs of the district if the application contains a copy of the
8 agreement specified in subdivision (a) and if the contract contains at least the following:

9 (1) An agreement that the county or other appropriate entity shall deposit in the
10 county school lease-purchase fund, created pursuant to Section 17034, an
11 amount equal to the total cost of any space in the proposed joint-use facility that
12 is beyond the needs of the district, prior to the signing of the construction
13 contract for the project. The deposit shall not be refundable, except to the extent
14 that it may prove subsequently to be in excess of the actual total cost of the
15 space that is beyond the needs of the district;

16 (2) An agreement between the district and the county or other appropriate entity
17 regarding staffing, maintenance, materials acquisition, and other matters related
18 to the administration and operating costs of the joint-use facility; or

19 (3) An agreement between the district and the county or other appropriate entity

in effect. If the contract is terminated, the board shall include the additional space in any calculations made after the termination for any other purposes provided for in this article."

1 regarding the procedure for amendment or termination of the contract, including
2 the disposition of materials housed in the joint-use facility should termination of
3 the contract occur.

4 Subdivision (c) provides that any space in a joint-use facility that is beyond the needs of
5 the district shall not be included in any calculations made for any other purposes
6 provided for in this article for the period of time that the contract for that joint-use facility
7 remains in effect. If the contract is terminated, the board shall include the additional
8 space in any calculations made after the termination for any other purposes provided
9 for in this article.

10 Chapter 753, Statutes of 2000, Section 2, added Education Code Section
1 17052²⁷¹. Subdivision (a) provides that notwithstanding any other provision of law,

²⁷¹ Education Code Section 17052, added by Chapter 753, Statutes of 2000,
Section 2:

"(a) Notwithstanding any other provision of law, the State Allocation Board may fund joint-use projects to construct libraries, multipurpose rooms, and gymnasiums, on school campuses where these facilities are used jointly for both school and community purposes.

(b) A school district may apply to the State Allocation Board for funding under this section if it meets all of the following requirements:

- (1) The school does not have the type of facility for which it seeks funding.
- (2) The school district agrees to provide local matching funds for 50 percent of the eligible cost of the facility as set forth in subdivision (c), and 100 percent local or joint-use funding for all costs that exceed that standard, as required by subdivision (d).
- (3) The school district has obtained approval of the plans for the facility from the Division of the State Architect and the State Department of Education.
- (4) The school district has entered into a joint-use agreement with its joint-use partner that specifies the method for sharing capital and operating costs, specifies relative responsibilities for the operation and staffing of the

1 joint-use projects shall, as may be necessary, be funded to construct libraries,
2 multipurpose rooms, and gymnasiums, on school campuses where these facilities are
3 used jointly for both school and community purposes. Subdivision (b) requires a school
4 district to apply to the board for funding under this section if it meets all of the following
5 requirements:

6 (1) The school does not have the type of facility for which it seeks funding;

7 (2) The school district agrees to provide local matching funds for 50 percent of
8 the eligible cost of the facility as set forth in subdivision (c), and 100 percent local
9 or joint-use funding for all costs that exceed that standard, as required by
10 subdivision (d);

11 (3) The school district has obtained approval of the plans for the facility from the

facility, and specifies the manner in which the safety of school pupils will be maintained during school hours.

(5) The school district demonstrates that the facility will be used to the maximum extent possible for school and community purposes after regular school hours.

(c) The State Allocation Board shall establish standards for the amount of funding to be made available for each project under this section. The funding standards may be expressed as per-square-foot cost limits or per-pupil cost limits or both.

(d) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards set forth in subdivision (c) if the excess is paid completely by local or joint-use partnership sources.

(e) On July 1 of each year the board shall apportion to qualifying applicant school districts those funds that it determines are available for the purposes of this section.

(f) The board may establish priority standards to govern the order of funding projects. If applications exceed available funding, the board shall give priority to applications where the size of the project is increased by at least 30 percent beyond minimum essential facilities through the use of additional funding from a joint-use partner."

1 Division of the State Architect and the State Department of Education;

2 (4) The school district has entered into a joint-use agreement with its joint-use
3 partner that specifies the method for sharing capital and operating costs,
4 specifies relative responsibilities for the operation and staffing of the facility, and
5 specifies the manner in which the safety of school pupils will be maintained
6 during school hours; and

7 (5) The school district demonstrates that the facility will be used to the maximum
8 extent possible for school and community purposes after regular school hours.

9 Subdivision (c) requires that standards shall be established by the board for the amount
10 of funding to be made available for each project under this section. The funding
11 standards may be expressed as per-square-foot cost limits or per-pupil cost limits or
12 both. Subdivision (d) provides that notwithstanding any other provision of this chapter,
13 project costs may exceed the board's standards set forth in subdivision (c) if the excess
14 is paid completely by local or joint-use partnership sources. Subdivision (e) provides
15 that on July 1 of each year the board shall apportion to qualifying applicant school
16 districts those funds that it determines are available for the purposes of this section.
17 Subdivision (f) provides that the board may establish priority standards to govern the
18 order of funding projects. If the school district applications exceed available funding,
19 the board shall give priority to applications where the size of the project is increased by
20 at least 30 percent beyond minimum essential facilities through the use of additional
21 funding from a joint-use partner.

1 ARTICLE 4. SPACE-SAVER SCHOOLS

2 Chapter 277, Statutes of 1996, Section 2, added²⁷² Education Code Section
3 17055. Subdivision (a) provides that “the board shall authorize project funding under
4 this chapter for the construction, in urban areas in which the construction of schools
5 would ordinarily require the removal of residential, commercial, or industrial structures,
6 of four elementary or junior high schools, or any combination thereof, none of which
7 serve any of the grades 10 to 12, inclusive” Subdivision (b) requires that “the
8 construction funded pursuant to subdivision (a) shall be designed to minimize the need
9 for the relocation of inhabitants of residential, commercial, or industrial structures. The
10 design features of the schools may include, but should not be limited to, the use of
11 below-ground facility construction, multistory construction, multiuse construction where
12 single-use construction currently exists, the joint use of facilities that otherwise involve
13 such uses as a shopping center, office complex, or apartment building, the joint or dual
14 use of land that otherwise involves park or other uses, overhead or underground
15 parking, or the use of areas above or below streets or freeways.”

16 Chapter 277, Statutes of 1996, Section 2, added²⁷³ Education Code Section
17 17056 to provide that “any school district that is a project applicant under this chapter

²⁷² Former Education Code Section 17755, (added by Chapter 1542, Statutes of 1988, Section 2) relating to similar subject matter as Section 17055, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁷³ Former Education Code Section 17756, (added by Chapter 1542, Statutes of 1988, Section 2) relating to similar subject matter as Section 17056, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 may apply for the funding of a school specifically under this article, pursuant to which it
2 may be approved by the board for funding only to the extent of its project eligibility
3 under this chapter. The governing board of each district for which that funding is
4 approved by the board shall do all of the following, in the order specified: (a) identify an
5 area within the district that it determines to be appropriate for the construction of a
6 school that meets the purposes of this article; and (b) establish criteria for the purpose
7 of identifying the school design that will most effectively accomplish the purposes of this
8 article and the needs of the district. The district shall thereupon issue, in a manner
9 approved by the board, a request for architectural design proposals incorporating those
10 criteria.”

1 Chapter 277, Statutes of 1996, Section 2, added²⁷⁴ Education Code Section
12 17058 to state that “the cost of any project funded under this article shall not exceed the
13 maximum cost that would otherwise be allowable for a project funded under this
14 chapter.”

15 ARTICLE 4.1. ALTERNATIVE USE OF APPORTIONMENTS

16 Chapter 277, Statutes of 1996, Section 2, added²⁷⁵ Education Code Section

²⁷⁴ Former Education Code Section 17758, (added by Chapter 1542, Statutes of 1988, Section 2) relating to similar subject matter as Section 17058, was repealed by Chapter 277, Statutes of 1996, Section 6.

²⁷⁵ Former Education Code Section 17759, (added by Chapter 833, Statutes of 1993, Section 1) relating to similar subject matter as Section 17059, was repealed by Chapter 277, Statutes of 1996, Section 6.

1 17059²⁷⁶ to require school districts, in areas where overcrowding in the schools has
2 created a need for new school facilities in neighborhoods where little or no vacant land
3 exists, to acquire property that already has been developed with structures, then
4 demolish these structures and construct classroom space. The reconstruction of
5 existing commercial buildings for school facility purposes is authorized under this
6 chapter. However, no existing commercial building shall be considered for
7 reconstruction for school facility classroom purposes unless it was designed and
8 constructed according to the standards established in the 1976 Uniform Building Code
9 or subsequent editions of that code.

²⁷⁶ Education Code Section 17059, added by Chapter 277, Statutes of 1996,
Section 2:

"The Legislature finds and declares as follows:

(a) In many areas of the state, overcrowding in the schools has created a need for new school facilities in neighborhoods where little or no vacant land exists. School districts are compelled, therefore, to acquire property that already has been developed with structures, then demolish these structures and construct classroom space.

(b) With an estimated statewide need for school facilities within the next five years that exceeds fourteen billion dollars (\$14,000,000,000), neither state nor local funds reasonably can be anticipated to meet this need.

(c) In many of the areas having overcrowded schools, a significant supply exists of vacant space in structures meeting current building codes.

(d) Use of this vacant space by schools can be a cost-effective means of providing classroom space for the students of California.

(e) This chapter and Section 4-306 of Part 1 of Title 24 of the California Code of Regulations authorize the reconstruction of existing commercial buildings for school facility purposes.

(f) No existing commercial building shall be considered for reconstruction for school facility classroom purposes unless it was designed and constructed according to the standards established in the 1976 Uniform Building Code or subsequent editions of that code."

1 Chapter 277, Statutes of 1996, Section 2, added²⁷⁷ Education Code Section
2 17059.1 to state that "in a manner that is consistent with this chapter and the California
3 Code of Regulations, a school district that is eligible for an apportionment for project
4 funding for new construction under this chapter may use that apportionment for the
5 acquisition and conversion of an existing commercial building to school facility
6 purposes."

7 Chapter 277, Statutes of 1996, Section 2, added²⁷⁸ Education Code Section
8 17059.2 to provide that "the State Allocation Board in conjunction with the office of the
9 State Architect shall advise all school districts in the state of the existence of the
10 procedure for reconstructing existing commercial buildings for school facility purposes
and shall upon request assist in the interpretation and successful implementation of the
12 pertinent regulations in the California Code of Regulations."

13 ARTICLE 5. JOINT VENTURE SCHOOL FACILITIES CONSTRUCTION
14 PROJECTS

15 Chapter 277, Statutes of 1996, Section 2, added²⁷⁹ Education Code Section

²⁷⁷ Former Education Code Section 17759.1, (added by Chapter 833, Statutes of 1993, Section 1) relating to similar subject matter as Section 17059.1, was repealed by Chapter 277, Statutes of 1996, Section 6.

²⁷⁸ Former Education Code Section 17759.2, (added by Chapter 833, Statutes of 1993, Section 1) relating to similar subject matter as Section 17059.2, was repealed by Chapter 277, Statutes of 1996, Section 6.

²⁷⁹ Former Education Code Section 17760, (added by Chapter 956, Statutes of 1995, Section 1) relating to similar subject matter as Section 17060, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17060²⁸⁰. Subdivision (a) requires that school districts shall, as may be necessary,
2 enter into a joint venture relationship for the purposes of school facilities construction.
3 Notwithstanding any other provision of this chapter, a school district entering into a joint
4 venture relationship does so as an independent entity and not as an agent of the State

²⁸⁰ Education Code Section 17060, added by Chapter 277, Statutes of 1996,
Section 2:

“(a) A school district may enter into a joint venture relationship for the purposes of school facilities construction. Notwithstanding any other provision of this chapter, a school district entering into a joint venture relationship does so as an independent entity and not as an agent of the State Allocation Board.

(b) For the purposes of this article, "joint venture" means a collaborative undertaking by two or more persons or organizations for a specific project or projects, having the legal characteristics of a partnership.

(c) The joint venture relationship may, but is not required to, include any of the following:

(1) Joint use of the property of, or facilities on, the project site.

(2) Ground leases, alternative financing arrangements, or similar financing arrangements.

(3) A construction arrangement in which a school district enters into an agreement with a developer pursuant to which the school district initially stipulates the basic performance and programmatic criteria for the facility and the developer provides input into the design work and building construction services by entering into a contract with a single source team to administer the project in a manner consistent with state law, and construct the project to, under most circumstances, a maximum price.

(d) The price for the portion of the project that is funded by the state shall be established through a bidding process as approved by the State Allocation Board. All subcontract trade groups that are included within the project, shall be determined based upon competitive bidding for each contract group. All subcontracts shall be awarded to the lowest responsible bidder.

(e) The proposed uses of any facilities constructed under the joint venture project shall not be inconsistent with educational purposes and activities.

(f) The cost of any project funded under this article shall not exceed the maximum cost that would otherwise be allowable for a project funded under this chapter.”

1 Allocation Board. Subdivision (b) defines "joint venture" to mean a collaborative
2 undertaking by two or more persons or organizations for a specific project or projects,
3 having the legal characteristics of a partnership. Subdivision (c) provides that the joint
4 venture relationship shall, as may be necessary, include: (1) joint use of the property of,
5 or facilities on, the project site; (2) ground leases, alternative financing arrangements, or
6 similar financing arrangements; or (3) a construction arrangement in which a school
7 district enters into an agreement with a developer pursuant to which the school district
8 initially stipulates the basic performance and programmatic criteria for the facility and
9 the developer provides input into the design work and building construction services by
10 entering into a contract with a single source team to administer the project in a manner
11 consistent with state law, and construct the project to, under most circumstances, a
12 maximum price. Subdivision (d) requires the price for the portion of the project that is
13 funded by the state to be established through a bidding process as approved by the
14 State Allocation Board. All subcontract trade groups that are included within the
15 project, shall be determined based upon competitive bidding for each contract group.
16 All subcontracts shall be awarded to the lowest responsible bidder. Subdivision (e)
17 requires that the proposed uses of any facilities constructed under the joint venture
18 project shall not be inconsistent with educational purposes and activities. Subdivision
19 (f) requires that the cost of any project funded under this article shall not exceed the
20 maximum cost that would otherwise be allowable for a project funded under this
21 chapter.

1 Chapter 277, Statutes of 1996, Section 2, added²⁸¹ Education Code Section
2 17061²⁸². Subdivision (a) requires that a school district shall, as may be necessary,

²⁸¹ Former Education Code Section 17761, (added by Chapter 956, Statutes of 1995, Section 1) relating to similar subject matter as Section 17061, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁸² Education Code Section 17061, added by Chapter 277, Statutes of 1996, Section 2:

“(a) A school district may apply to the State Allocation Board for funding for the costs of property acquisition and the cost of construction, as specified in this chapter, of the school facilities portion of a joint venture project. The school district shall publicly solicit proposals for the joint venture project pursuant to the procedures set forth in this section and Sections 17062, 17521, 17522, and 17523.

(b) Upon review of the application for funding, the State Allocation Board shall establish the maximum allowances for construction of the school facilities portion of the joint venture project. For the purpose of calculating allowances pursuant to Article 3 (commencing with Section 17040), the State Allocation Board shall use the information used to determine the allowances for the school district at the time the district received approval of funds under this chapter to acquire property on which the school facilities will be constructed, or at the time an application is made pursuant to subdivision (a), whichever is earlier.

(c) The State Allocation Board may approve, in whole or in part, an application submitted by a school district pursuant to this section in an amount the State Allocation Board may deem appropriate, not to exceed the amount applied for, subject to final approval of the joint venture agreement pursuant to Section 17063.

(d) For purposes of this section, and the process referred to in subdivision (a), a school district joint venture request for proposals shall include, but not necessarily be limited to, all of the following:

(1) A specific description of the school buildings or land, or both, to be constructed or utilized under the joint venture and a description of how the costs of the project have been determined.

(2) The identification of the current educational uses of the school buildings or land, or both, and of the educational uses proposed under the joint venture.

(3) The identification of the current noneducational uses of the proposed school buildings or land, or both, and of the noneducational uses proposed under the joint venture, and a specific assessment of the compatibility of those uses with any applicable general or specific governmental land use plan and with

1 apply to the board for funding for the costs of property acquisition and the cost of
2 construction, as specified in this chapter, of the school facilities portion of a joint venture
3 project. The school district shall publicly solicit proposals for the joint venture project
4 pursuant to the procedures set forth in this section and Sections 17062, 17521
5 (providing that for the purposes of receiving proposals for the joint occupancy of a
6 building to be constructed on school property, the board shall adopt a resolution
7 describing the proposed site in a manner so as to identify the site, specifying the
8 intended use of that portion of the building that is to be occupied by the school district,
9 and fixing a time not less than 90 days thereafter for a meeting at which the board shall
10 receive and consider all plans or proposals submitted), 17522 (providing that notice of
11 adoption of the resolution shall be published at least once a week for three weeks in a
12 newspaper of general circulation), and 17523 (providing that the board shall meet at the
13 time and place fixed by the resolution to consider the plans and proposals).
14 Subdivision (b) requires that the maximum allowances for construction of the school
15 facilities portion of the joint venture project shall be established upon the board's review
16 of the application for funding. For the purpose of calculating allowances pursuant to

applicable zoning restrictions.

(4) A description of the prospective economic benefits to be derived by the school district from the joint venture.

(5) A description of the prospective educational benefits to be derived by the school district from the joint venture.

(6) A request that each request for proposal response include a comprehensive description of the joint venture, including, but not limited to, a description of the intended means of financing the joint venture."

1 Article 3 "Allowances" (commencing with Section 17040), the board shall use the
2 information used to determine the allowances for the school district at the time the
3 district received approval of funds under this chapter to acquire property on which the
4 school facilities will be constructed, or at the time an application is made pursuant to
5 subdivision (a), whichever is earlier. Subdivision (c) requires the board to approve, in
6 whole or in part, an application submitted by a school district pursuant to this section in
7 an amount the board may deem appropriate, not to exceed the amount applied for,
8 subject to final approval of the joint venture agreement pursuant to Section 17063.

9 Subdivision (d) provides that for purposes of this section, and the process referred to in
10 subdivision (a), a school district joint venture request for proposals shall include at least
11 the following:

12 (1) A specific description of the school buildings or land, or both, to be
13 constructed or utilized under the joint venture and a description of how the costs
14 of the project have been determined;

15 (2) The identification of the current educational uses of the school buildings or
16 land, or both, and of the educational uses proposed under the joint venture;

17 (3) The identification of the current noneducational uses of the proposed school
18 buildings or land, or both, and of the noneducational uses proposed under the
19 joint venture, and a specific assessment of the compatibility of those uses with
20 any applicable general or specific governmental land use plan and with
21 applicable zoning restrictions;

1 (4) A description of the prospective economic benefits to be derived by the
2 school district from the joint venture;

3 (5) A description of the prospective educational benefits to be derived by the
4 school district from the joint venture; and

5 (6) A request that each request for proposal response include a comprehensive
6 description of the joint venture, including, but not limited to, a description of the
7 intended means of financing the joint venture.

8 Chapter 277, Statutes of 1996, Section 2, added²⁸³ Education Code Section
9 17062²⁸⁴. Subdivision (a) provides that notwithstanding any other law, upon approval of

²⁸³ Former Education Code Section 17762, (added by Chapter 956, Statutes of 1995, Section 1) relating to similar subject matter as Section 17062, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁸⁴ Education Code Section 17062, added by Chapter 277, Statutes of 1996, Section 2:

“(a) Notwithstanding Sections 20111 and 20118.4 of the Public Contract Code, or any other law, upon approval of funding pursuant to Section 17061, a school district may utilize a request for qualifications and proposal process described in subdivision (a) of Section 17061 to select and enter into a joint venture agreement with a developer to construct school facilities. The agreement may utilize Section 17406.

(b) The joint venture agreement shall include, but not be limited to, all of the following terms:

(1) The cost of the project approved by the State Allocation Board pursuant to Section 17061 as the amount that the district will pay to the developer pursuant to the joint venture agreement upon completion of the project, if applicable.

(2) A detailed description of the project, including, but not limited to, the school facilities and any other facilities that may be included in the project and any other information necessary to meet the requirements of this chapter.

(3) The timeframe for completion of the project.

(4) A requirement that there shall be no state liability if funds are not made

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1 funding pursuant to Section 17061, a school district shall, as may be necessary, utilize
2 a request for qualifications and proposal process described in subdivision (a) of Section
3 17061 to select and enter into a joint venture agreement with a developer to construct
4 school facilities. The agreement may utilize Section 17406 (allowing the governing
5 board of a school district, without advertizing for bids, to let, for a minimum rental of one
6 dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to
7 the district if the lease requires the lessee therein to construct on the demised
8 premises, or provide for the construction thereon of, a building or buildings for the use
9 by the school district during the term thereof, and provides that title to that building shall
10 vest in the school district at the expiration of that term). Subdivision (b) requires the
11 joint venture agreement to include, at the least, all of the following terms:

12 (1) The cost of the project approved by the board pursuant to Section 17061 as

available within the four-year period specified in subdivision (a) of Section 17063.

(c) The joint venture agreement may also include a requirement that if the actual cost of constructing the school facility project designated in the agreement exceeds the amount set forth in that agreement, the developer shall be responsible for the additional expense.

(d) The lien placed on a schoolsite pursuant to this chapter shall only attach to that portion of the project for which state funds are actually expended. In addition, the lien shall expressly recognize any subordinate property interest created by the joint venture, and the state lien shall not be foreclosed or otherwise used to terminate the property interest, or any subordinate financing liens incidental thereto, created by the joint venture. The document creating that lien on a schoolsite shall be written in a manner to clearly prohibit assumption of any state liability resulting from the lien.

(e) Notwithstanding subdivision (d), the nondisturbance of subordinate property interests permitted in subdivision (d) shall not permit the foreclosure or other private taking of actual school facilities or property paid for with state funds in a manner that would restrict, terminate, or impair the school facilities portion of the joint venture or the school district's use thereof."

1 the amount that the district will pay to the developer pursuant to the joint venture
2 agreement upon completion of the project, if applicable;

3 (2) A detailed description of the project, including, but not limited to, the school
4 facilities and any other facilities that may be included in the project and any other
5 information necessary to meet the requirements of this chapter;

6 (3) The time frame for completion of the project; and

7 (4) A requirement that there shall be no state liability if funds are not made
8 available within the four-year period specified in subdivision (a) of Section 17063.

9 Subdivision (c) requires that the joint venture agreement shall, as may be necessary,
10 also include a requirement that if the actual cost of constructing the school facility
11 project designated in the agreement exceeds the amount set forth in that agreement,
12 the developer shall be responsible for the additional expense. Subdivision (d) provides
13 that the lien placed on a schoolsite pursuant to this chapter shall only attach to that
14 portion of the project for which state funds are actually expended. In addition, the lien
15 shall expressly recognize any subordinate property interest created by the joint venture,
16 and the state lien shall not be foreclosed or otherwise used to terminate the property
17 interest, or any subordinate financing liens incidental thereto, created by the joint
18 venture. The document creating that lien on a schoolsite shall be written in a manner to
19 clearly prohibit assumption of any state liability resulting from the lien. Subdivision (e)
20 provides that notwithstanding subdivision (d), the nondisturbance of subordinate
21 property interests permitted in subdivision (d) shall not permit the foreclosure or other

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1 private taking of actual school facilities or property paid for with state funds in a manner
2 that would restrict, terminate, or impair the school facilities portion of the joint venture or
3 the school district's use thereof.

4 Chapter 277, Statutes of 1996, Section 2, added²⁸⁵ Education Code Section
5 17063 to provide that "upon completion of the joint venture agreement pursuant to
6 Section 17062, the school district shall transmit the agreement to the State Allocation
7 Board for final review to determine whether the agreement is consistent with the project
8 approval pursuant to Section 17061. The State Allocation Board shall act to approve or
9 disapprove the complete agreement within 60 days following submission of the
10 complete proposal to the State Allocation Board. The approval or disapproval relates to
11 only the decision by the State Allocation Board to fund the school portion of the joint
12 venture project and is not to be construed as an approval or disapproval of the terms
13 and conditions of the joint venture agreement nor as authority for the school district to
14 act as the agent of the State Allocation Board. The State Allocation Board is not made
15 a party to the joint venture agreement and shall not incur liability under the joint venture
16 agreement through its approval or disapproval of the agreement. The joint venture shall
17 indemnify and hold harmless the State Allocation Board and its officers, agents, and
18 employees from any loss or liability, including reasonable attorneys fees and costs,
19 caused by the joint venture arising out of, or in relation to, any contract entered into by

²⁸⁵ Former Education Code Section 17763, (added by Chapter 956, Statutes of 1995, Section 1) relating to similar subject matter as Section 17063, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 the joint venture in furtherance of the joint venture project. The date of approval by the
2 State Allocation Board of the project shall be the date of funding eligibility for the
3 project. The apportionment of funds for the eligible project shall be made at any point
4 up to four years following the date of funding eligibility subject to the availability of funds
5 for this purpose. If the state funds are not available within that four-year period, the
6 school district may at its option remain in the funding cycle, subject to other provisions
7 of this chapter, until the school district receives all of the funds it is eligible to receive
8 pursuant to this article as of the date of funding eligibility. The district's eligibility for
9 reimbursement of authorized costs and the district's position in the processing schedule
10 for the reimbursement shall be established as the date of project approval by the State
11 Allocation Board. The exact amount of the reimbursement shall be determined at the
12 conclusion of the project and shall be based upon the actual subcontract trade bids and
13 other costs allowable pursuant to Section 17019.3.”

14 Chapter 277, Statutes of 1996, Section 2, added²⁸⁶ Education Code Section
15 17064 to provide that “the selection of any design professional pursuant to this article
16 shall be made in accordance with Chapter 10 (commencing with Section 4525) of
17 Division 5 of Title 1 of the Government Code.”

²⁸⁶ Former Education Code Section 17764, (added by Chapter 956, Statutes of 1995, Section 1) relating to similar subject matter as Section 17064, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 Chapter 277, Statutes of 1996, Section 2, added²⁸⁷ Education Code Section
2 17065 to provide that “the design and construction of school facilities pursuant to this
3 article shall comply with Article 3 (commencing with Section 17280) of Chapter 2 of Part
4 10.5.”

5 Chapter 277, Statutes of 1996, Section 2, added²⁸⁸ Education Code Section
6 17066 to provide that “this article does not affect any requirement of a school district to
7 comply with the prevailing wage requirements of Article 2 (commencing with Section
8 1770) of Chapter 2 of Part 7 of Division 2 of the Labor Code with respect to the school
9 facilities portion of a joint venture project under this article.”

10 CHAPTER 12.5. LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

11 ARTICLE 1. GENERAL PROVISIONS

12 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
13 17070.10 to provide that “this chapter shall be known, and may be cited, as the Leroy
14 F. Greene School Facilities Act of 1998.”

15 Chapter 33, Statutes of 2002, Section 1, amended Education Code Section

²⁸⁷ Former Education Code Section 17765, (added by Chapter 956, Statutes of 1995, Section 1) relating to similar subject matter as Section 17065, was repealed by Chapter 277, Statutes of 1996, Section 1.

²⁸⁸ Former Education Code Section 17766, (added by Chapter 956, Statutes of 1995, Section 1) relating to similar subject matter as Section 17066, was repealed by Chapter 277, Statutes of 1996, Section 1.

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1 17070.15²⁸⁹ to define the following terms: (a) "apportionment;" (b) "attendance area;" (c)
2 "board;" (d) "department;" (e) "committee;" (f) "modernization;" (g) "property;" (h)

²⁸⁹ Education Code Section 17070.15, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 33, Statutes of 2002, Section 1:

"The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

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

(b) "Attendance area" means the geographical area serving an existing high school and those junior high schools and elementary schools included therein.

(c) "Board" means the State Allocation Board as established by Section 15490 of the Government Code.

(d) "Department" means the Department of General Services.

(e) "Committee" means the State School Building Finance Committee established pursuant to Section 15909.

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

(g) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(h) "School district" means a school district or a county office of education. For purposes of determining eligibility under this chapter, "school district" may also mean a high school attendance area.

(i) "Fund" means the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, established pursuant to Section 17070.40.

(j) "County fund" means a county school facilities fund established pursuant to Section 17070.43.

(k) "Portable classroom" means a classroom building of one or more stories that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable classroom, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

(l) "School building capacity" means the capacity of a school building to house pupils."

1 "school district;" (i) "fund;" (j) "county fund;" (k) "portable classroom;" and (l) "school
2 building capacity."

3 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
4 17070.33²⁹⁰. Subdivision (a) requires the board to adopt guidelines for use by districts
5 by June 30, 1999, to achieve measurable reductions in the costs of school facilities
6 construction. Subdivision (b) requires that the guidelines include, but need not be
7 limited to, all of the following:

- 8 (1) Mechanisms designed to reduce the costs of professional fees;
9 (2) Mechanisms designed to reduce the costs of site preparation;

²⁹⁰ Education Code Section 17070.33, added by Chapter 407, Statutes of 1998,
Section 4:

"(a) The board shall adopt guidelines for use by districts by June 30, 1999, to
achieve measurable reductions in the costs of school facilities construction.

(b) The guidelines shall include, but need not be limited to, all of the following:

- (1) Mechanisms designed to reduce the costs of professional fees.
- (2) Mechanisms designed to reduce the costs of site preparation.
- (3) Recommendations for the use of alternate cost-saving construction
materials and methods.
- (4) Recommendations regarding the joint use of core facilities.
- (5) Mechanisms designed to reduce costs by incorporating efficiencies in
schoolsite design.
- (6) Recommendations regarding the use of cost-effective, efficient
reusable facility plans.

(c) If a school district's matching funds include fees charged pursuant to Section
17620 or pursuant to Section 65995.5 or 65995.7 of the Government Code, or if a
district receives funds pursuant to this chapter, the district shall consider the guidelines
developed pursuant to this section as fully as is practicable.

(d) When the board adopts the guidelines, it shall not include any
recommendation that would have a significant detrimental effect on educational
programs."

- 1 (3) Recommendations for the use of alternate cost-saving construction materials
2 and methods;
- 3 (4) Recommendations regarding the joint use of core facilities;
- 4 (5) Mechanisms designed to reduce costs by incorporating efficiencies in school
5 site design; and
- 6 (6) Recommendations regarding the use of cost-effective, efficient reusable
7 facility plans.

8 Subdivision (c) requires the district to consider the guidelines developed pursuant to
9 this section as fully as is practicable if a school district's matching funds include funds
10 pursuant to this chapter, fees charged pursuant to Section 17620 or pursuant to Section
11 65995.5 or 65995.7 of the Government Code. Subdivision (d) requires that adoption of
12 these guidelines exclude any recommendation that would have a significant detrimental
13 effect on educational programs.

14 Chapter 33, Statutes of 2002, Section 3, amended Education Code Section
15 17070.40²⁹¹ to create the 1998 State School Facilities Fund, 2002 State School

²⁹¹ Education Code Section 17070.40, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 33, Statutes of 2002, Section 3:

“(a)(1) A fund is hereby established in the State Treasury to be known as the 1998 State School Facilities Fund. All money in the fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated without regard to fiscal years for expenditure pursuant to this chapter.

(2) The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the 1998 State School Facilities Fund from any source.

(3) The board may make apportionments in amounts not exceeding those funds on deposit in the 1998 State School Facilities Fund, and any amount of bonds authorized by the committee, but not yet sold by the Treasurer.

(4) The board may make disbursements pursuant to any apportionment made from any funds in the 1998 State School Facilities Fund, irrespective of whether there exists at the time of the disbursement an amount in the 1998 State School Facilities Fund sufficient to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

(b)(1) A fund is hereby established in the State Treasury to be known as the 2002 State School Facilities Fund. All money in the fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated without regard to fiscal years for expenditure pursuant to this chapter.

(2) The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the 2002 State School Facilities Fund from any source.

(3) The board may make apportionments in amounts not exceeding those funds on deposit in the 2002 State School Facilities Fund, and any amount of bonds authorized by the committee, but not yet sold by the Treasurer.

(4) The board may make disbursements pursuant to any apportionment made from any funds in the 2002 State School Facilities Fund, irrespective of whether there exists at the time of the disbursement an amount in the 2002 State School Facilities Fund sufficient to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

(c)(1) A fund is hereby established in the State Treasury to be known as the 2004 State School Facilities Fund. All money in the fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated without regard to fiscal years for expenditure pursuant to this chapter.

(2) The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the 2004 State School Facilities Fund from any source.

(3) The board may make apportionments in amounts not exceeding those funds on deposit in the 2004 State School Facilities Fund, and any amount of bonds authorized by the committee, but not yet sold by the Treasurer.

(4) The board may make disbursements pursuant to any apportionment made from any funds in the 2004 State School Facilities Fund, irrespective of whether there exists at the time of the disbursement an amount in the 2004 State

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1 Facilities Fund, and 2004 State School Facilities Fund for apportionment to school
2 districts for the purpose of the Leroy F. Greene School Facilities Act of 1998.

3 Chapter 992, Statutes 1999, Section 1, amended Education Code Section
4 17070.50²⁹² which requires the applicant school district to certify to the board that the
5 services of any architect, structural engineer, or other design professional for any work
6 under the project have been obtained pursuant to a competitive process (consistent
7 with the requirements of Chapter 10 (commencing with Section 4525) of Division 5 of
8 Title 1 of the Government Code). The applicant school district must also obtain the
9 written approval of the State Department of Education that the site selection, and the
10 building plans and specifications, comply with the standards adopted by the department
11 pursuant to subdivisions (b) and (c), respectively, of Section 17251. Their requirements
12 must be met before the board apportions any funds.

School Facilities Fund sufficient to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.”

²⁹² Education Code Section 17070.50, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 992, Statutes of 1999, Section 1:

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

1 Chapter 33, Statutes of 2002, Section 5, amended Education Code Section
2 17070.51²⁹³. Subdivision (a) requires the Office of Public School Construction to notify

²⁹³ Education Code Section 17070.51, added by Chapter 590, Statutes of 2000, Section 1, as amended by Chapter 33, Statutes of 2002, Section 5:

“(a) If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a material inaccuracy, the Office of Public School Construction shall notify the board.

(b) The board shall impose the following penalties if an apportionment and fund release has been made based upon information in the project application or related materials that constitutes a material inaccuracy.

(1) Pursuant to a repayment schedule approved by the board of no more than five years, the school district shall repay to the board, for deposit into the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, an amount proportionate to the additional funding received as a result of the material inaccuracy including interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater.

(2) The board shall prohibit the school district from self-certifying certain project information for any subsequent applications for project funding for a period of up to five years following the date of the finding of a material inaccuracy or until the district's repayment of the entire amount owed under paragraph (1). Although a school district that is subject to this paragraph may not self-certify, the school district shall not be prohibited from applying for state funding under this chapter. The board shall establish an alternative method for state or independent certification of compliance that shall be applicable in these cases. The process shall include, but shall not be limited to, procedures for payment by the school district of any increased costs associated with the alternative certification process.

(c) For school districts found to have provided material inaccuracies when a funding apportionment has occurred, but no fund release has been made, the board shall direct its staff to reduce the apportionment as necessary to reflect the actual nature of the project and to disregard the inaccurate information or material, and paragraph (2) of subdivision (b) shall apply.

(d) For those school districts found to have provided material inaccuracies when

1 the board if any school districts, architects or design professionals falsely certified
2 eligibility or funding application related information. These false certifications shall be
3 referenced as a material inaccuracy. Subdivision (b) requires the imposition of the
4 following penalties if an apportionment and fund release has been made based upon
5 information in the project application or related materials that constitutes a material
6 inaccuracy:

7 (1) The school district shall repay to the board, pursuant to a repayment
8 schedule of no more than 5 years, by depositing into the 1998 State School
9 Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School
10 Facilities Fund, as the case may be, an amount proportionate to the additional
11 funding received as a result of the material inaccuracy. This repayment figure
12 shall include interest at the rate paid on moneys in the Pooled Money Investment
13 Account or at the highest rate of interest for the most recent issue of state
14 general obligation bonds, whichever is greater; and

15 (2) The school district shall be prohibited from self-certifying certain project
16 information for any subsequent applications for project funding for a period of up
17 to five years following the date of the finding of a material inaccuracy or until the
18 district's repayment of the entire amount owed under paragraph (1). Although a
19 school district that is subject to this paragraph may not self-certify, the school

no funding apportionment or fund release has been made, the inaccurate information or materials shall not be considered, and paragraph (2) of subdivision (b) shall apply. The project may continue if the application, minus the inaccurate materials, is still complete.

1 district is not prohibited from applying for state funding under this chapter. An
2 alternative method for state or independent certification of compliance applicable
3 in these cases shall be established, including procedures for payment by the
4 school district of any increased costs associated with the alternative certification
5 process.

6 Subdivision (c) requires a reduction in apportionment as necessary to reflect the actual
7 nature of the project when a school district is found to have provided material
8 inaccuracies and a funding apportionment has occurred, but no fund release has been
9 made. The reduction shall reflect the actual nature of the project and disregard the
10 inaccurate information or material. Paragraph (2) of subdivision (b) shall be applicable.

11 Subdivision (d) provides that for those school districts found to have provided material
12 inaccuracies when no funding apportionment or fund release has been made, the
13 inaccurate information or materials shall not be considered, and paragraph (2) of
14 subdivision (b) shall apply. The project may continue if the application, minus the
15 inaccurate materials, is still complete.

16 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
17 17070.55 which requires that "upon request of any school district, the State Department
18 of Education shall provide assistance in the evaluation and utilization of existing school
19 facilities and the justification of the need for schoolsites, new facilities, and the
20 rehabilitation or replacement of existing facilities, in accordance with board regulations."

21 Chapter 407, Statutes of 1998, Section 4, added Education Code Section

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1 17070.60 to provide that "funding decisions made by the board shall not, in themselves,
2 make the board liable for any tort, breach of contract, or any other action for damages
3 caused by a school district arising from new construction or modernization by the
4 district. These contracts include, but are not limited to, contracts between the school
5 district and its construction contractors, construction managers, architects, or
6 engineers. The school district shall be liable for all torts, breaches of contract, or any
7 other actions for damages caused by the school district."

8 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
9 17070.63. Subdivision (a) requires that "the total funding provided under this chapter
10 shall constitute the state's full and final contribution to the project and for eligibility for
11 state facilities funding represented by the number of unhoused pupils for which the
12 school district is receiving the state grant. As a condition of receipt of funds, a school
13 district shall certify that the grant amount, combined with local funds, shall be sufficient
14 to complete the school construction project for which the grant is intended." Subdivision
15 (b) requires that "any funds provided to a school district under any article in this chapter
16 may not be counted towards the local match for receipt of funds under any other article
17 in this chapter." Subdivision (c) requires that "any savings achieved by the district's
18 efficient and prudent expenditure of these funds shall be retained by the district in the
19 county fund for expenditure by the district for other high priority capital outlay purposes."

20 Chapter 33, Statutes of 2002, Section 7, amended Education Code Section

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1 17070.70²⁹⁴. Subdivision (a) requires that any school district to which the board has
2 granted funds shall hold title, including, but not limited to, any leasehold interest as set
3 forth in subdivision (c), to all property acquired, constructed, or improved with those
4 funds. Title, as defined solely for the purpose of a school district' s eligibility to receive
5 funds from the board pursuant to this chapter shall include an order for prejudgment
6 possession issued by a court in an eminent domain proceeding. Subdivision (b)
7 requires the applicant school district to comply with all laws pertaining to the
8 construction, reconstruction, or alteration of, or addition to, school buildings.
9 Subdivision (c) requires that notwithstanding Section 17009.5 (providing that except as
10 set forth in Section 17052 (funding provided for joint-use projects to construct libraries,
11 multipurpose rooms, and gymnasiums), on or after November 4, 1998, the board shall
12 only approve and fund school facilities construction projects pursuant to this chapter

²⁹⁴ Education Code Section 17070.70, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 33, Statutes of 2002, Section 7:

“(a) Title, including, but not limited to, any leasehold interest as set forth in subdivision (c), to all property acquired, constructed, or improved with funds made available under this chapter shall be held by the school district to which the board grants the funds. Title, as defined solely for the purpose of a school district' s eligibility to receive funds from the board pursuant to this chapter shall include an order for prejudgment possession issued by a court in an eminent domain proceeding.

(b) The applicant school district shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school buildings.

(c) Notwithstanding Section 17009.5, construction or modernization funds made available pursuant to this chapter may be expended upon property that is leased to the applicant school district only if the project qualified for and received approval by the board, prior to November 4, 1998, pursuant to Article 4 (commencing with Section 17055), of Chapter 12. “

1 "Leroy F. Greene School Facilities Act of 1998"), construction or modernization funds
2 made available pursuant to this chapter shall be expended, as necessary, upon
3 property that is leased to the applicant school district only if the project qualified for and
4 received approval by the board, prior to November 4, 1998, pursuant to Article 4
5 "Space-Saver Schools" (commencing with Section 17055), of Chapter 12 "Leroy F.
6 Greene State School Building Lease-Purchase Law of 1976."

7 Chapter 530, Statutes of 2000, Section 1, added Education Code Section
8 17070.71. Subdivision (a) requires that "notwithstanding subdivision (a) of Section
9 17070.70, new construction or modernization funded pursuant to this chapter may be
10 upon real property leased to the applicant school district if all of the following conditions
11 are met: (1) the property is leased from another governmental entity, and (2) the term
12 of the lease is for at least 40 years after approval of the project under this chapter, or
13 the school district has a lease for at least 25 years on federal property. The board may
14 authorize a lesser term, of not less than 30 years only if the board finds that granting an
15 exception to this requirement would be in the state's best interest." Subdivision (b)
16 requires that "the applicant school district, and the facility on leased land, if any, shall
17 comply with all laws pertaining to the construction, reconstruction, or alteration of, or
18 addition to, schoolsites and school buildings." Subdivision (c) provides that "lease costs
19 are not eligible project or site acquisition costs under this chapter."

20 Chapter 734, Statutes of 2001, Section 10, amended Education Code Section

1 17070.75²⁹⁵. Subdivision (a) requires the school district to make all necessary repairs,

²⁹⁵ Education Code Section 17070.75, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 734, Statutes of 2001, Section 10:

“(a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and to encourage school districts to maintain all buildings under their control, the board shall require an applicant school district to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the school district's general fund for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings, according the highest priority to funding for the purposes set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for 20 years after receipt of funds under this chapter, a minimum amount equal to or greater than 3 percent of the applicant school district's total general fund * * * expenditures, including other financing uses, for that fiscal year. For the 1998-99 fiscal year and the 1999-2000 fiscal year, a school district may phase in this requirement by agreeing to certify the deposit of no less than 2 percent for the 1998-99 fiscal year and no less than 2 1/2 percent for the 1999-2000 fiscal year. Annual deposits to the fund established pursuant to paragraph (1) in excess of 2 1/2 percent of the district general fund budget may count towards the district's matching funds requirement necessary to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 17584 to the extent that funds are used for purposes that qualify for funding under that section. In addition, any district contribution to this fund may be provided in lieu of meeting the ongoing maintenance requirements pursuant to Section 17014 to the extent the funds are used for purposes established in that section. A school district that serves as the administrative unit for a special education local plan area may elect to exclude from its total general fund expenditures, for purposes of this paragraph, the distribution of revenues that are passed through to participating members of the special education local plan area. This paragraph is applicable only to the following school districts:

(A) High school districts with an average daily attendance greater than 300 pupils.

(B) Elementary school districts with an average daily attendance greater than 900 pupils.

(C) Unified school districts with an average daily attendance

1 renewals, and replacements to ensure that a project is at all times kept in good repair,
2 working order, and condition. All costs incurred for this purpose shall be borne by the
3 school district. Subdivision (b) requires an applicant school district, in order to ensure
4 compliance with subdivision (a) and to encourage maintenance of all buildings under
5 their control, to do all of the following prior to the board approval of a project:

6 (1) Establish a restricted account within the school district's general fund for the
7 exclusive purpose of providing moneys for ongoing and major maintenance of
8 school buildings, according the highest priority to funding for the purposes set
9 forth in subdivision (a); and

10 (2) Agree to deposit into the restricted account, in each fiscal year for 20 years
1 after receipt of funds under this chapter, a minimum amount equal to or greater
12 than 3 percent of the applicant school district's total general fund expenditures,

greater than 1,200 pupils.

(3) Certify that it has publicly approved an ongoing and major maintenance plan that outlines the use of the funds deposited, or to be deposited, pursuant to paragraph (2). The plan may provide that the district need not expend all of its annual allocation for ongoing and major maintenance in the year in which it is deposited if the cost of major maintenance requires that the allocation be carried over into another fiscal year. However, any state funds carried over into a subsequent year shall not be counted toward the annual minimum contribution by the district. A plan developed in compliance with this section shall be deemed to meet the requirements of Section 17585.

(c) A district to which paragraph (2) of subdivision (b) does not apply shall certify to the board that it can reasonably maintain its facilities with a lesser level of maintenance.

(d) For the purposes of calculating a county office of education requirement pursuant to this section, the 3 percent maintenance requirement shall be calculated based upon the county office of education general fund less any restricted accounts."

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1 including other financing uses, for that fiscal year. For the 1998-99 fiscal year
2 and the 1999-2000 fiscal year, a school district may phase in this requirement by
3 agreeing to certify the deposit of no less than 2 percent for the 1998-99 fiscal
4 year and no less than 2 ½ percent for the 1999-2000 fiscal year. Annual deposits
5 to the fund established pursuant to paragraph (1) in excess of 2 ½ percent of the
6 district general fund budget may count towards the district's matching funds
7 requirement necessary to receive apportionments from the State School
8 Deferred Maintenance Fund to the extent that funds are used for purposes that
9 qualify for funding under that section. In addition, any district contribution to this
10 fund may be provided in lieu of meeting the ongoing maintenance requirements
11 pursuant to Section 17014 to the extent the funds are used for purposes
12 established in that section. A school district that serves as the administrative unit
13 for a special education local plan area shall elect, as necessary, to exclude from
14 its total general fund expenditures, for purposes of this paragraph, the
15 distribution of revenues that are passed through to participating members of the
16 special education local plan area. This paragraph is applicable only to the
17 following school districts:

18 (A) High school districts with an average daily attendance greater than
19 300 pupils,

20 (B) Elementary school districts with an average daily attendance greater
21 than 900 pupils, and

1 (C) Unified school districts with an average daily attendance greater than
2 1,200 pupils; and

3 (3) Certify that it has publicly approved an ongoing and major maintenance plan
4 that outlines the use of the funds deposited, or to be deposited, pursuant to
5 paragraph (2). The plan shall provide, as may be necessary, that the district
6 need not expend all of its annual allocation for ongoing and major maintenance
7 in the year in which it is deposited if the cost of major maintenance requires that
8 the allocation be carried over into another fiscal year. However, any state funds
9 carried over into a subsequent year shall not be counted toward the annual
10 minimum contribution by the district. A plan developed in compliance with this
11 section shall be deemed to meet the requirements of Section 17585.

12 Subdivision (c) requires that a district to which paragraph (2) of subdivision (b) does not
13 apply must certify to the board that it can reasonably maintain its facilities with a lesser
14 level of maintenance. Subdivision (d) states that for the purposes of calculating a
15 county office of education requirement pursuant to this section, the 3 percent
16 maintenance requirement shall be calculated based upon the county office of education
17 general fund less any restricted accounts.

18 Chapter 194, Statutes of 2001, Section 1, added Education Code Section
19 17070.77²⁹⁶. Subdivision (a) requires that for each project funded after January 1,

²⁹⁶ Education Code Section 17070.77, added by Chapter 194, Statutes of 2001,
Section 1:

1 2002, the applicant school district governing board must certify, as part of the school
2 district's annual budget process and beginning in the fiscal year in which the project is
3 funded by the state, that it is in compliance with the plan adopted pursuant to paragraph
4 (3) of subdivision (b) of Section 17070.75 for completing major maintenance
5 requirements for the project. Subdivision (b) defines the term "major maintenance" to
6 mean all actions necessary to keep roofing, siding, painting, floor and window

"(a) For each project funded after January 1, 2002, the board shall require the applicant school district governing board to certify, as part of the school district's annual budget process and beginning in the fiscal year in which the project is funded by the state, that it is in compliance with the plan adopted pursuant to paragraph (3) of subdivision (b) of Section 17070.75 for completing major maintenance requirements for the project.

(b) For purposes of this chapter, the term "major maintenance" means all actions necessary to keep roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and other items designated by the governing board of the school district in good repair.

(c) The board shall require the school district's governing board to certify that the plan includes and is being implemented with all of the following components:

- (1) Identification of the major maintenance needs for the project.
- (2) Specification of a schedule for completing the major maintenance.
- (3) Specification of a current cost estimate for the scheduled major

maintenance needs.

(4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance needs.

(5) Review of the plan annually, as a part of the school district's annual budget process, and update, as needed, the major maintenance needs, the estimates of expected costs, and any adjustments in funding the reserve.

(6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district.

(7) Provision in the school district's annual budget for the reserve that contains the total funding available for scheduled major maintenance needs as specified in the updated plan, and an explanation if this amount of the reserve is less than that specified in the updated plan."

1 coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and
2 other items designated by the governing board of the school district in good repair.

3 Subdivision (c) requires the school district's governing board to certify that the plan
4 includes and is being implemented with all of the following components:

5 (1) Identification of the major maintenance needs for the project;

6 (2) Specification of a schedule for completing the major maintenance;

7 (3) Specification of a current cost estimate for the scheduled major maintenance
8 needs;

9 (4) Specification of the school district's schedule for funding a reserve to pay for
10 the scheduled major maintenance needs;

11 (5) Review of the plan annually, as a part of the school district's annual budget
12 process, and update, as needed, the major maintenance needs, the estimates of
13 expected costs, and any adjustments in funding the reserve;

14 (6) Availability for public inspection of the original plan, and all updated versions
15 of the plan, at the office of the superintendent of the school district during the
16 working hours of the school district; and

17 (7) A provision in the school district's annual budget for the reserve that contains
18 the total funding available for scheduled major maintenance needs as specified
19 in the updated plan, and an explanation if this amount of the reserve is less than
20 that specified in the updated plan.

21 Chapter 407, Statutes of 1998, Section 4, added Education Code Section

1 17070.80²⁹⁷. Subdivision (a) requires that all school facilities purchased or newly

²⁹⁷ Education Code Section 17070.80, added by Chapter 407, Statutes of 1998, Section 4:

“(a) All school facilities purchased or newly constructed pursuant to this chapter for use, in whole or in part, by pupils who are individuals with exceptional needs, as defined in Section 56026, shall be designed and located on the schoolsite so as to maximize interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both.

(b) The governing board of each applicant school district and the county office of education shall ensure that school facilities for pupils who are individuals with exceptional needs are integrated with other school facilities.

(c) The State Allocation Board, after consultation with the State Department of Education and representatives from county offices of education, special education services regions, and school districts, shall develop and adopt any regulations necessary to implement this section.

(d) Notwithstanding any other provision of law, the requirement set forth in subdivision (a) may be waived, by the Superintendent of Public Instruction, only upon compliance with the following procedure:

(1) The applicant school district or county superintendent of schools shall file a written request for waiver that documents the reasons for its inability to comply with the requirement.

(2) The State Department of Education shall verify the reasons set forth pursuant to paragraph (1), including the documentation submitted, which verification shall be completed no later than 30 days after the filing of the request for waiver with the Superintendent of Public Instruction.

(3) The Advisory Commission on Special Education, as established under Section 33590, at its first scheduled meeting following the verification conducted pursuant to paragraph (2), shall review the request for waiver, accompanying documentation, and the verification findings of the State Department of Education. No later than 15 days following the date of that meeting, the commission shall submit its written comments and recommendations regarding the request for waiver to the Superintendent of Public Instruction.

(4) The Superintendent of Public Instruction shall review the comments and recommendations submitted by the Advisory Commission on Special Education prior to approving or rejecting the request for waiver.

(5) Any request for waiver, submitted in accordance with this section, that is not rejected within 60 days of its receipt by the State Department of Education, shall be deemed approved.”

1 constructed pursuant to this chapter for use, in whole or in part, by pupils who are
2 individuals with exceptional needs, shall be designed and located on the schoolsite so
3 as to maximize interaction between those individuals with exceptional needs and other
4 pupils as appropriate to the needs of both. Subdivision (b) requires the governing
5 board of each applicant school district and the county office of education to ensure that
6 school facilities for pupils who are individuals with exceptional needs are integrated with
7 other school facilities. Subdivision (c) provides that the board, in consultation with the
8 State Department of Education and representatives from county offices of education,
9 special education services regions, and school districts, shall develop and adopt any
10 regulations necessary to implement this section. Subdivision (d) provides that
11 notwithstanding any other provision of law, the requirement set forth in subdivision (a)
12 shall be waived as necessary, by the Superintendent of Public Instruction, only upon
13 compliance with the following procedure:

14 (1) The applicant school district or county superintendent of schools shall file a
15 written request for waiver that documents the reasons for its inability to comply
16 with the requirement;

17 (2) The State Department of Education shall verify the reasons set forth pursuant
18 to paragraph (1), including the documentation submitted, which verification shall
19 be completed no later than 30 days after the filing of the request for waiver with
20 the Superintendent of Public Instruction;

21 (3) The Advisory Commission on Special Education, at its first scheduled

1 meeting following the verification conducted pursuant to paragraph (2), shall
2 review the request for waiver, accompanying documentation, and the verification
3 findings of the State Department of Education. No later than 15 days following
4 the date of that meeting, the commission shall submit its written comments and
5 recommendations regarding the request for waiver to the Superintendent of
6 Public Instruction;

7 (4) The Superintendent of Public Instruction shall review the comments and
8 recommendations submitted by the Advisory Commission on Special Education
9 prior to approving or rejecting the request for waiver;

10 (5) Any request for waiver, submitted in accordance with this section, that is not
11 rejected within 60 days of its receipt by the State Department of Education, shall
12 be deemed approved.

13 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
14 17070.90 to require that "as a part of its application, a school district shall certify that it
15 has considered the feasibility of the joint use of land and facilities with other
16 governmental entities in order to minimize school facilities costs. Funds provided
17 pursuant to this chapter for growth and modernization may be used for the school
18 portion of joint-use facilities."

19 Chapter 33, Statutes of 2002, Section 8, added Education Code Section
20 17070.95 which requires "as a part of its application for large construction and
21 modernization projects, a school district shall certify, in consultation with the career

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1 technical education advisory committee established pursuant to Section 8070 [providing
2 that the governing board of each school district participating in a career technical
3 education program shall appoint a career technical education advisory committee to
4 develop recommendations on the program and to provide liaison between the district
5 and potential employers], that it has considered the need for vocational and career
6 technical facilities to adequately meet its program needs consistent with Section 51224
7 [providing that the governing board of any school district maintaining a high school shall
8 prescribe courses of study designed to provide the skills and knowledge required for
9 adult life of pupils attending the schools within the district], subdivision (b) of Section
10 51225.3 [providing that the governing board, with the active involvement of parents,
11 administrators, teachers, and pupils, shall adopt alternative means for pupils to
12 complete the prescribed course of study to meet graduation requirements] , and
13 Section 52336.1 [providing that any pupil who has successfully completed his or her
14 education through grade 10, with written consent, may choose to follow either a
15 traditional college preparatory curriculum or a career preparatory program]. The board
16 shall adopt regulations necessary for administration of this section.”

17 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
18 17070.97 to “require the school district to insure against public liability or property
19 damage in connection with any facility constructed or modernized with an
20 apportionment under this chapter.”

21 Chapter 407, Statutes of 1998, Section 4, added Education Code Section

1 17070.98 to provide that "a school district that does not have employees who possess
2 adequate construction management experience may contract for the provision of
3 construction management, and may use funds provided pursuant to Article 4 "New
4 Construction Grant Eligibility Determination" (commencing with Section 17072.10),
5 Article 5 "New Construction Funding Process" (commencing with Section 17072.20),
6 and Article 7 "Modernization Apportionment" (commencing with Section 17074.10) for
7 the cost of those services as expressly authorized by Section 17072.35 and Section
8 17074.25."

9 ARTICLE 2. EXISTING SCHOOL BUILDING CAPACITY

10 Chapter 858, Statutes of 1999, Section 6, amended Education Code Section
11 17071.10²⁹⁸. Subdivision (a) requires the calculation determined by this article be made
12 on a one-time basis, and used as the baseline for eligibility determinations pursuant to
13 this chapter. Subdivision (b) requires each school district that elects to participate in the
14 new construction program pursuant to this chapter to submit to the board a one-time

²⁹⁸ Education Code Section 17071.10, added by Chapter 407, Statutes of 1998.
Section 4, as amended by Chapter 858, Statutes of 1999, Section 6:

"(a) The calculation determined by this article shall be made on a one-time basis,
and will be used as the baseline for eligibility determinations pursuant to this chapter.

(b) Each school district that elects to participate in the new construction program
pursuant to this chapter shall submit to the board a one-time report of existing school
building capacity.

(c) Notwithstanding subdivisions (a) and (b), a school district newly formed,
reorganized, or affected by reorganization, pursuant to an election that occurred on or
after November 4, 1998, shall calculate or recalculate its existing school building
capacity pursuant to regulations adopted by the State Allocation Board."

1 report of existing school building capacity. Subdivision (c) requires that notwithstanding
2 subdivisions (a) and (b), a school district newly formed, reorganized, or affected by
3 reorganization, pursuant to an election that occurred on or after November 4, 1998,
4 shall calculate or recalculate its existing school building capacity pursuant to regulations
5 adopted by the board.

6 Chapter 858, Statutes of 1999, Section 7, amended Education Code Section
7 17071.25²⁹⁹ to provide the formula for calculating existing school building capacity in the

²⁹⁹ Education Code Section 17071.25, added by Chapter 407, Statutes of 1998,
as amended by Chapter 858, Statutes of 1999, Section 7:

“(a) The existing school building capacity in the applicant school district or, where appropriate, in the attendance area, at the time of initial application shall be calculated pursuant to the following formula:

(1) Identify by grade level all permanent teaching stations existing in the school district or, where appropriate, the attendance area. For the purposes of this section, "teaching station" means any space that was constructed or reconstructed to serve as an area in which to provide pupil instruction, but shall not include portable buildings, except as provided in Section 17071.30.

(2) (A) The assumed capacity of each calculated teaching station pursuant to paragraph (1) shall be 25 pupils for each teaching station used for kindergarten or for grades 1 to 6, inclusive, and 27 pupils for each teaching station used for grades 7 to 12, inclusive.

(B) On or after January 1, 2000, the board may adopt or amend regulations adjusting the assumed capacity set forth in this subparagraph as appropriate for each teaching station used for nonsevere or severe special day class purposes after considering the recommendations of the Legislative Analyst pursuant to Section 17072.15. These special day class capacity adjustments and any adjustment of existing school capacity related to changes in the assumed capacity of special day class teaching stations shall be approved by the Director of Finance prior to implementation.

(C) On or after January 1, 2001, the board may adopt regulations establishing assumed capacity standards after consideration of the recommendations developed by the Director of General Services for

1 applicant district.

2 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
3 17071.30³⁰⁰ to require each applicant school district, for purposes of determining the

continuation high school, community day school, county community school, and county community day school, teaching stations pursuant to Section 17072.17. Teaching station assumed capacity adjustments pursuant to these regulations and any other adjustments of existing school capacity related to changes in the assumed capacity of continuation high school, community day school, county community school, and county community day school, teaching stations shall be approved by the Director of Finance prior to implementation.

(3) Multiply the assumed capacity of each teaching station as specified in paragraph (2) by the number of teaching stations calculated under paragraph (1).

(4) The result of this computation shall be the number of pupils housed by grade level in the existing school building capacity of the applicant school district.

(b) The existing school building capacity of the applicant school district calculated under this section shall not include, in any school operated on a year-round schedule, any teaching station that has been in continuous use during the preceding five-year period primarily for the operation of a preschool program or programs.”

³⁰⁰ Education Code Section 17071.30, added by Chapter 407, Statutes of 1998, Section 4:

“For purposes of determining the existing school building capacity, each applicant school district shall include each portable classroom, whether owned or leased, except as otherwise provided in subdivision (a) or (b).

(a) Portable classrooms leased pursuant to Chapter 14 (commencing with Section 17085) shall be excluded from the existing school building capacity. Portable classrooms obtained by an applicant district pursuant to subdivision (b) of Section 17088.5 shall be excluded from the existing school building capacity, except as to any portable classroom or classrooms for which the district rejected the board's offer to purchase pursuant to that subdivision. Portable classrooms leased for a period of less than five years prior to the date of application shall not be included in existing school building capacity.

(b) The number of portable classrooms, reduced by the number of portable classrooms used as interim housing for modernization projects, that exceed 25 percent of the number of permanent classrooms available to the district shall not be included in the existing building capacity.”

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1 existing school building capacity, to include each portable classroom, whether owned or
2 leased, except: (a) where portable classrooms leased pursuant to Chapter 14 "State
3 Relocatable Classroom Law of 1979" shall be excluded from the existing school
4 building capacity. Portable classrooms obtained by an applicant district pursuant to
5 subdivision (b) of Section 17088.5 (whereby a school district is eligible to lease a
6 portable classroom, but funds are not at the time available, the board may authorize the
7 school district to purchase a portable classroom if purchased under a procedure
8 determined by the board, and when funds are made available, the board shall purchase
9 the portable classroom from the school district and shall then lease the portable
10 classroom back the school district) shall be excluded from the existing school building
11 capacity, except as to any portable classroom or classrooms for which the district
12 rejected the board's offer to purchase pursuant to that subdivision. Portable
13 classrooms leased for a period of less than five years prior to the date of application
14 shall not be included in existing school building capacity; and (b) the number of portable
15 classrooms, reduced by the number of portable classrooms used as interim housing for
16 modernization projects, that exceed 25 percent of the number of permanent classrooms
17 available to the district shall not be included in the existing building capacity.

18 Chapter 33, Statutes of 2002, Section 9, amended³⁰¹ Education Code Section
19 17071.33. Subdivision (a) requires "for the purposes of determining existing school

³⁰¹ Education Code Section 17071.33, added by Chapter 407, Statutes of 1998, Section 4, was amended by Chapter 33, Statutes of 2002, Section 9.

1 building capacity, the calculation shall be adjusted as required for first priority status
2 pursuant to Section 17017.7 as that calculation would have been made under the
3 policies of the board in effect immediately preceding September 1, 1998." Subdivision
4 (b) requires that "notwithstanding subdivision (a), with respect to a high school district,
5 the existing school building capacity shall be calculated without regard to multitrack
6 year-round school considerations. "

7 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
8 17071.35 to provide that "notwithstanding any other provisions of law, the maximum
9 school building capacity for each applicant district shall be increased by the number of
10 pupils reported by the Superintendent of Public Instruction for that grade level pursuant
11 to Section 42268 [providing that the Superintendent of Public Instruction shall annually
12 report to the State Allocation Board, the number of pupil in excess of capacity certified
13 by the school district]. This adjustment shall be calculated on the basis, at the district's
14 option, of either the district as a whole or the appropriate attendance area."

15 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
16 17071.40 to provide that "each school on a year-round, multitrack calendar that has a
17 density of 200 or more pupils enrolled per acre, that is located in a school district with
18 40 percent of its pupils attending multitrack, year-round schools shall be exempted from
19 the increase in school building capacity required by Section 17071.35. Nothing in this
20 section shall be construed as exempting the school from the requirements of Section
21 17071.33."

1 Chapter 159, Statutes of 2001, Section 55, amended Education Code Section
2 17071.46³⁰². Subdivision (a) requires an applicant school district proposing to demolish
3 a single story building and replace it with a multistory building on the same site to
4 comply with the following conditions in order to receive a supplemental grant for 50
5 percent of the replacement cost of the single story building to be demolished from the
6 board:

- 7 (1) The school at which the building demolition and replacement is to occur is
8 operating on a multitrack year-round education schedule;

³⁰² Education Code Section 17071.46, added by Chapter 458, Statutes of 2000,
Section 1, as amended by Chapter 159, Statutes of 2001, Section 55:

"(a) When an applicant school district proposes to demolish a single story building and replace it with a multistory building on the same site, the State Allocation Board shall provide a supplemental grant for 50 percent of the replacement cost of the single story building to be demolished, if all of the following conditions are met:

(1) The school at which the building demolition and replacement is to occur is operating on a multitrack year-round education schedule.

(2) The cost of the demolition and replacement is less than the total cost of providing a new school facility, including land, on a new site for the additional number of pupils housed as a result of the replacement building, as determined by the State Allocation Board.

(3) The school district will maximize the increase in pupil capacity on the site when it builds the replacement building, subject to the limits imposed on it pursuant to paragraph * * * (4).

(4) The State Department of Education has determined that the demolition of an existing single story building and replacement with a multistory building at the site is the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site, as determined by the State Department of Education.

(b) The State Allocation Board shall establish additional requirements it deems necessary to ensure that the economic interests of the state and the educational interests of the children of the state are protected. "

1 (2) The cost of the demolition and replacement is less than the total cost of
2 providing a new school facility, including land, on a new site for the additional
3 number of pupils housed as a result of the replacement building, as determined
4 by the board;

5 (3) The school district will maximize the increase in pupil capacity on the site
6 when it builds the replacement building, subject to the limits imposed on it
7 pursuant to paragraph (4); and

8 (4) The State Department of Education has determined that the demolition of an
9 existing single story building and replacement with a multistory building at the site is the
10 best available alternative and will not create a school with an inappropriate number of
11 pupils in relation to the size of the site.

12 Subdivision (b) requires the board to establish additional requirements it deems
13 necessary to ensure that the economic interests of the state and the educational
14 interests of the children of the state are protected.

15 ARTICLE 3. NEW CONSTRUCTION ELIGIBILITY DETERMINATION

16 Chapter 935, Statutes of 2002, Section 3, amended Education Code Section
17 17071.75³⁰³ to require that after a one-time initial report of existing school building

³⁰³ Education Code Section 17071.75, added Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 935, Statutes of 2002, Section 3:

"After a one-time initial report of existing school building capacity has been completed, a school district's ongoing eligibility for new construction funding shall be determined by making all of the following calculations:

(a) Each school district that applies to receive funding for new construction shall

1 capacity has been completed, a school district's ongoing eligibility for new construction
2 funding shall be determined by making several calculations including enrollment
3 projections for the fifth year beyond the fiscal year in which the application is made. For
4 a school district with an enrollment of 2,500, or less, an adjustment in enrollment
5 projections shall not result in a loss of ongoing eligibility to that school district for a
6 period of three years from the date of the approval of eligibility by the board.

7 Chapter 407, Statutes of 1998, Section 4, added Education Code Section

calculate enrollment projections for the fifth year beyond the fiscal year in which the application is made. Projected enrollment shall be determined by utilizing the cohort survival enrollment projection system, as defined and approved by the board. The board may supplement the cohort survival enrollment projection by the number of unhoused pupils that are anticipated as a result of dwelling units proposed pursuant to approved and valid tentative subdivision maps.

(b) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for which facilities were provided from any state or local funding source after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10). For this purpose, the total number of pupils for which facilities were provided shall be determined using the pupil loading formula set forth in Section 17071.25.

(c) Subtract the number of pupils pursuant to subdivision (b) from the number of pupils determined pursuant to subdivision (a).

(d) The calculations required to establish eligibility under this article shall result in a distinction between the number of existing unhoused pupils and the number of projected unhoused pupils.

(e) Apply the increase or decrease resulting from the difference between the most recent report made pursuant to Section 42268, and the report used in determining the school district's baseline capacity pursuant to subdivision (a) of Section 17071.25.

(f) For a school district with an enrollment of 2,500, or less, an adjustment in enrollment projections shall not result in a loss of ongoing eligibility to that school district for a period of three years from the date of the approval of eligibility by the board."

1 17071.76³⁰⁴. Subdivision (a) requires that whenever the existing school building
2 capacity in any high school attendance area prevents another high school attendance
3 area from receiving the maximum per-unhoused-pupil grant specified for the school
4 district as a whole, the eligibility shall be computed separately for each high school
5 attendance area, as may be necessary. Subdivision (b) requires that a school district
6 shall also combine, as necessary for the purposes of eligibility, two or more adjacent
7 high school attendance areas pursuant to the following conditions:

8 (1) The funding eligibility is for the construction of a high school, junior high
9 school, or elementary school located or to be located in any of those high school
10 attendance areas;

11 (2) The high school, junior high school, or elementary school to be constructed is

³⁰⁴ Education Code Section 17071.76, added by Chapter 407, Statutes of 1998,
Section 4:

“(a) Whenever the existing school building capacity in any high school attendance area prevents another high school attendance area from receiving the maximum per-unhoused-pupil grant specified for the school district as a whole, the eligibility may be computed separately for each high school attendance area.

(b) For the purposes of eligibility, a school district may combine two or more adjacent high school attendance areas pursuant to the following conditions:

(1) The funding eligibility is for the construction of a high school, junior high school, or elementary school located or to be located in any of those high school attendance areas.

(2) The high school, junior high school, or elementary school to be constructed is to serve pupils residing in each of those high school attendance areas.

(3) The combined eligibility reflects the eligibility to which each of the high school attendance areas would otherwise be entitled, reflecting the proportion of projected pupil enrollment in the school to be constructed, as calculated under this chapter, from each of those attendance areas.”

1 to serve pupils residing in each of those high school attendance areas; or

2 (3) The combined eligibility reflects the eligibility to which each of the high school
3 attendance areas would otherwise be entitled, reflecting the proportion of
4 projected pupil enrollment in the school to be constructed, as calculated under
5 this chapter, from each of those attendance areas.

6 ARTICLE 4. NEW CONSTRUCTION GRANT ELIGIBILITY DETERMINATION

7 Chapter 33, Statutes of 2002, Section 11, amended Education Code Section
8 17072.10³⁰⁵ to require the board to determine the applicant's maximum total new

³⁰⁵ Education Code Section 17072.10, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 33, Statutes of 2002, Section 11:

“(a) The board shall determine the applicant's maximum total new construction grant eligibility by multiplying the number of unhoused pupils calculated pursuant to Article 3 (commencing with Section 17071.75) in each school district with an approved application for new construction, by the per-unhoused-pupil grant as follows:

(1) Five thousand two hundred dollars (\$5,200) for elementary school pupils.

(2) Five thousand five hundred dollars (\$5,500) for middle school pupils.

(3) Seven thousand two hundred dollars (\$7,200) for high school pupils.

(b) The board shall annually adjust the per-unhoused-pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) The board may establish a single supplemental per-unhoused-pupil grant in addition to the amounts specified in subdivision (a) based on the statewide average marginal difference in costs in instances where a project requires multilevel school facilities due to limited acreage. The district's application shall demonstrate that a practical alternative site is not available.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to seven thousand

1 construction grant eligibility.

2 Chapter 647, Statutes of 2001, Section 1, amended Education Code Section
3 17072.12³⁰⁶ Subdivision (a) requires an applicant school district to satisfy the following

five hundred dollars (\$7,500) for any new construction project assistance. The amount of the supplemental apportionment authorized pursuant to this subdivision shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction."

³⁰⁶ Education Code Section 17072.12, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 647, Statutes of 2001, Section 1:

"(a) In addition to the amount provided in Section 17072.10, the board may provide funding for assistance in site development and acquisition if all of the following are met:

(1) The amount of the site acquisition and development assistance does not exceed 50 percent of the cost of site development to the school district, plus the lesser of the following:

(A) 50 percent of the site cost to the school district * * * .

(B) 50 percent of the appraised value of the site within * * * six months of the time the complete application is submitted * * * .

(2) The school district certifies that there is no alternative available site, or that the district plans to sell an available site in order to use the proceeds of the sale for the purchase of the new site.

(b) Notwithstanding subdivision (a), the board may provide funding for assistance in site development and acquisition to a school district that uses land previously acquired by the school district in an amount equal to 50 percent of the cost of site development to the school district, plus 50 percent of the site's appraised value at the time the application for site acquisition and development is submitted, provided all of the following are met:

(1) The site was acquired no less than five years prior to the date the application is submitted.

(2) The site had been productively used by the school district as other than a schoolsite for the five years immediately preceding the date the application is submitted.

(3) The board determines that the nonschool function currently taking place on the site must be discontinued or relocated in order to utilize the site as a schoolsite.

(c) A school district that receives assistance pursuant to subdivision (b) shall,

1 conditions in order to receive funding for assistance in site development and acquisition
2 from the board:

3 (1) The amount of the site acquisition and development assistance does not
4 exceed 50 percent of the cost of site development to the school district, plus the
5 lesser of either 50 percent of the site cost to the school district, or 50 percent of
6 the appraised value of the site within six months of the time the complete
7 application is submitted;

8 (2) The school district certifies that there is no alternative available site, or that
9 the district plans to sell an available site in order to use the proceeds of the sale
10 for the purchase of the new site.

1 Subdivision (b) provides that notwithstanding subdivision (a), a school district that uses
12 land previously acquired by the school district in an amount equal to 50 percent of the
13 cost of site development to the school district, plus 50 percent of the site's appraised
14 value at the time the application for site acquisition and development is submitted to the
15 board, shall, as necessary, receive funding for assistance in site development and
16 acquisition if the following are met:

within one year after the completion of the project, certify in writing to the board that the nonschool function was in fact relocated as set forth in paragraph (4) of subdivision (b).

(d) Pursuant to subdivision (b), an applicant school district shall include in its application to the board a cost-benefit analysis performed by the school district demonstrating how utilizing existing nonschoolsite district property pursuant to this section would be a more effective method of solving the school district's pupil housing problems than any other method of funding under this chapter. The board shall review and approve the analysis if the board agrees with the findings and shall consider the analysis and findings in approving the project pursuant to this section."

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1 (1) The site was acquired no less than five years prior to the date the application
2 is submitted;

3 (2) The site had been productively used by the school district as other than a
4 schoolsite for the five years immediately preceding the date the application is
5 submitted;

6 (3) The board determines that the nonschool function currently taking place on
7 the site must be discontinued or relocated in order to utilize the site as a
8 schoolsite.

9 Subdivision (c) requires a school district receiving assistance pursuant to subdivision (b)
10 to, within one year after the completion of the project, certify in writing to the board that
11 the nonschool function was in fact relocated as set forth in paragraph (4) of subdivision
12 (b). Subdivision (d) requires an applicant school district that, pursuant to subdivision (b)
13 to include in its application to the board a cost-benefit analysis performed by the school
14 district demonstrating how utilizing existing nonschoolsite district property pursuant to
15 this section would be a more effective method of solving the school district's pupil
16 housing problems than any other method of funding under this chapter. The board shall
17 review and approve the analysis if the board agrees with the findings and shall consider
18 the analysis and findings in approving the project pursuant to this section.

19 Chapter 935, Statutes of 2002, Section 4, amended Education Code Section

1 17072.13³⁰⁷ to require funding, in addition to amounts provided pursuant to Section

³⁰⁷ Education Code Section 17072.13, added by Chapter 992, Statutes of 1999, Section 2, as amended by Chapter 935, Statutes of 2002, Section 4:

"In addition to the amounts provided pursuant to Sections 17072.10 and 17072.12, the board may provide site acquisition and hazardous materials evaluation and response action funding for proposed new schoolsites as follows:

(a) (1) For 50 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and for 50 percent of the other response action costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other remedial response action in connection with hazardous substances at that site. Except as provided in subdivision (b), the funding provided pursuant to this section may not exceed 50 percent of ~~a number calculated by subtracting the school district's cost of the site from what the appraised value of the site would be after the response action is completed~~ of the total evaluation and response action costs, including, but not limited to, the costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action, as determined by the Department of Toxic Substances Control, in connection with hazardous substances at that site, pursuant to standards adopted by the board.

(2) For projects eligible for funding under this subdivision, the total state share of the site acquisition costs, including evaluation and response action, shall not exceed 50 percent of 1 ½ times the appraised value of the uncontaminated site. However, the board may exceed this maximum for projects that demonstrate circumstances of extreme need.

(b) (1) The board may provide funding for up to 100 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district eligible for financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10) and for up to 100 percent of the other response action costs for the site. The funding provided pursuant to this subdivision may not exceed 100 percent of ~~a number calculated by subtracting the school district's cost of the site from what the appraised value of the site would be after the response action is completed~~ the total evaluation and response action costs, including, but not limited to, the costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action, as determined by the Department of Toxic Substances Control, in connection with hazardous substances at that site, pursuant to standards adopted by the board.

(2) The board may provide funding pursuant to this subdivision only if the State Department of Education certifies that the site is the best available site considering all of the following factors in relation to other available sites:

(A) The total costs of the project, including, but not limited to, costs of evaluation and response action.

(B) The desirability of the site, considering its proximity to pupils and suitability for meeting the educational and safety needs of the school district.

(C) The time required to fully complete the project in relation to the current and projected need for school facilities.

(3) For projects eligible for funding under this subdivision, the total state share of the site acquisition costs, including evaluation and response action, shall not exceed 100 percent of 1 ½ times the appraised value of the uncontaminated site. However, the board may exceed this maximum for projects that demonstrate circumstances of extreme need.

(c) A school district with a proposed site that meets the environmental hardship criteria set forth in paragraph (1) may apply to the board for site acquisition, including, but not limited to, evaluation and response action, funding for that site prior to having construction plans for that site approved by the Division of the State Architect and State Department of Education. ~~The site acquisition funding is subject to the funding limits provided in subdivisions (a) or (b) and may not result in an increase in the funding limits available to a school district under this section.~~

(1) A project is eligible for environmental hardship site acquisition funding if both of the following apply:

(A) The remedial preparation and implementation of a response action plan for the site, to be approved by the Department of Toxic Substances Control; pursuant to Section 17213, is estimated by the Department of Toxic Substances Control to take six months or more to complete.

(B) The State Department of Education determines that the site is the best available alternative site.

(2) The initial site-specific reservation pursuant to this subdivision shall be for a period of one year. Extension may be approved in one-year intervals upon demonstration to the State Allocation Board of progress toward acquisition, including, but not limited to, evaluation or response, as the case may be. In the event there is not demonstrable progress, the State Allocation Board shall have the option of rescinding the reservation.

(3) Environmental hardship site acquisition funds approved by the State Allocation Board can be used only for the site identified in the response action plan approved by the Department of Toxic Substances Control.

(4) The date that the State Allocation Board approves the environmental hardship site acquisition funding will become the State Allocation Board approval date for the project's construction funding for that site.

1 17072.10 and 1772.12, for site acquisition, and hazardous materials evaluation and
2 response action for proposed new schoolsites. Subdivisions (a) and (b) provide the
3 specific allocations of funds the board may apportion. Subdivision (c) requires that a
4 school district with a proposed site that meets the environmental hardship criteria set
5 forth in paragraph (1) shall, as may be necessary, apply to the board for site acquisition,
6 including, but not limited to, evaluation and response action, funding for that site prior to
7 having construction plans for that site approved by the Division of the State Architect
8 and State Department of Education. A project is eligible for environmental hardship site
9 acquisition if the following apply: the implementation and preparation of a response
10 action for the site to be approved by the Department of Toxic Substances Control is
11 estimated to take six months or more to complete, and the State Department of
12 Education determines that the site is the best available alternative site. Initial site-
13 specific reservation shall be for a period of one year, unless a demonstration is made to
14 the board that progress has been made toward acquisition, including, but not limited to,

(5) A school district may apply to the State Allocation Board for construction funding for the environmental hardship site when the project has received final Division of the State Architect plan approval and final State Department of Education site and plan approval.

(d) The cost incurred by the school districts when complying with any requirement identified in this section are allowable costs for purposes of an applicant under this chapter and may be reimbursed in accordance with ~~Section 17072.12~~ this section.

(e) The State Allocation Board shall develop regulations that allow school districts with financial hardship site acquisition, including, but not limited to, evaluation and response action, funding prior to ownership of the site or evidence that the site is in escrow."

1 evaluation or response. The funds acquired for environmental hardship site acquisition
2 can be used only for the site identified in the response action. A school district shall, as
3 mat be necessary, apply to the board for construction funding for the environmental
4 hardship site when the project has received final Division of the State Architect plan
5 approval and final State Department of Education site and plan approval. Subdivision
6 (d) provides that the cost incurred by the school districts when complying with any
7 requirement identified in this section are allowable costs for purposes of an applicant
8 under this chapter and may be reimbursed in accordance with this section. Subdivision
9 (e) requires the board to develop regulations that allow school districts with financial
10 hardship site acquisition funding prior to ownership of the site or evidence that the site
11 is in escrow.

12 Chapter 935, Statutes of 2002, Section 5, amended Education Code Section
13 17072.18³⁰⁸. Subdivision (a) provides that "the board may provide evaluation and

³⁰⁸ Education Code Section 17072.18, added by Chapter 443, Statutes of 2000,
Section 1, as amended by Chapter 935, Statutes of 2002, Section 5:

" (a) (1) The board may provide evaluation and response action funding for response costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, ~~or other response action in connection with hazardous substances~~ at an existing schoolsite, in the same manner as provided in Section 17072.13.

(2) Funding as set forth in paragraph (1) may be provided to a school district that has not applied for, or received, funds from the board for the acquisition of a new schoolsite, but which has incurred, or will incur, response costs necessary for the development of the site, ~~before it can undertake construction at the site, in accordance with the requirements of this chapter, and which existing schoolsite, if the school district is otherwise eligible to receive funds for funding under this chapter.~~

1 response action funding for response costs of the removal of hazardous waste or solid
2 waste, the removal of hazardous substances, or other response action in connection
3 with hazardous substances at an existing schoolsite, in the same manner as provided in
4 Section 17072.13.” This funding shall, as necessary, be provided to a school district
5 that has not applied for or received funds from the board for the acquisition of a new
6 schoolsite, but which has incurred, or will incur, response costs necessary for the
7 development of an existing schoolsite, if the school district is otherwise eligible for
8 funding under this chapter. Subdivision (b) provides that if the school district is
9 otherwise eligible for funding under this chapter, it may apply for funding pursuant to
10 this section prior to having construction plans for that site approved by the Division of
11 the State Architect or by the State Department of Education.

12 ARTICLE 5. NEW CONSTRUCTION FUNDING PROCESS

13 Chapter 935, Statutes of 2002, Section 6, amended Education Code Section
14 17072.20³⁰⁹. Subdivision (a) provides that an applicant school district that has met the

(b) A school district may apply for funding pursuant to this section prior to having construction plans for that site approved by the Division of the State Architect or by the State Department of Education if the school district is otherwise eligible for funding under this chapter.”

³⁰⁹ Education Code Section 17072.20, added by chapter 407, Statutes of 1998, Section 4, as amended by Chapter 935, Statutes of 2002, Section 6:

“(a) An applicant school district that has been determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) or Article 3 (commencing with Section 17071.75) may submit at any time a request to the board for a project apportionment for all or a portion of the funding for which the school district is eligible.

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1 eligibility requirements for new construction funding set forth in Article 2 "Existing
2 School Building Capacity" or Article 3 "New Construction Eligibility Determination" shall
3 submit at any time, as may be necessary, a request to the board for a project
4 apportionment for all or a portion of the funding for which the school district is eligible.
5 Subdivision (b) requires that the application include, but shall not be limited to, the
6 school district's determination of the amount of state funding that the district is
7 otherwise eligible for relating to site acquisition, site development, new construction,
8 and hardship funding provided pursuant to Article 8 "Hardship Application," if any.
9 Subdivision (c) states that the board shall verify and adjust, as necessary, and approve
10 the district's application.

11 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
12 17072.30 to require that "subject to the availability of funds, and to the determination of
13 priority pursuant to Section 17072.25 [providing the mechanism by which the board

(b) The application shall include, but shall not be limited to, the school district's determination of the amount of state funding that the district is otherwise eligible for relating to site acquisition, site development, new construction, and hardship funding provided pursuant to Article 8 (commencing with Section 17075.10), if any. The amount shall be reduced by the amount of the alternative fee collected pursuant to subdivision (a) of Section 65995.7 of the Government Code if a reimbursement election or agreement pursuant to Section 65995.7 of the Government Code is not in effect.

(c) The board shall verify and adjust, as necessary, and approve the district's application.

~~(d) Unless otherwise requested by an applicant school district, or unless the school district's eligibility is reduced because of an increase in the existing school building capacity as calculated pursuant to subdivision (b) of Section 17071.75, the eligibility for funding determined pursuant to this section shall be effective for a period of three years for school districts having an enrollment of 2,500 or less for the prior fiscal year."~~

1 shall rank the approved applications for new construction funding], the board shall
2 apportion funds to an eligible school district only upon the approval of the project by the
3 Department of General Services pursuant to the Field Act, as defined in Section 17281,
4 and certification by the school district that the required 50 percent matching funds from
5 local sources have been expended by the district for the project, or have been
6 deposited in the county fund, or will be expended by the district by the time the project
7 is completed, in an amount at least equal to the proposed apportionment pursuant to
8 this chapter, prior to release of the state funds.”

9 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
10 17072.32 to require that “for any project that has received an apportionment pursuant to
11 Section 17072.30, funding shall be released in amounts equal to the amount of the
12 local match upon certification by the district that the district has entered into a binding
13 contract for completion of the approved project.”

14 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
15 17072.33 to provide that “in the case of site acquisition, a district may request that the
16 state's share of site assistance be provided to the district in amounts equal to the
17 amount of the local match when the district enters escrow for a site included within a
18 project.”

19 Chapter 935, Statutes of 2002, Section 7, amended Education Code Section
20 17072.35 to provide that “a grant for new construction may be used for any and all
21 costs necessary to adequately house new pupils in any approved project, and those

1 costs may only include the cost of design, engineering, testing, inspection, plan
2 checking, construction management, site acquisition and development, evaluation and
3 response action costs relating to hazardous substances at a new or existing schoolsite,
4 demolition, construction, acquisition and installation of portable classrooms,
5 landscaping, necessary utility costs, utility connections and other fees, equipment
6 including telecommunication equipment to increase school security, furnishings, and the
7 upgrading of electrical systems or the wiring or cabling of classrooms in order to
8 accommodate educational technology. A grant for new construction may also be used
9 to acquire an existing government or privately owned building, or a privately financed
10 school building, and for the necessary costs of converting the government or privately
11 owned building for public school use.”

12 ARTICLE 6. MODERNIZATION ELIGIBILITY DETERMINATION

13 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
14 17073.10 to require that “each school district that desires to receive an apportionment
15 for modernization under this chapter shall submit an application in a form, and in the
16 number of copies, that the board may require.”

17 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
18 17073.15 to provide that “a school district shall be eligible to receive an apportionment
19 for modernization of permanent school buildings that are more than 25 years old, or in
20 the case of portable classrooms that are at least 20 years old, and that have not been
21 previously modernized with state funding.”

1 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
2 17073.20 to provide that "funding may be approved for the modernization of any
3 permanent school building that is more than 25 years old, or, in the case of any
4 portable classroom that is more than 20 years old, as described in Section 17071.30,
5 and that prior to November 4, 1998, had not been previously modernized with state
6 funding."

7 ARTICLE 7. MODERNIZATION APPORTIONMENT

8 Chapter 33, Statutes of 2002, Section 13, amended Education Code Section
9 17074.10³¹⁰ to require the board to determine the total funding eligibility of a school

³¹⁰ Education Code Section 17074.10, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 33, Statutes of 2002, Section 13:

"(a) The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level housed in permanent school buildings that are at least 25 years old or portable classrooms that are at least 20 years old, and that have not been previously modernized with state funding:

(1) Two thousand two hundred forty-six dollars (\$2,246) for each elementary pupil.

(2) Two thousand three hundred seventy-six dollars (\$2,376) for each middle school pupil.

(3) Three thousand one hundred ten dollars (\$3,110) for each high school pupil.

(b) The board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) It is the intent of the Legislature that the amounts provided pursuant to this article for school modernization do not include funding for administrative and overhead

1 district for modernization funding.

2 Chapter 935, Statutes of 2002, Section 9, amended Education Code Section
3 17074.15³¹¹. Subdivision (a) requires the board to release disbursements to school
4 districts with approved applications for modernization, to the extent state funds are
5 available for the state's 80-percent share, and the school district has provided its
6 20-percent local match. Subject to the availability of funds, the board shall apportion
7 funds to an eligible school district only upon the approval of the project by the

costs.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to two thousand five hundred dollars (\$2,500) for any modernization project assistance. The amount of the supplemental apportionment shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction."

³¹¹ Education Code Section 17074.15, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 935, Statutes of 2002, Section 9:

"(a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 80-percent share, and the school district has provided its 20-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required 20-percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) This section shall apply only to an application filed on or before April 29, 2002, regardless of the source of state bond funding."

1 Department of General Services pursuant to the Field Act, as defined in Section 17281,
2 including, but not limited to, a project that complies with the Field Act by complying with
3 Section 17280.5, and evidence that the certification by the school district that the
4 required 20-percent matching funds from local sources have been expended by the
5 district for the project, or have been deposited in the county fund or will be expended by
6 the district by the time of completion of the project, and evidence that the district has
7 entered into a binding contract for the completion of that project. If state funds are
8 insufficient to fund all qualifying school districts, the board shall fund all qualifying
9 school districts in the order in which the application for funding was approved by the
10 board. Subdivision (b) provides that this section shall apply only to an application filed
1 on or before March 15, 2002, regardless of the source of state bond funding.

12 Chapter 935, Statutes of 2002, Section 10, amended Education Code Section
13 17074.16. Subdivision (a) requires that "the board shall release disbursements to
14 school districts with approved applications for modernization, to the extent state funds
15 are available for the state's 60-percent share, and the school district has provided its
16 40-percent local match. Subject to the availability of funds, the board shall apportion
17 funds to an eligible school district only upon the approval of the project by the
18 Department of General Services pursuant to the Field Act, as defined in Section 17281,
19 including, but not limited to, a project that complies with the Field Act by complying with
20 Section 17280.5, and evidence that the certification by the school district that the
21 required 40-percent matching funds from local sources have been expended by the

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1 district for the project, or have been deposited in the county fund or will be expended by
2 the district by the time of completion of the project, and evidence that the district has
3 entered into a binding contract for the completion of that project. If state funds are
4 insufficient to fund all qualifying school districts, the board shall fund all qualifying
5 school districts in the order in which the application for funding was approved by the
6 board" Subdivision (b) requires that "this section shall apply only to an application that
7 was filed after April 29, 2002."

8 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
9 17074.20 to require that "as a condition for the receipt of funds under this article, a
10 school district shall ensure that all buildings modernized comply with Sections 17212
11 [requiring that school sites meet specific geological and engineering studies], 17212.5
12 [requiring that geological and engineering studies are complied, especially in
13 demanding that no school building shall be constructed, reconstructed, or relocated on
14 the trace of a geological fault along which surface rupture can reasonably be expected
15 to occur within the life of the school building], and 17213 [requiring that certain factors
16 are met regarding hazardous or solid waste disposal, and hazardous air emissions
17 before the governing board of a school district approve projects involving the acquisition
18 of a school site by a school district]."

19 Chapter 407, Statutes of 1998, Section 4, added Education Code Section
20 17074.25 to provide that "a modernization apportionment may be used for an
21 improvement to extend the useful life of, or to enhance the physical environment of, the

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

12 Chapter 33, Statutes of 2002, Section 16, added Education Code Section
13 17074.26 which requires that “the board shall adopt regulations to adjust the per-pupil
14 amounts set forth in Section 17074.14 for modernization projects for school buildings
15 that are 50 years old or older based upon the higher costs associated with modernizing
16 older buildings.”

17 Chapter 1075, Statutes of 2002, Section 2, added Education Code Section
18 17074.27 which requires that “in addition to the uses specified in Section 17074.25, a
19 modernization apportionment may also be used for the control, management, or
20 abatement of lead.”

21 Chapter 1075, Statutes of 2002, Section 2, added Education Code Section

1 17074.30 which requires that "commencing with applications submitted after January 1,
2 2004, any school district applying for funding pursuant to this article shall certify that it
3 has considered the potential for the presence of lead-containing materials in the
4 modernization projects and will follow all relevant federal, state, and local standards for
5 the management of any identified lead."

6 ARTICLE 7.5. AUTOMATIC FIRE DETECTION, ALARM, AND SPRINKLER
7 SYSTEMS

8 Chapter 725, Statutes of 2001, Section 2, added Education Code Section
9 17074.50³¹². Subdivision (a) requires that on and after July 1, 2002, all new

³¹² Education Code Section 17074.50, added by Chapter 725, Statutes of 2001,
Section 2:

"(a) On and after July 1, 2002, all new construction projects submitted to the
Division of the State Architect pursuant to this chapter, including, but not limited to;
hardship applications, that require the approval of the Department of General Services
shall include an automatic fire detection, alarm, and sprinkler system as set forth in
Section 17074.52 and approved by the State Fire Marshal.

These provisions shall entitle the school district to all applicable reductions in
code requirements, as provided in the California Building Standards Code (Title 24 of
the California Code of Regulations).

(b) On and after July 1, 2002, all modernization projects that have an estimated
total cost in excess of two hundred thousand dollars (\$200,000) submitted to the
Division of the State Architect pursuant to this chapter, including, but not limited to,
hardship applications, that require the approval of the Department of General Services
shall include an automatic fire detection and alarm system as set forth in Section
17074.52 and approved by the State Fire Marshal. For a modernization project that is to
be completed in more than one phase, the school district may defer installation of the
system until the final phase of the modernization project. Solely for purposes of this
section, "modernization" means any modification of a permanent structure or
construction of a new building on an existing campus.

(c) The Department of General Services shall administer this section based upon
the standards adopted by the State Fire Marshal pursuant to Section 17074.52."

1 construction projects submitted to the Division of the State Architect pursuant to this
2 chapter, including, but not limited to, hardship applications, that require the approval of
3 the Department of General Services shall include an automatic fire detection, alarm,
4 and sprinkler system as set forth in Section 17074.52 and be approved by the State
5 Fire Marshal. These provisions shall entitle the school district to all applicable
6 reductions in code requirements. Subdivision (b) provides that on and after July 1,
7 2002, all modernization projects that have an estimated total cost in excess of two
8 hundred thousand dollars (\$200,000) submitted to the Division of the State Architect
9 pursuant to this chapter, including, but not limited to, hardship applications, that require
10 the approval of the Department of General Services shall include an automatic fire
11 detection and alarm system as set forth in Section 17074.52 and approved by the State
12 Fire Marshal. For a modernization project that is to be completed in more than one
13 phase, the school district may defer installation of the system until the final phase of the
14 modernization project. Solely for purposes of this section, "modernization" means any
15 modification of a permanent structure or construction of a new building on an existing
16 campus.

17 Chapter 725, Statutes of 2001, Section 2, added Education Code Section
18 17074.52³¹³. Subdivision (a) requires that for modernization projects, the automatic fire

³¹³ Education code Section 17074.52, added by Chapter 725, Statutes of 2001, Section 2:

"(a) For modernization projects, the automatic fire detection and alarm system required pursuant to subdivision (b) of Section 17074.50 shall consist of smoke or heat

1 detection and alarm system required pursuant to subdivision (b) of Section 17074.50
2 shall consist of smoke or heat detectors, or a combination thereof, as determined by the
3 State Fire Marshall, installed in the school building. The alarm, upon activation of an
4 initiating device, must alert all occupants and shall transmit the alarm signal to an
5 approved supervising station. Subdivision (b) requires that for new construction
6 projects, the automatic fire detection, alarm, and sprinkler system required pursuant to
7 subdivision (a) of Section 17074.50, shall in addition to compliance with subdivision (a),
8 include an automatic fire sprinkler system installed in the school building including, but
9 not necessarily limited to, attic spaces. Subdivision (c) states that notwithstanding
10 Section 17074.50 or subdivisions (a) or (b) of this section, for a stand alone portable
11 building, the system required pursuant to this article shall consist of an automatic fire
12 detection and alarm system. For the purposes of this subdivision a "stand alone

detectors, or a combination thereof, as determined by the State Fire Marshall, installed
in the school building. The alarm, upon activation of an initiating device, shall alert all
occupants and shall transmit the alarm signal to an approved supervising station.

(b) For new construction projects, the automatic fire detection, alarm, and
sprinkler system required pursuant to subdivision (a) of Section 17074.50, shall in
addition to compliance with subdivision (a), include an automatic fire sprinkler system
installed in the school building including, but not necessarily limited to, attic spaces.

(c) Notwithstanding Section 17074.50 or subdivisions (a) or (b) of this section, for
a stand alone portable building, the system required pursuant to this article shall consist
of an automatic fire detection and alarm system. For the purposes of this subdivision a
"stand alone portable building" means a portable building that is used as a single
classroom and that is sited more than 25 feet from any other building, including, but not
limited to, any other portable building.

(d) Except as required for automatic fire detectors and waterflow detection
devices, manual fire alarm boxes shall not be required throughout the school building.

(e) The entire system shall be installed, tested, and maintained in accordance
with the regulations of the State Fire Marshal."

1 portable building" means a portable building that is used as a single classroom and that
2 is sited more than 25 feet from any other building, including, but not limited to, any other
3 portable building. Subdivision (d) does not require manual fire alarm boxes throughout
4 the school building except as required for automatic fire detectors and waterflow
5 detection devices. Subdivision (e) requires that the entire system shall be installed,
6 tested, and maintained in accordance with the regulations of the State Fire Marshal.

7 Chapter 725, Statutes 2001, Section 2, added by Education Code Section
8 17074.54³¹⁴. Subdivision (a) provides that a portable building that is sited with the intent
9 that it be at the site for less than three years and is sited upon a temporary foundation
10 in a manner that is designed to permit easy removal, is exempt from Sections 17074.50

³¹⁴ Education Code Section 17074.54, added by Chapter 17074.54, Statues of
2001, Section 2:

"(a) A portable building that is sited with the intent that it be at the site for less
than three years and is sited upon a temporary foundation in a manner that is designed
to permit easy removal, is exempt from Sections 17074.50 and 17074.52 for a period of
three years from the date of siting.

(b) After the three-year exemption set forth in subdivision (a), a school district
may request an extension of the exemption for an additional period not to exceed three
additional years. The board shall grant the request if the school district presents
convincing evidence demonstrating to the satisfaction of the board that the extension is
necessary.

(c) For purposes of this section, "portable building" means a classroom building
of modular design and construction that meets all of the following criteria:

(1) It is designed and constructed to be relocatable and transportable over
public streets.

(2) It is designed and constructed for relocation without detaching the roof
or the floor from the building.

(3) It has a floor area of 2,000 square feet or less when measured at the
most exterior walls."

1 and 17074.52 for a period of three years from the date of siting. Subdivision (b)
2 provides that after the three-year exemption set forth in subdivision (a), a school district
3 shall, as may be necessary, request an extension of the exemption for an additional
4 period not to exceed three additional years. If the school district presents convincing
5 evidence demonstrating to the satisfaction of the board that the extension is necessary,
6 the board shall grant the request. Subdivision (c) defines "portable building" to mean a
7 classroom building of modular design and construction that meets specific criteria.

8 Chapter 725, Statutes of 2001, Section 2, added Education Code Section
9 17074.56³¹⁵. Subdivision (a) requires that a method is established to provide up to 100
10 percent of the increased costs of the automatic fire detection, alarm, and sprinkler

³¹⁵ Education Code Section 17074.56, added Chapter 725, Statutes of 2001,
Section 2:

"(a) The State Allocation Board shall adjust the per-pupil grant amount set forth in Section 17072.10 as necessary to accommodate 50 percent of the increased costs due to the automatic fire detection, alarm, and sprinkler system required pursuant to subdivision (a) of Section 17074.50. The board shall adjust the per-pupil grant amount set forth in Section 17074.10 as necessary to accommodate 80 percent of the increased costs due to the automatic fire detection and alarm system required pursuant to subdivision (b) of Section 17074.50. The board shall establish a method to provide up to 100 percent of the increased costs of the automatic fire detection, alarm, and sprinkler, if applicable, systems for school districts which qualify for hardship assistance pursuant to paragraph (1) of subdivision (b) of Section 17075.10.

(b) By July 1, 2003, the board shall review the adequacy of the per-pupil grant adjustments made pursuant to subdivision (a) and shall increase or decrease those adjustments as determined to be necessary.

(c) Any project submitted to the Division of the State Architect on or after September 1, 2001, that includes a qualifying fire detection, alarm, and sprinkler, if applicable, system, and that has not been fully funded prior to July 1, 2002, shall be eligible for grant or eligibility adjustments as set forth in this article. "

1 systems for school districts which qualify for hardship assistance. Subdivision (c)
2 requires that any project submitted to the Division of the State Architect on or after
3 September 1, 2001, that includes a qualifying fire detection, alarm, or sprinkler system,
4 and that has not been fully funded prior to July 1, 2002, shall be eligible for grant or
5 eligibility adjustments as set forth in this article.

6 ARTICLE 8. HARDSHIP APPLICATION

7 Chapter 33, Statutes of 2002, Section 17, amended Education Code Section
8 17075.10³¹⁶. Subdivision (a) provides that a school district shall, as may be necessary,

³¹⁶ Education Code Section 17075.10, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 33, Statutes of 2002, Section 17:

“(a) A school district may apply for hardship assistance in cases of extraordinary circumstances.

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

(1) Demonstrate both of the following:

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

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

(2) Demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities.

(c) The board shall review the increased costs that may be uniquely associated with urban construction and shall adjust the per-pupil grant for new construction, or modernization, hardship applications as necessary to accommodate those costs. The board shall adopt regulations setting forth the standards, methodology, and a schedule of allowable adjustments, for the urban adjustment factor established pursuant to this subdivision.”

1 apply for hardship assistance in cases of extraordinary circumstances. Subdivision (b)
2 requires a school district applying for hardship state funding under this article to comply
3 with either paragraph (1) or (2). Paragraph (1) requires a demonstration that due to
4 extreme financial, disaster-related, or other hardship the school district has unmet need
5 for pupil housing. The school district must also demonstrate that it is not financially
6 capable of providing the matching funds otherwise required for state participation, that
7 the district has made all reasonable efforts to impose all levels of local debt capacity
8 and development fees, and that the school district is, therefore, unable to participate in
9 the program pursuant to this chapter except as set forth in this article. Alternatively,
10 paragraph (2) requires a demonstration that due to unusual circumstances that are
11 beyond the control of the district, excessive costs need to be incurred in the
12 construction of school facilities. Subdivision (c) states that the board shall review the
13 increased costs that may be uniquely associated with urban construction and shall
14 adjust the per-pupil grant for new construction, or modernization, hardship applications
15 as necessary to accommodate those costs. The board shall adopt regulations setting
16 forth the standards, methodology, and a schedule of allowable adjustments, for the
17 urban adjustment factor established pursuant to this subdivision.

18 Chapter 33, Statutes of 2002, Section 18, amended Education Code Section
19 17075.15³¹⁷. Subdivision (a) requires that funds available from any bond act for the

³¹⁷ Education Code Section 17075.15, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 33, Statutes of 2002, Section 18:

(a) From funds available from any bond act for the purpose of funding facilities for school districts with a financial hardship, the board may provide other construction, modernization, or relocation assistance as set forth in this chapter or Chapter 14 (commencing with Section 17085) to the extent that severe circumstances may require, and may adjust or defer the local financial participation, as pupil health and safety considerations require to the extent that bond act funds are provided for this purpose.

(b) The board shall adopt regulations for determining the amount of funding that may be provided to a district, and the eligibility and prioritization of funding, under this article.

(c) ~~The regulations shall include a method for determining~~ define the amount, and sources, of financing that the school district could reasonably provide for school facilities. Further, the regulations shall also specify a method for determining required levels of local effort to obtain matching funds as follows:

(1) Unencumbered funds available in all facility accounts in the school district including, but not limited to, fees on development, redevelopment funds, sale proceeds from surplus property, funds generated by certificates of participation for facility purposes, bond funds, federal grants, and other funds available for school facilities, as the board may determine.

(2) The board may exclude from consideration all funds encumbered for a specific capital outlay purpose, a reasonable amount for interim housing, and other funds that the board may find are not reasonably available for the project.

(d) Further, the regulations shall also specify a method for determining required levels of local effort to obtain matching funds. The regulations shall include consideration of at least all of the following factors:

(1) Whether the school district has passed a bond measure within the two-year period immediately preceding the application for funding under this article, the proceeds of which are substantially available for use in the project to be funded under this chapter, but remains unable to provide the necessary matching share requirement.

(2) Whether the school district has a current outstanding bonded indebtedness, which shall include general obligation bonds, Mello-Roos bonds, school facility improvement district bonds, certificates of participation, and other debt instruments upon which the school district is paying a debt service, of at least 60 percent of the school district's total bonding capacity, as determined by the board.

(3) Whether the total bonding capacity, as defined in Section 15102 or 15106, as applicable, is five million dollars (\$5,000,000) or less, in which case, the school district shall be deemed eligible for financial hardship.

(4) Whether the application for funding under this article is from a county superintendent of schools.

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1 purpose of funding facilities for school districts with a financial hardship, shall, as
2 necessary, be allocated to provide other construction, modernization, or relocation
3 assistance as set forth in this chapter or Chapter 14 "State Relocatable Classroom Law
4 of 1979" (commencing with Section 17085) to the extent that severe circumstances
5 may require. The board shall, as may be necessary, adjust or defer the local financial
6 participation, as pupil health and safety considerations require to the extent that bond
7 act funds are provided for this purpose. Subdivision (b) requires the board to adopt
8 regulations for determining the amount of funding that may be provided to a district, and
9 the eligibility and prioritization of funding, under this article. Subdivision (c) requires the
10 regulations to define the amount, and sources, of financing that the school district could
11 reasonably provide for school facilities as follows:

12 (1) Unencumbered funds available in all facility accounts in the school district
13 including, but not limited to, fees on development, redevelopment funds, sale
14 proceeds from surplus property, funds generated by certificates of participation
15 for facility purposes, bond funds, federal grants, and other funds available for
16 school facilities, as the board may determine;

17 (2) The board shall exclude from consideration all funds encumbered for a
18 specific capital outlay purpose, a reasonable amount for interim housing, and

(5) Whether the school district submits other evidence of substantial local effort acceptable to the board.

(6) The value of any unused local general obligation debt capacity, and developer fees added to the needs analysis to reflect the district's financial hardship, available for the purposes of school facilities financing. "

1 other funds that the board may find are not reasonably available for the project.

2 Subdivision (d) requires that the regulations also specify a method for determining
3 required levels of local effort to obtain matching funds. The regulations shall include
4 consideration of the following factors:

5 (1) Whether the school district has passed a bond measure within the two-year
6 period immediately preceding the application for funding under this article, the
7 proceeds of which are substantially available for use in the project to be funded
8 under this chapter, but remains unable to provide the necessary matching share
9 requirement;

10 (2) Whether the school district has a current outstanding bonded indebtedness,
11 which shall include general obligation bonds, Mello-Roos bonds, school facility
12 improvement district bonds, certificates of participation, and other debt
13 instruments upon which the school district is paying a debt service, of at least 60
14 percent of the school district's total bonding capacity, as determined by the
15 board;

16 (3) Whether the total bonding capacity, as defined in Section 15102 or 15106, as
17 applicable, is five million dollars (\$5,000,000) or less, in which case, the school
18 district shall be deemed eligible for financial hardship;

19 (4) Whether the application for funding under this article is from a county
20 superintendent of schools;

21 (5) Whether the school district submits other evidence of substantial local effort

1 acceptable to the board; and

2 (6) The value of any unused local general obligation debt capacity, and
3 developer fees added to the needs analysis to reflect the district's financial
4 hardship, available for the purposes of school facilities financing.

5 ARTICLE 9. PROGRAM ACCOUNTABILITY

6 Chapter 33, Statutes of 2002, Section 19, amended Education Code Section
7 17076.10³¹⁸. Subdivision (a) requires a school district that has received any funds

³¹⁸ Education Code Section 17076.10, added by Chapter 407, Statutes of 1998, Section 4, as amended by Chapter 33, Statutes of 2002, Section 19:

“(a) A school district that has received any funds pursuant to this chapter shall submit a summary report of expenditure of state funds and of district matching funds annually until all state funds and district matching funds are expended, and shall then submit a final report to the board. The board may require an audit of these reports or other district records to ensure that all funds received pursuant to this chapter are expended in accordance with program requirements.

(b) If the board finds that a participating school district has made no substantial progress towards increasing its pupil capacity or modernizing its facilities within 18 months of the receipt of any funding pursuant to this chapter, the board shall rescind the apportionment in an amount equal to the unexpended funds.

(c) If the board, after the review of expenditures or audit has been conducted pursuant to subdivision (a), determines that a school district failed to expend funds in accordance with this chapter, the department shall notify the school district of the amount that must be repaid to the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, within 60 days. If the school district fails to make the required payment within 60 days, the department shall notify the Controller and the school district in writing, and the Controller shall deduct an amount equal to the amount received by the school district under this subdivision, from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained by the Controller shall be deposited into the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as appropriate.

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1 pursuant to this chapter to submit a summary report of expenditure of state funds and
2 of district matching funds annually until all state funds and district matching funds are
3 expended. The school district must then submit a final report to the board. The board
4 shall, as may be necessary, require an audit of these reports or other district records to
5 ensure that all funds received pursuant to this chapter are expended in accordance with
6 program requirements. Subdivision (b) requires the board to rescind the apportionment
7 in an amount equal to the unexpended funds if the board finds that a participating
8 school district has made no substantial progress towards increasing its pupil capacity or
9 modernizing its facilities within 18 months of the receipt of any funding pursuant to this
10 chapter. Subdivision (c) provides that if the board, after the review of expenditures or
11 audit has been conducted pursuant to subdivision (a), determines that a school district
12 failed to expend funds in accordance with this chapter, the department shall notify the
13 school district of the amount that must be repaid to the 1998 State School Facilities
14 Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund,
15 as the case may be, within 60 days. If the school district fails to make the required
16 payment within 60 days, the department shall notify the Controller and the school
17 district in writing, and the Controller shall deduct an amount equal to the amount
18 received by the school district under this subdivision, from the school district's next

(d) If a school district has received an apportionment, but has not met the criteria to have funds released pursuant to Section 17072.32 or 17074.15 within a period established by the board, but not to exceed 18 months, the board shall rescind the apportionment and deny the district's application. "

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1 principal apportionment or apportionments of state funds to the school district, other
2 than basic aid apportionments required by Section 6 of Article IX of the California
3 Constitution (providing for minimum salary requirements teachers, minimum state
4 allocated funds for each student, and certain retirement funds). Any amounts obtained
5 by the Controller shall be deposited into the 1998 State School Facilities Fund, the
6 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as
7 appropriate. Subdivision (d) requires the board to rescind the apportionment and deny
8 the district's application if a school district has received an apportionment, but has not
9 met the criteria to have funds released pursuant to Section 17072.32 or 17074.15 within
10 a period established by the board, but not to exceed 18 months.

11 Chapter 133, Statutes of 1999, Section 1, added Education Code Section
12 17076.11 to require that "any school district using funds allocated pursuant to this
13 chapter for the construction or modernization of a school building, shall have a
14 participation goal of at least 3 percent, per year, of the overall dollar amount expended
15 each year by the school district, for disabled veteran business enterprises."

16 ARTICLE 10. SCHOOL PROJECT SAFETY COMPONENTS

17 Chapter 709, Statutes of 1999, Section 1, added Education Code Section
18 17077.10³¹⁹. Subdivision (a) provides that eventually pupil safety will be enhanced by

³¹⁹ Education Code Section 17077.10, added by Chapter 709, Statutes of 1999,
Section 1:

"(a) It is a goal of the Legislature to eventually enhance pupil safety by equipping
all elementary and secondary school classrooms with a telephone hook connected to a

1 equipping all elementary and secondary school classrooms with a telephone hook
2 connected to a public switched network. Subdivision (b) requires that schools should,
3 as may be necessary, be integrated into local emergency, information, and interagency
4 health and safety, networks with up-to-date telecommunications systems in order to
5 protect the safety of pupils. Connection to these systems would also facilitate
6 community and parent interaction with teachers and schools, and thereby further
7 enhance pupil safety. Subdivision (c) defines "school building" to mean and include
8 any building used, or designed to be used, for elementary or secondary school

public switched network.

(b) The Legislature finds and declares that as of 1999, there are approximately 205,000 classrooms in California's elementary and secondary schools and only a small, undetermined percentage of these classrooms have telephones. The Legislature finds and declares that in order to protect the safety of pupils, schools should be integrated into local emergency, information, and interagency health and safety, networks with up-to-date telecommunications systems. Connection to these systems would also facilitate community and parent interaction with teachers and schools, and thereby further enhance pupil safety.

(c) "School building" as used in this section means and includes any building used, or designed to be used, for elementary or secondary school purposes and constructed, reconstructed, altered, or added to, by the state or by any city or city and county, or by any political subdivision, or by any school district of any kind within the state, or by any regional occupational center or program, established by or authorized to act by any agreement under joint exercise of power, or by the United States government, or any agency thereof. This definition includes any fabrication, construction, or alteration of a relocatable school building.

(d) Commencing with applications submitted on or after January 1, 2000, any school district applying for funding pursuant to this chapter shall include in its plans and specifications for the construction or fabrication of a new or modernized school building, that includes the construction or fabrication of new or modernized classrooms, a hard-wired connection to a public switched telephone network in each new or modernized classroom. However, a school district may meet this requirement by utilizing wireless technology equal to a hard-wired connection to a public switched telephone network."

1 purposes and constructed, reconstructed, altered, or added to, by the state or by any
2 city or city and county, or by any political subdivision, or by any school district of any
3 kind within the state, or by any regional occupational center or program, established by
4 or authorized to act by any agreement under joint exercise of power, or by the United
5 States government, or any agency thereof. This definition includes any fabrication,
6 construction, or alteration of a relocatable school building. Subdivision (d) requires all
7 school districts applying for funding pursuant to this chapter, with an application
8 submitted on or after January 1, 2000, to include in their plans and specifications for the
9 construction or fabrication of a new or modernized school building with the construction
10 or fabrication of new or modernized classrooms, a hard-wired connection to a public
11 switched telephone network in each new or modernized classroom. However, a school
12 district may meet this requirement by utilizing wireless technology equal to a hard-wired
13 connection to a public switched telephone network.

14 ARTICLE 10.5. ENERGY EFFICIENCY

15 Chapter 33, Statutes of 2002, Section 2, renumbered Education Code Section
16 17077.30³²⁰. Subdivision (a) requires the applicant school district to certify, as part of its

³²⁰ Former Education Code Section 17077.10, added by Chapter 981, Statutes of 1999, Section 1, renumbered as Section 17077.30 to avoid duplicate code sections by Chapter 33, Statutes of 2002, Section 21:

“(a) As part of the requirements for submission of an application to the State Allocation Board for funding pursuant to this chapter for any new construction or modernization project, the applicant school district may, at the time of submission of the final drawings to the Division of the State Architect, certify that an energy analysis and report has been prepared that sets forth the utility savings that would be generated if

1 application to the State Allocation Board for funding pursuant to this chapter for any
2 new construction or modernization project at the time of submission of the final
3 drawings to the Division of the State Architect, that an energy analysis and report has
4 been prepared that sets forth the utility savings that would be generated if the facilities
5 were designed, constructed, and equipped, with the energy efficiency and renewable
6 technologies that would make the facilities exceed the minimum building
7 energy-efficiency standards mandated for new public buildings pursuant to the latest
8 edition of the California Building Standards Code through the use of energy efficiency
9 and renewable energy technologies. Subdivision (b) requires the energy analysis and

the facilities were designed, constructed, and equipped, with the energy efficiency and renewable technologies that would make the facilities exceed the minimum building energy-efficiency standards mandated for new public buildings pursuant to the latest edition of the California Building Standards Code through the use of energy efficiency and renewable energy technologies.

(b) The energy analysis and report shall include a verifiable life-cycle cost analysis for each proposed energy conservation measure and renewable energy that may include, but need not be limited to, photovoltaic parking lot and security lighting, and solar swimming pool and domestic water heating, showing a return on investment of less than 15 years.

(c) The cost of the energy analyses and reports shall not exceed:

(1) Seven thousand five hundred dollars (\$7,500) per project for elementary schools.

(2) Ten thousand dollars (\$10,000) per project for middle schools.

(3) Fifteen thousand dollars (\$15,000) per project for high schools.

(d) An applicant school district may count the following funds or expenditures toward meeting the local matching funds requirement under this chapter:

(1) The amount from any local sources actually expended on the project by the applicant school district for an energy audit.

(2) The amount actually applied to the project from any incentive, grant, or rebate, received by the applicant school district from a program funded pursuant to Section 381 of the Public Utilities Code."

1 report to include a verifiable life-cycle cost analysis for each proposed energy
2 conservation measure and renewable energy that may include, but need not be limited
3 to, photovoltaic parking lot and security lighting, and solar swimming pool and domestic
4 water heating, showing a return on investment of less than 15 years. Subdivision (c)
5 prohibits the cost of the energy analyses and reports from exceeding: (1) Seven
6 thousand five hundred dollars (\$7,500) per project for elementary schools; (2) Ten
7 thousand dollars (\$10,000) per project for middle schools; or (3) Fifteen thousand
8 dollars (\$15,000) per project for high schools. Subdivision (d) requires an applicant
9 school district to, as may be necessary, count the following funds or expenditures
10 toward meeting the local matching funds requirement under this chapter: (1) the
11 amount from any local sources actually expended on the project by the applicant school
12 district for an energy audit, and (2) the amount actually applied to the project from any
13 incentive, grant, or rebate, received by the applicant school district from a program
14 funded pursuant to Section 381 of the Public Utilities Code.

15 Chapter 33, Statutes of 2002, Section 22, added Education Code Section
16 17077.35. Subdivision (a) requires that "an applicant school district may include plan
17 design and other project components that seek school facility energy efficiency
18 approaching the ultimate goal of school facility energy self-sufficiency, and may seek a
19 grant adjustment for the state's share of the increased costs associated with those
20 components." Subdivision (b) provides that energy efficiency components that are
21 eligible for inclusion into a project pursuant to this section include, but are not limited to,

1 conservation, load reduction technologies, peakload shifting, solar water heating
2 technologies, the use of ground source temperatures for heating and cooling,
3 photovoltaics, and technologies that meet the emerging technology eligibility criteria
4 established by the State Energy Resources Conservation and Development
5 Commission. A project that received funding from the renewable energy program
6 administered by the State Energy Resources Conservation and Development
7 Commission is not eligible for a grant adjustment under this section. Subdivision (c)
8 requires that "in order to be eligible for the grant adjustment pursuant to this section, the
9 building proposed for the project, including the energy-efficiency and renewable energy
10 measures utilized pursuant to this section, shall exceed the nonresidential building
11 energy-efficiency standards by an amount not less than 15 percent for new construction
12 projects and not less than 10 percent for modernization projects, and shall be shown to
13 provide sufficient energy savings to return the cost of the initial investment in the project
14 over a period not to exceed seven years. The applicant shall certify that the cost for the
15 project exceeds the amount of funding otherwise available to the applicant under this
16 chapter." Subdivision (d) requires that "the board shall provide an applicant for a new
17 construction or modernization project with a grant adjustment to provide an increase not
18 to exceed 5 percent of its state grants authorized by Sections 17072.10 and 17074.10
19 for the state's share of costs associated with design and other plan components related
20 to school facility energy efficiency as set forth in this article."
21

1 ARTICLE 10.6 JOINT-USE FACILITIES

2 Chapter 33, Statutes of 2002, Section 23, added Education Code Section
3 17077.40³²¹. Subdivision (a) requires that the board shall, as may be necessary,
4 provide a grant, from funds made available for the purposes of this article, to fund
5 joint-use projects to construct facilities on kindergarten to grade 12, inclusive,
6 schoolsites. Subdivision (b) requires a school district, as may be necessary, to apply to
7 the board for funding under this article for a project that meets any of the following
8 criteria:

³²¹ Education code Section 17077.40, added by Chapter 33, Statutes of 2002,
Section 23:

“(a) With funds made available for the purposes of this article, the board may provide a grant to fund joint-use projects to construct facilities on kindergarten to grade 12, inclusive, schoolsites.

(b) A school district may apply to the board for funding under this article for a project that meets any of the following criteria:

(1) The joint-use project is a part of an application for new construction funding under this chapter, and is for the purpose of providing facilities to be used for a kindergarten to grade 12/higher education collaborative effort for any of the following purposes:

(A) To improve pupil academic achievement.

(B) To provide teacher education.

(C) To provide childcare facilities.

(2) The joint-use project is part of an application for new construction funding under this chapter, and will increase the size or extra cost associated with the joint use of the proposed multipurpose room, gymnasium, childcare facility, or library beyond that necessary for school use.

(3) The joint-use project is for a kindergarten to grade 12/higher education collaborative effort to improve academic achievement or provide teacher education, or a multipurpose room, gymnasium, library, or childcare facility, and the project will be located at a school that does not have the type of facility for which funds are requested or the existing facility is inadequate. “

1 (1) The joint-use project is a part of an application for new construction funding
2 under this chapter, and is for the purpose of providing facilities to be used for a
3 kindergarten to grade 12/higher education collaborative effort to improve pupil
4 academic achievement, to provide teacher education, or to provide childcare
5 facilities;

6 (2) The joint-use project is part of an application for new construction funding
7 under this chapter, and will increase the size or extra cost associated with the
8 joint use of the proposed multipurpose room, gymnasium, childcare facility, or
9 library beyond that necessary for school use; or

10 (3) The joint-use project is for a kindergarten to grade 12/higher education
11 collaborative effort to improve academic achievement or provide teacher
12 education, or a multipurpose room, gymnasium, library, or childcare facility, and
13 the project will be located at a school that does not have the type of facility for
14 which funds are requested or the existing facility is inadequate.

15 Chapter 33, Statutes of 2002, Section 23, added Education Code Section
16 17077.42 to provide that "in order to be approved for a grant under this article, the
17 applicant district shall demonstrate that it has complied with all of the following: (a) the
18 school district has entered into a joint-use agreement with a governmental agency,
19 public community college, public college or public university, or a nonprofit organization
20 approved by the board; (b) the joint-use agreement specifies the method of sharing
21 capital and operating costs, specifies relative responsibilities for the operation and

1 staffing of the facility, and specifies the manner in which the safety of the pupils will be
2 ensured; (c) the joint-use partner has agreed to provide matching funds for 50 percent
3 of the eligible costs under this article; (d) the school district demonstrates that the
4 facility will be used to the maximum extent possible for both school and community
5 purposes, or both school and higher education purposes, as applicable; (e)(1) the
6 project application qualifies for funding under paragraph (1) or (2) of subdivision (b) of
7 Section 17077.40 and the school district has received all approvals necessary for
8 apportionment under this chapter, (2) the project qualifies for funding under paragraph
9 (3) of subdivision (b) of Section 17077.40 and the school district has completed
10 preliminary plans for the project and has received State Department of Education
11 approval of the plans. “

12 Chapter 935, Statutes of 2002, Section 11, amended Education Code Section
13 17077.45³²². Subdivision (a) requires the board to establish standards for determining

³²² Education Code Section 17077.45, added by Chapter 33, Statutes of 2002, Section 23, as amended by Chapter 935, Statutes of 2002, Section 11:

“(a) The board shall establish standards for determining the amount of the supplemental grant funding to be made available for each project under this article.

(1) For a project application qualifying for funding under paragraph (1) or (2) of subdivision (b) of Section 17077.40, the supplemental grant shall be in the form of an adjustment to the per-pupil eligibility of the project. This per-pupil eligibility adjustment shall be calculated to cover costs associated with the project that are uniquely related to the joint-use nature of the project, including, but not limited to, any increased costs associated with planning the joint-use aspect of the project.

(2) For a project application qualifying under paragraph (3) of subdivision (b), the supplemental grant may be provided without regard to the existence of per-pupil eligibility pursuant to this chapter, and may be expressed on

1 the amount of the supplemental grant funding to be made available for each project
2 under this article. For a project application qualifying for funding under paragraph (1) or
3 (2) of subdivision (b) of Section 17077.40, the supplemental grant shall be in the form
4 of an adjustment to the per-pupil eligibility of the project, which shall be calculated to
5 cover costs associated with the project that are uniquely related to the joint-use nature
6 of the project. For a project application qualifying under paragraph (3) of subdivision
7 (b), the supplemental grant may be provided without regard to the existence of per-pupil
8 eligibility pursuant to this chapter, and may be expressed on per-square-foot cost basis,
9 on a per-pupil cost basis, or on a per-project cost basis. Subdivision (b) provides that
10 notwithstanding any other provision of this chapter, project costs may exceed the

per-square-foot cost basis, on a per-pupil cost basis, or on a per-project cost basis.

(b) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards established pursuant to subdivision (a) only if the excess is paid completely by local or joint-use partner sources.

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

(d) If the total funding for the purposes of this article is not sufficient to fund all of the joint-use projects for funding under this article, the board shall fund projects eligible under paragraphs (1), (2), and (3) of subdivision (b) of Section 17077.40 in that order. The board may establish other priority standards within that order, as necessary.

(e) Except as expressly provided in this article, projects funded pursuant to this article shall comply with all other requirements of this chapter, except for Article 11 (commencing with Section 17078.10), which shall apply only to projects under this article if they also qualify for funding under Article 11 (commencing with Section 17078.10)."

1 board's standards established pursuant to subdivision (a) only if the excess is paid
2 completely by local or joint-use partner sources. Subdivision (c) requires that the board
3 apportion, on July 1 of each year, to qualifying applicant school districts those funds
4 that it determines are available for the purpose of this article. The board shall not
5 release funds to a qualifying applicant until the project plans have received all approval
6 required pursuant to this chapter, including, but not limited to, the approval of the
7 Division of the State Architect. If the project does not receive all necessary plan
8 approvals within one year of the date of the apportionment, the board shall rescind the
9 apportionment. Subdivision (d) requires the board to fund projects eligible under
10 paragraphs (1), (2), and (3) of subdivision (b) of Section 17077.40 in that order if the
11 total funding for the purposes of this article is not sufficient to fund all of the joint-use
12 projects for funding under this article. The board may establish other priority standards
13 within that order, as necessary. Subdivision (e) requires that except as expressly
14 provided in this article, projects funded pursuant to this article shall comply with all other
15 requirements of this chapter, except for Article 11 "Critically Overcrowded School
16 Facilities," which shall apply only to projects under this article if they also qualify for
17 funding under Article 11.

18 ARTICLE 11. CRITICALLY OVERCROWDED SCHOOL FACILITIES

19 Chapter 33, Statutes of 2002, Section 24, added Article 11 (commencing with
20 Section 17078.10) to Chapter 12.5 of Part 10 of the Education Code.

21 Chapter 33, Statutes of 2002, Section 24, added Education Code Section

1 17078.10³²³. Subdivision (a) requires the board to administer the Critically
2 Overcrowded School Facilities Program. Subdivision (e) establishes the 2002 Critically
3 Overcrowded School Facilities Account within the 2002 State School Facilities Fund,
4 and the 2004 Critically Overcrowded School Facilities Account within the 2004 State
5 School Facilities Fund. Funds reserved for the purposes of this article shall be placed,
6 as appropriate, in these account. The funds must be made available exclusively for
7 projects eligible under this article until the funds are made available for other purposes
8 of this chapter pursuant to Section 17078.30.

9 Chapter 33, Statutes of 2002, Section 24, added Education Code Section

³²³ Education Code Section 17078.10, added by Chapter 33, Statutes of 2002,
Section 24:

"(a) There is hereby established the Critically Overcrowded School Facilities Program to be administered by the board.

(b) For the purposes of this article, "preliminary application" means an application for a preliminary apportionment pursuant to this article.

(c) For the purposes of this article, "preliminary apportionment" means an apportionment made for eligible applicants with critically overcrowded schools in advance of full compliance with all of the application requirements otherwise required for an apportionment pursuant to this chapter.

(d) For the purposes of this article, "final apportionment" has the same meaning as "apportionment" as set forth in subdivision (a) of Section 17070.15.

(e) There is hereby established the 2002 Critically Overcrowded School Facilities Account within the 2002 State School Facilities Fund, and the 2004 Critically Overcrowded School Facilities Account within the 2004 State School Facilities Fund, for the purposes of this article. Funds reserved for the purposes of this article shall be placed in those accounts, as appropriate, and shall be available exclusively for projects eligible under this article until the funds are made available for other purposes of this chapter pursuant to Section 17078.30."

1 17078.15³²⁴. Subdivision (d) prohibits a school district that elects to utilize
2 per-unhoused-pupil eligibility pursuant to this chapter to support a project pursuant to
3 this article, from simultaneously utilizing that same eligibility to support any other
4 application pursuant to this chapter.

5 Chapter 33, Statutes of 2002, Section 24, added Education Code Section
6 17078.18 to require that "projects funded under this article shall meet all of the following
7 criteria: (a) the project is a new construction project to build new pupil capacity to relieve
8 overcrowding; (b) the proposed school facility shall be located in the proposed general
9 location, as set forth in Section 17078.22, of the school or schools that have the

³²⁴ Education Code Section 177078.15, added by Chapter 33, Statutes of 2002,
Section 24:

"(a) Unless this article expressly provides otherwise, the provisions contained in
the other articles of this chapter shall apply with equal force to a project funded under
this article. This article shall control over the provisions of this chapter contained in
other articles only to the extent that this article expressly conflicts with those provisions.

(b) This article shall apply only to a project that is otherwise eligible under this
chapter and that meets both of the following criteria:

(1) The project meets the criteria set forth in Section 17078.18.

(2) The project is to be funded from the proceeds of state bonds approved
by the voters at the November 5, 2002, statewide general election, or the 2004
direct primary election or the 2004 statewide general election, as the case may
be, that were expressly reserved in the bond act or acts for the purposes set
forth in this article.

(c) The state share of project costs and the state per-unhoused-pupil new
construction apportionments for programs eligible under this article shall be equal to the
share and amounts otherwise provided by the board pursuant to this chapter, including,
but not limited to, any applicable adjustments or supplements otherwise authorized
pursuant to this chapter.

(d) A school district that elects to utilize per-unhoused-pupil eligibility pursuant to
this chapter to support a project pursuant to this article, shall not simultaneously utilize
that same eligibility to support any other application pursuant to this chapter."

1 conditions and pupils that establish the eligibility pursuant to this article as set forth in
2 subdivision (c); and (c) at least 75 percent of the projected pupil occupancy of the
3 project facilities shall come from a source school or source schools that have a site
4 pupil population density greater than 115 pupils per acre in grades kindergarten to six,
5 inclusive, or a site pupil population density greater than 90 pupils per acre in grades
6 seven to 12, inclusive, as determined by the Superintendent of Public Instruction using
7 enrollment data from the California Basic Educational Data System for the 2001-02
8 school year. For source schools with grades that include a combination of kindergarten
9 to six, inclusive, and seven to 12, inclusive, the controlling source schoolsite pupil
10 population density shall be the one applicable to the grade levels in which the majority
11 of the pupils are enrolled at the source school.”

12 Chapter 935, Statutes of 2002, Section 12, amended Education Code Section
13 17078.20³²⁵. Subdivision (a) requires that information be disseminated to school

³²⁵ Education Code Section 17078.20, added by Chapter 33, Statutes of 2002, Section 24, as amended by Chapter 935, Statutes of 2002, Section 12:

“(a) The board shall disseminate information to school districts regarding the availability of funding pursuant to this article and the appropriate deadlines for applications.

(b) Applicants for funding pursuant to this article shall submit preliminary applications to the board.

(c) The preliminary applications shall be submitted by May 1, 2003, for projects to be funded with the proceeds of bonds approved by the voters at the November 5, 2002, statewide general election.

(d) Preliminary applications shall be accepted by the board during the period between 60 days before and 120 days after, the 2004 direct primary election, or the 2004 statewide general election, as appropriate for projects to be funded with the proceeds of bonds approved by the voters at the 2004 direct primary election, or the

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1 districts regarding the availability of funding pursuant to this article and the appropriate
2 deadlines for applications. Subdivision (b) requires applicants seeking funding pursuant
3 to this article to submit preliminary applications to the board. Subdivision (c) requires
4 that the preliminary applications be submitted by May 1, 2003, for projects to be funded
5 with the proceeds of bonds approved by the voters at the November 5, 2002, statewide
6 general election. Subdivision (d) provides that preliminary applications will be accepted
7 by the board during the period between 60 days before and 120 days after, the 2004
8 direct primary election, or the 2004 statewide general election, as appropriate for
9 projects to be funded with the proceeds of bonds approved by the voters at the 2004
10 direct primary election, or the 2004 statewide general election, as appropriate.

11 Subdivision (e) requires that if funds are insufficient to fully fund all of the preliminary
12 applicants, the board shall apportion first to those projects that would house pupils from
13 source schools with the highest pupil density levels relative to the State Department of
14 Education standards.

15 Chapter 33, Statutes of 2002, Section 24, added Education Code Section
16 17078.22³²⁶. Subdivision (a) requires that preliminary applications shall: (1) establish

2004 statewide general election, as appropriate.

(e) If funds are insufficient to fully fund all of the preliminary applicants, the board shall apportion first to those projects that would house pupils from source schools with the highest pupil density levels relative to the State Department of Education standards.”

³²⁶ Education Code Section 17078.22, added by Chapter 33, Statutes of 2002, Section 24:

1 per-unhoused-pupil eligibility as set forth in Article 3 "New Construction Eligibility
2 Determination," (2) identify the unhoused pupil population that the proposed project will
3 serve by determining the number of pupils to be served and the likely source school or
4 schools from which the pupils population will be drawn, (3) identify the proposed
5 general location of the needed new facilities, and (4) estimate the total facility cost on a
6 per-pupil basis and estimate the total site acquisition and development costs pursuant
7 to the regulations adopted pursuant to subdivision (c) of Section 17078.24. Subdivision
8 (b) provides that the State Department of Education shall, as may be necessary, grant

"(a) The preliminary applications shall do all of the following:

(1) Establish per-unhoused-pupil eligibility as set forth in Article 3
(commencing with Section 17071.75).

(2) Identify the unhoused pupil population that the proposed project will
serve by determining the number of pupils to be served and the likely source
school or schools from which the pupils population will be drawn.

(3) Identify the proposed general location of the needed new facilities
pursuant to any of the following:

(A) Within that portion of the attendance area from which one or
more elementary schools that would be a source of the per-pupil eligibility
for the proposed facility draws its enrollment, or within a one-mile radius of
a source school, or within a one-mile radius of any one of the source
schools if there are more than one, whichever is greater.

(B) Within the attendance area of a high school, middle school, or
junior high school that would be a source of the per-pupil eligibility for the
proposed facility or within a three-mile radius of a source school, or within
a three-mile radius of any one of the source schools if there are more than
one, whichever is greater.

(4) Estimate the total facility cost on a per-pupil basis and estimate the
total site acquisition and development costs pursuant to the regulations adopted
pursuant to subdivision (c) of Section 17078.24.

(b) The State Department of Education may grant a variance from the distance
maximums set forth in paragraph (3) of subdivision (a) if the school district
demonstrates to the satisfaction of the department that the variance is necessary in
order to adequately provide facilities for the identified source school pupils."

1 a variance from the distance maximums set forth in paragraph (3) of subdivision (a) if
2 the school district demonstrates to the satisfaction of the department that the variance
3 is necessary in order to adequately provide facilities for the identified source school
4 pupils.

5 Chapter 33, Statutes of 2002, Section 24, added Education Code Section
6 17078.24. Subdivision (a) requires that "on the basis of the preliminary application and
7 upon confirmation by the board of the applicant's eligibility, the board shall in a timely
8 manner make a preliminary apportionment for applicants under this article exclusively
9 from funds reserved expressly for the purposes of this article." Subdivision (b) requires
10 that "preliminary apportionments for site development and acquisition included in the
11 preliminary application pursuant to subdivision (a) of Section 17078.22 shall be based
12 either on the preliminary appraisal, if available, or on the median costs of appropriately
13 sized parcels within the qualifying area, as determined by the board." Subdivision (c)
14 requires that "preliminary apportionments shall include the total estimated state costs of
15 the project, including, but not limited to, site acquisition and development costs related
16 to evaluations and elimination of hazardous materials, an inflation factor, any applicable
17 excess cost allowances, and hardship costs, if any. The board shall adopt regulations
18 establishing standards and methods for setting these costs and for making related
19 estimates."

20 Chapter 33, Statutes of 2002, Section 24, added Education Code Section

1 17078.25³²⁷. Subdivision (a) requires that within the maximum time period set forth in
2 Section 17078.30 (providing that all funds reserved for the purposes of this article from
3 the proceeds of state bonds approved by the voters at the 2004 direct primary election
4 pursuant to preliminary apportionment that are not included within a final apportionment

³²⁷ Education Code Section 17078.28, added by Chapter 33, Statutes of 2002,
Section 24:

“(a) Within the maximum time period set forth in Section 17078.30, the applicant shall have a period of up to four years from the date of the preliminary apportionment in which to complete the application for final apportionment.

(b) The applicant may request a single one-year extension of the period set forth in subdivision (a). The board shall grant the request for the single one-year extension if it determines that the applicant has made substantial progress towards completing the requirements for filing an application for final apportionment. The board may grant only one one-year extension for the project and may only grant the extension if granting the extension would not, in total, cause the project to exceed the maximum time period set forth in Section 17078.30.

(c) The board shall adopt regulations setting forth standards for determining the existence of substantial progress within the meaning of subdivision (b).

(d) The governing board of a school district shall report annually to the State Allocation Board regarding the progress made toward completing the requirements for filing an application for final apportionment, and shall annually hold, at a regularly scheduled meeting of the governing board, a public hearing pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code) to discuss, and to receive public comment regarding, the report.

(e) In its first annual report the governing board of the school district shall certify that the State Department of Education has determined in writing that there is at least one approvable site within the proposed general location of the proposed facility identified pursuant to paragraph (3) of subdivision (a) of Section 17078.22, or within the variance location authorized pursuant to subdivision (b) of Section 17078.22.

(f) If the applicant for the one-year extension pursuant to subdivision (b) has not made substantial progress to complete the application process within the allotted time period, the preliminary apportionment shall be rescinded and shall be utilized by the board for funding of other projects that have received a preliminary apportionment pursuant to this article, or at the expiration of the maximum time allowed pursuant to Section 17078.30, the board shall use the funds for any other new construction purpose of this chapter.”

1 shall thereafter be available to the board for apportionment for any new construction
2 purpose), the applicant shall have a period of up to four years from the date of the
3 preliminary apportionment in which to complete the application for final apportionment.
4 Subdivision (b) requires the applicant to request, as may be necessary, a single
5 one-year extension of the period set forth in subdivision (a). The board shall grant the
6 request for the single one-year extension if it determines that the applicant has made
7 substantial progress towards completing the requirements for filing an application for
8 final apportionment. The board may grant only one one-year extension for the project
9 and may only grant the extension if granting the extension would not, in total, cause the
10 project to exceed the maximum time period set forth in Section 17078.30. Subdivision
11 (c) requires the board to adopt regulations setting forth standards for determining the
12 existence of substantial progress within the meaning of subdivision (b). Subdivision (d)
13 requires the governing board of a school district to report annually to the State
14 Allocation Board regarding the progress made toward completing the requirements for
15 filing an application for final apportionment, and shall annually hold, at a regularly
16 scheduled meeting of the governing board, a public hearing to discuss, and to receive
17 public comment regarding, the report. Subdivision (e) requires the governing board of
18 the school district to certify in its first annual report that the State Department of
19 Education has determined in writing that there is at least one approvable site within the
20 proposed general location of the proposed facility identified pursuant to paragraph (3) of
21 subdivision (a) of Section 17078.22, or within the variance location authorized pursuant

1 to subdivision (b) of Section 17078.22. Subdivision (f) requires the preliminary
2 apportionment be rescinded and utilized by the board for funding other projects that
3 have received a preliminary apportionment pursuant to this article if the applicant for the
4 one-year extension pursuant to subdivision (b) has not made substantial progress
5 toward completing the application process within the allotted time period, or at the
6 expiration of the maximum time allowed pursuant to Section 17078.30. The board shall
7 use the funds for any other new construction purpose of this chapter.

8 Chapter 33, Statutes of 2002, Section 24, added Education Code Section
9 17078.27. Subdivision (a) requires that "upon completion of the preliminary process
10 authorized pursuant to this article, and when a preliminary applicant has complied with
11 the conditions set forth in this chapter for a final apportionment, including, but not
12 limited to, Section 17070.50 [providing that no funds will be apportioned to a school
13 district unless the applicant school district has certified that the services of any
14 architect, structural engineer, or other design professional for any work under the
15 project has been obtained and written approval of the State Department of Education
16 that the site selection, and building plans and specifications, comply with adopted
17 standards], the board shall adjust the preliminary apportionment as set forth in
18 subdivision (b) and as necessary to reflect the current eligible grant amounts for final
19 apportionments pursuant to this chapter consistent with regulations adopted pursuant to
20 subdivision (c) of Section 17078.24. The board shall then convert the adjusted
21 preliminary apportionment to a final apportionment and proceed to completion of the

1 project in the same manner as for any project funded under provisions of this chapter
2 other than this article.” Subdivision (b) requires that “the board may adjust for cost
3 increases only if uncommitted funds reserved expressly for the purposes of this article
4 remain available for those purposes.”

5 Chapter 935, Statutes of 2002, Section 12, amended Education Code Section
6 17078.30³²⁸. Subdivision (a) requires that a portion of the funds reserved for the

³²⁸ Education Code Section 17078.30, added by Chapter 33, Statutes of 2002, Section 24, as amended by Chapter 935, Statutes of 2002, section 12:

“(a) (1) A portion of the funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election that are not included in a preliminary apportionment for an application that is received by the deadline specified in subdivision (c) of Section 17078.20 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(2) The amount of funds that shall be made available to the board for purposes other than this article, pursuant to this subdivision, shall be calculated as follows:

(A) Add the total amount preliminarily apportioned to 15 percent of that amount.

(B) Take the number calculated pursuant to subparagraph (A) and subtract that number from the amount originally reserved for the purposes of this article.

(C) The number calculated pursuant to subparagraph (B) shall thereafter be available to the board for any new construction purpose under any other article of this chapter.

(3) All funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election pursuant to a preliminary apportionment that are not included within a final apportionment within the timeframes permitted by Section 17078.25 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(b) (1) A portion of the funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the 2004 direct

1 purposes set forth in this article from the proceeds of state bonds approved by the
2 voters at the November 5, 2002, statewide general election that are not included in a
3 preliminary apportionment for an application that is received by the deadline specified in
4 subdivision (c) of Section 17078.20 shall thereafter be available to the board for
5 apportionment for any new construction purpose under any other article of this chapter.
6 All funds reserved for the purposes set forth in this article from the proceeds of state
7 bonds approved by the voters at the November 5, 2002, statewide general election
8 pursuant to a preliminary apportionment that are not included within a final
9 apportionment within the timeframes permitted by Section 17078.25 shall thereafter be

primary election, or the 2004 statewide general election, as appropriate, that are not included in a preliminary apportionment for an application that is received by the deadline specified in subdivision (d) of Section 17078.20 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(2) The amount of funds that shall be made available to the board for purposes other than this article, pursuant to this subdivision, shall be calculated as follows:

(A) Add the total amount preliminarily apportioned to 15 percent of that amount.

(B) Take the number calculated pursuant to subparagraph (A) and subtract that number from the amount originally reserved for the purposes of this article.

(C) The number calculated pursuant to subparagraph (B) shall thereafter be available to the board for any new construction purpose under any other article of this chapter.

(3) All funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the 2004 direct primary election, or the 2004 statewide general election, as appropriate, pursuant to a preliminary apportionment that are not included within a final apportionment within the timeframes permitted by Section 17078.25 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter."

1 available to the board for apportionment for any new construction purpose under any
2 other article of this chapter. Subdivision (b) provides that a portion of the funds
3 reserved for the purposes set forth in this article from the proceeds of state bonds
4 approved by the voters at the 2004 direct primary election, or the 2004 statewide
5 general election, that are not included in a preliminary apportionment for an application
6 that is received by the deadline specified in subdivision (d) of Section 17078.20 shall
7 thereafter be available to the board for apportionment for any new construction purpose
8 under any other article of this chapter. All funds reserved for the purposes set forth in
9 this article from the proceeds of state bonds approved by the voters at the 2004 direct
10 primary election pursuant to a preliminary apportionment that are not included within a
11 final apportionment within the timeframes permitted by Section 17078.25 shall
12 thereafter be available to the board for apportionment for any new construction purpose
13 under any other article of this chapter.

14 CHAPTER 13. TRANSFER OF EXCESS FUNDS

15 Chapter 277, Statutes of 1996, Section 2, added³²⁹ Education Code Section
16 17080. Subdivision (a) provides that " notwithstanding any other provision of law,
17 whenever moneys transferred to the General Fund each year from (1) moneys
18 deposited in the Public School Building Loan Fund pursuant to Section 15735, and (2)
19 moneys deposited in the State School Building Aid Fund pursuant to Section 16080,

³²⁹ Former Education Code Section 17780, (added by Chapter 282, Statutes of 1979, Section 8), relating to similar subject matter as new Section 17080, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 are in excess of the amounts required to reimburse the General Fund on account of
2 principal and interest due and payable for that fiscal year on all school building aid
3 bonds outstanding against the state, an amount equal to such excess is appropriated
4 from the General Fund for purposes of the Leroy F. Greene State School Building
5 Lease-Purchase Law of 1976 and Section 17584 [State School Deferred Maintenance].
6 The Controller shall transfer, as directed by the State Allocation Board, such
7 appropriated amount to the State School Building Lease-Purchase Fund and to the
8 State School Deferred Maintenance Fund, which is hereby established.” Subdivisions
9 (b) and (c) refer to the State School Deferred Maintenance Fund.

10 CHAPTER 14. EMERGENCY SCHOOL CLASSROOM LAW OF 1979

1 ARTICLE 1. GENERAL PROVISIONS

12 Chapter 277, Statutes of 1996, Section 2, added³³⁰ Education Code Section
13 17085 to state that “this chapter may be cited as the State Relocatable Classroom Law
14 of 1979.”

15 Chapter 277, Statutes of 1996, Section 2, added³³¹ Education Code Section
16 17086 to provide that “in adopting this chapter, the Legislature recognizes that the ad
17 valorem tax is no longer available as a source of revenue for the construction of

³³⁰ Former Education Code Section 17785, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17085, was repealed by Chapter 277, Statutes of 1996, Section 1.

³³¹ Former Education Code Section 17786, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17086, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 necessary school facilities. The Legislature considers that the greatest need in school
2 construction is for classrooms for the education of public school pupils. It is the intent
3 of the Legislature to satisfy this primary need to the greatest extent possible before
4 providing any additional educational facilities, regardless of how desirable such
5 additional facilities may be.”

6 Chapter 277, Statutes of 1996, Section 2, added³³² Education Code Section
7 17087 to define the terms “as used in this chapter: (a) "Board" means the State
8 Allocation Board; (b) "State School Building Aid Fund" means that fund established
9 pursuant to Section 16096; and (c) "Lessee" means a school district or county
10 superintendent of schools to whom the board has leased a portable classroom pursuant
11 to this chapter.”

12 Chapter 277, Statutes of 1996, Section 2, added³³³ Education Code Section
13 17088³³⁴ to establish the powers and duties granted to the board under this chapter.

³³² Former Education Code Section 17787, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17087, was repealed by Chapter 277, Statutes of 1996, Section 1.

³³³ Former Education Code Section 17788, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17088, was repealed by Chapter 277, Statutes of 1996, Section 1.

³³⁴ Education Code Section 17088, added by Chapter 277, Statutes of 1996, Section 2:

“In addition to any other powers and duties as are granted the board by this chapter, other statutes, or the State Constitution, the board has the power to do each of the following:

(a) Establish any qualifications not in conflict with other provisions of this chapter,

1 Chapter 277, Statutes of 1996, Section 2, added³³⁵ Education Code Section
2 17088.3. Subdivision (a) requires that "no school district shall qualify for the lease
3 under this chapter, after January 1, 1990, of one or more portable classrooms except
4 upon submitting a study examining the feasibility of implementing in the district a
5 year-round multitrack educational program that is designed to increase pupil capacity in
6 the district by at least 20 percent." Subdivision (b) requires that "emergency or urgency
7 conditions within a school district shall constitute grounds for approval by the board,

as it deems will best serve the purposes of this chapter, for determining the eligibility of school districts and county superintendents of schools to lease portable classrooms under this chapter.

(b) Establish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(c) Adopt any rules and regulations for the administration of this chapter requiring such procedure, forms, and information, as it may deem necessary.

(d) Have constructed, furnished, equipped, or otherwise require whatever work is necessary to place, portable classrooms on schoolsites where needed.

(e) Own, have maintained, and lease portable classrooms to qualifying school districts and county superintendents of schools.

(f) From any moneys in the State School Building Aid Fund available for purposes of this chapter, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance, pursuant to this chapter, required by Section 15504 of the Government Code.

(g) Notwithstanding any other provision of law, from any funds available to the board, the board may, no later than January 15 of any year, make available to the Director of General Services up to thirty-five million dollars (\$35,000,000) for expenditure in the subsequent school year. It is the intent of the Legislature that this allocation be annually funded from an appropriation made for this purpose by the Legislature in the Budget Act for the fiscal year in which the board is to act to make that funding available. These funds shall be utilized to purchase portable classrooms for the purposes of this section."

³³⁵ Former Education Code Section 17788.3, (added by Chapter 1246, Statutes of 1987, Section 3) relating to similar subject matter as Section 17088.3, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 pending submission of the report.” Subdivision (c) requires that “subdivision (a) does
2 not apply to facilities that are designated as uninhabitable after July 1, 1989, due to fire
3 or other health or safety conditions.” Subdivision (d) requires that “subdivision (a) does
4 not apply to a school district for leases or subleases under this chapter for the purpose
5 of providing facilities, pursuant to subdivision (c) of Section 17091, for licensed child
6 day care programs or recreation or enrichment activities or programs for schoolage
7 children.”

8 Chapter 277, Statutes of 1996, Section 2, added³³⁶ Education Code Section
9 17088.5³³⁷. Subdivision (a) allows the board to empower any lessee to act as its agent

³³⁶ Former Education Code Section 17788.5, (added by Chapter 886, Statutes of 1986, Section 24) relating to similar subject matter as Section 17088.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

³³⁷ Education Code Section 17088.5, added by Chapter 277, Statutes of 1996, Section 2:

“(a) The board may empower any lessee to act as its agent in the performance of acts authorized under this chapter with regard to portable classrooms to be made available to that lessee, including, but not necessarily limited to, contracting for architectural and construction services and purchasing furniture and equipment.

(b) In addition, where any qualifying school district or county superintendent of schools is deemed by the board to be eligible under this chapter for the lease of portable classrooms, but adequate funds are not at that time available to the board for the purchase of those classrooms, the board may authorize the school district or county superintendent of schools to purchase portable classrooms, to the extent of that eligibility, pursuant to the following conditions:

(1) The portable classrooms are purchased under a procedure determined by the board, pursuant to either a bidding process implemented by the school district or county superintendent of schools or by the State Office of Procurement.

(2) To the extent that funding for purposes of this chapter is subsequently made available to the board, the board shall purchase the portable classroom or

1 in the performance of acts authorized under this chapter with regard to portable
2 classrooms to be made available to that lessee, including, but not necessarily limited to,
3 contracting for architectural and construction services and purchasing furniture and
4 equipment. Subdivision (b) provides that where any qualifying school district or county
5 superintendent of schools is deemed for the lease of portable classrooms, but
6 adequate funds are not at that time available to the board for the purchase of those
7 classrooms, the board shall, as may be necessary, authorize the school district or
8 county superintendent of schools to purchase portable classrooms, to the extent of that
9 eligibility if:

10 (1) The portable classrooms are purchased under a procedure determined by
11 the board, pursuant to either a bidding process implemented by the school
12 district or county superintendent of schools or by the State Office of
13 Procurement; and

14 (2) To the extent that funding for purposes of this chapter is subsequently made
15 available to the board, the board shall purchase the portable classroom or

classrooms from the school district or county superintendent of schools, for lease to that entity under this chapter, for an amount, not to exceed the purchase price the board determines it would have paid for the classroom or classrooms at the time they were acquired pursuant to paragraph (1), as necessary to reimburse the school district or county superintendent of schools for the purchase price, less the amount that would have been charged to the school district or county superintendent of schools for the lease of the classroom or classrooms under Section 17089 from the date of purchase. The sale of the portable classroom or classrooms under this paragraph shall be at the discretion of the school district or county superintendent of schools."

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1 classrooms from the school district or county superintendent of schools, for lease
2 to that entity under this chapter, for an amount, not to exceed the purchase price
3 the board determines it would have paid for the classroom or classrooms at the
4 time they were acquired pursuant to paragraph (1), as necessary to reimburse
5 the school district or county superintendent of schools for the purchase price,
6 less the amount that would have been charged to the school district or county
7 superintendent of schools for the lease of the classroom or classrooms under
8 Section 17089 from the date of purchase. The sale of the portable classroom or
9 classrooms under this paragraph shall be at the discretion of the school district
10 or county superintendent of schools.

11 Chapter 277, Statutes of 1996, Section 2, added³³⁸ Education Code Section
12 17088.7³³⁹. Subdivision (a) requires that any school district, or, under a joint powers

³³⁸ Former Education Code Section 17788.7, (added by Chapter 667, Statutes of 1989, Section 1) relating to similar subject matter as Section 17088.7, was repealed by Chapter 277, Statutes of 1996, Section 1.

³³⁹ Education Code Section 17088.7, added by Chapter 277, Statutes of 1996, Section 2:

“(a) Any school district, or, under a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, any combination of one or more school districts or county superintendents of schools, may, to the extent of the eligibility of the school district or of the parties to the joint powers agreement to lease portable classrooms under this chapter, purchase portable classrooms as provided in this section.

(b) The number of portable classrooms which may be purchased pursuant to this section, on a statewide basis, shall not exceed 200 in any given year, and shall not exceed 600 in total. Portable classrooms purchased prior to September 22, 1989, are exempt from the yearly limit of 200, but shall be counted towards the total limit of 600.

1 agreement, any combination of one or more school districts or county superintendents
2 of schools, shall, to the extent of the eligibility of the school district or of the parties to
3 the joint powers agreement to lease portable classrooms under this chapter, purchase
4 portable classrooms as provided in this section. Subdivision (b) limits the number of
5 portable classrooms which may be purchased pursuant to this section, on a statewide
6 basis, to not exceed 200 in any given year, and shall not exceed 600 in total. Portable
7 classrooms purchased prior to September 22, 1989, are exempt from the yearly limit of
8 200, but shall be counted towards the total limit of 600. Subdivision (c) provides that
9 the purchase costs of the portable classrooms, which include costs of site preparation,

(c) The purchase costs of the portable classrooms, which include costs of site preparation, furniture and equipment, toilet facilities as described in Section 65980 of the Government Code, and the transportation of classrooms, may be funded from revenues received by the school district or districts pursuant to Section 17620. The purchase shall comply with any procedures and policies established by the board under this chapter for the purchase of portable classrooms. All portable classrooms purchased pursuant to this section are the property of the state.

(d) The board shall lease the portable classrooms purchased pursuant to the authority granted in this section to the purchaser, as described in subdivision (a), in accordance with this chapter, including applicable eligibility standards, and the purchase costs paid shall be credited toward the rent the purchaser would otherwise be required to pay under this chapter as a lessee.

(e) In the event that the purchase of portable classrooms under this section occurs pursuant to a joint powers agreement, as described in subdivision (a), the agreement shall identify the school district or districts and county superintendent or superintendents of schools that are party to the agreement, identify the district or districts providing the revenues, specify the manner in which the revenues are to be expended, and specify the distribution of portable classrooms subsequent to purchase, which distribution shall be in accordance with the eligibility requirements of this chapter. The agreement shall be subject to approval of the board, pursuant to subdivision (b) and any applicable procedures and policies established by the board under this chapter.”

1 furniture and equipment, toilet facilities, and the transportation of classrooms, may be
2 funded from revenues received by the school district or districts pursuant to Section
3 17620 (providing the circumstances for levies against development projects by school
4 districts). The purchase shall comply with any procedures and policies established by
5 the board under this chapter. All portable classrooms purchased pursuant to this
6 section are the property of the state. Subdivision (d) requires the board to lease the
7 portable classrooms purchased pursuant to the authority granted in this section to the
8 purchaser, as described in subdivision (a), in accordance with this chapter, including
9 applicable eligibility standards, and the purchase costs paid shall be credited toward the
10 rent the purchaser would otherwise be required to pay under this chapter as a lessee.
11 Subdivision (e) requires the agreement, in the event that the purchase of portable
12 classrooms under this section occurs pursuant to a joint powers agreement, as
13 described in subdivision (a), identify the school district or districts and county
14 superintendent or superintendents of schools that are party to the agreement, identify
15 the district or districts providing the revenues, specify the manner in which the revenues
16 are to be expended, and specify the distribution of portable classrooms subsequent to
17 purchase, which distribution shall be in accordance with the eligibility requirements of
18 this chapter. The agreement shall be subject to board approval, pursuant to subdivision
19 (b) and any applicable procedures and policies established by the board under this
20 chapter.

1 Chapter 277, Statutes of 1996, Section 2, added³⁴⁰ Education Code Section
2 17089. Subdivision (a) requires that “the board shall lease portable classrooms to
3 qualifying school districts and county superintendents of schools for not less than one
4 dollar (\$1) per year, nor more than four thousand dollars (\$4,000) per year, for each
5 portable classroom, which amount shall be annually increased according to the
6 adjustment for inflation set forth in the statewide cost index for classroom construction,
7 as determined by the board at its January meeting.” Subdivision (b) provides that “the
8 board shall require each lessee to undertake all necessary maintenance, repairs,
9 renewal, and replacement to ensure that a project is at all times kept in good repair,
10 working order, and condition. All costs incurred for this purpose shall be borne by the
lessee.”

12 Chapter 848, Statutes of 1998, Section 1, amended³⁴¹ Education Code Section
13 17089.2³⁴² to require any portable classroom that is leased from the board by a school

³⁴⁰ Former Education Code Section 17789, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17089, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁴¹ Former Education Code Section 17789.2, (added by Chapter 333, Statutes of 1991, Section 2) relating to similar subject matter as Section 17089.2, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁴² Education Code Section 17089.2, added by Chapter 277, Statutes of 1996, Section 2, as amended by Chapter 848, Statutes of 1998, Section 1:

“Any portable classroom that is leased from the board by a school district or county superintendent of schools under this chapter on * * * or prior to December 1, 1991, may be purchased by that district or county superintendent of schools for an amount equal to the purchase price paid by the board, including the purchase costs

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1 district or county superintendent of schools under this chapter on or prior to December
2 1, 1991, be purchased, as may be necessary, by that district or county superintendent
3 of schools for an amount equal to the purchase price paid by the board, including the
4 purchase costs specified in subdivision (c) of Section 17088.7, less the amount of any
5 rent already paid to the board by the district or county superintendent of schools for that
6 classroom. Payment for purchases made pursuant to this section shall be in equal
7 annual installments for an agreed upon term not to exceed nine years.

8 Chapter 277, Statutes of 1996, Section 2, added³⁴³ Education Code Section
9 17089.5 to provide that "the board may lease portable classrooms to any school district
10 or county superintendent of schools which serves infant or preschool individuals with
11 exceptional needs, as defined in Section 56026, and which operates programs
12 pursuant to Part 30 [Special Education Programs] (commencing with Section 56000).
13 These portable classrooms shall be adequately equipped to meet the educational
14 needs of these students, including, but not limited to, sinks and restroom facilities."

15 Chapter 277, Statutes of 1996, Section 2, added³⁴⁴ Education Code Section

specified in subdivision (c) of Section 17088.7, less the amount of any rent already paid
to the board by the district or county superintendent of schools for that classroom.
Payment for purchases made pursuant to this section shall be in equal annual
installments for an agreed upon term not to exceed nine years."

³⁴³ Former Education Code Section 17789.5, (added by Chapter 576, Statutes of 1986, Section 1) relating to similar subject matter as Section 17089.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁴⁴ Former Education Code Section 17790, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17090, was repealed by

1 17090 which requires that "the board shall require lessees to insure at their own
2 expense for the benefit of the state, any leased portable classroom which is the
3 property of the state, against such risks, including liability from the use thereof, in such
4 amounts as the board may deem necessary to protect the interest of the state. All
5 payments resulting from claims made against the insurance shall be made payable to
6 and retained by the board for deposit in the State School Building Aid Fund."

7 Chapter 277, Statutes of 1996, Section 2, added³⁴⁵ Education Code Section
8 17091. Subdivision (a) requires that "the board shall have authority to adopt rules
9 establishing priorities for the acquisition and leasing of classrooms to those school
10 districts and county superintendents of schools whose pupils will benefit most. The
11 board may make exceptions from the established priorities if it determines that the
12 pupils affected will benefit." Subdivision (b) provides that "if at any time the number of
13 portable classrooms available exceeds the number of those required by applicant
14 districts, as determined by basic loading standards and eligibility requirements, the
15 board may authorize additional portable classrooms to be placed in any school district
16 that agrees to hire an additional teacher for each additional portable classroom placed
17 in the district pursuant to this subdivision." Subdivision (c) requires that "if at any time
18 the number of portable classrooms available exceeds the number of those required by

Chapter 277, Statutes of 1996, Section 1.

³⁴⁵ Former Education Code Section 17791, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17091, was repealed by Chapter 277, Statutes of 1996, Section 1.

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1 applicant districts, as determined by basic loading standards and eligibility
2 requirements, the board shall authorize additional portable classrooms to be placed in
3 any school district, upon request of the school district, for the purpose of providing
4 licensed child day care programs or recreation or enrichment activities or programs for
5 schoolage children on a schoolsite, unless the surplus classrooms are needed for
6 emergency purposes.”

7 Chapter 590, Statutes of 2000, Section 3, amended³⁴⁶ Education Code Section
8 17092³⁴⁷. Subdivision (a) requires that unless the district furnishes evidence,
9 satisfactory to the board, that the district has no available bond proceeds that could be
10 used for the purchase of classroom facilities, portable classrooms shall not be made

³⁴⁶ Former Education Code Section 17792, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17092, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁴⁷ Education Code Section 17092, added by Chapter 277, Statutes of 1996, Section 2, as amended by Chapter 590, Statutes of 2000, Section 3:

“(a) No portable classrooms shall be made available to any school district unless the district furnishes evidence, satisfactory to the board, that the district has no available bond proceeds that could be used for the purchase of classroom facilities.

(b) Notwithstanding any other provision of law, a school district or county superintendent of schools that has received approval for a project that includes a justified number of new teaching stations pursuant to Chapter 12 (commencing with Section 17000) or Chapter 12.5 (commencing with Section 17070.15) shall be eligible for at least the same number of emergency portable classrooms as approved new teaching stations.

(c) Subdivision (a) does not apply to leases or subleases under this chapter for the purpose of providing facilities, pursuant to subdivision (c) of Section 17091, for licensed child day care programs or any recreation or enrichment activities or programs for schoolage children.”

1 available to any school district. Subdivision (b) requires that notwithstanding any other
2 provision of law, a school district or county superintendent of schools that has received
3 approval for a project that includes a justified number of new teaching stations pursuant
4 to Chapter 12 "Leroy F. Greene School Building Lease-Purchase Law of 1976" or
5 Chapter 12.5 "Leroy F. Greene School Facilities Act of 1998" shall be eligible for at
6 least the same number of emergency portable classrooms as approved new teaching
7 stations. Subdivision (c) provides that subdivision (a) does not apply to leases or
8 subleases under this chapter for the purpose of providing facilities, pursuant to
9 subdivision (c) of Section 17091, for licensed child day care programs or any recreation
10 or enrichment activities or programs for school-age children.

1 Chapter 277, Statutes of 1996, Section 2, added³⁴⁸ Education Code Section
12 17092.3 to require a school district, as may be necessary, to "sublease any portable
13 classroom obtained by the district pursuant to subdivision (c) of Section 17091 to a
14 private provider that has entered into a contract with the district to provide any child
15 care and development program or programs or any recreation or enrichment activities
16 or programs for schoolage children on a schoolsite. The terms of the sublease for
17 rental payments and other related costs shall not exceed the costs of the portable
18 classroom to the district."

³⁴⁸ Former Education Code Section 17792.3, (added by Chapter 1183, Statutes of 1994, Section 4) relating to similar subject matter as Section 17092.3, was repealed by Chapter 277, Statutes of 1996, Section 1.

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1 Chapter 277, Statutes of 1996, Section 2, added³⁴⁹ Education Code Section
2 17093 which requires that "the board shall have prepared for its use, performance
3 specifications for portable classrooms complying with Sections 17280 to 17314,
4 inclusive, which are capable of being economically moved, and bids for the construction
5 of which can be solicited from more than one responsible bidder. The board may from
6 time to time solicit bids from, and award to, the lowest responsible competitive bidder,
7 contracts for the construction or purchase of the number of portable classrooms it
8 deems will be required by eligible school districts and county superintendents of
9 schools during the next 12 months."

10 Chapter 277, Statutes of 1996, Section 2, added³⁵⁰ Education Code Section
11 17094 to provide that "if at any time the board determines that a lessee's need for
12 particular portable classrooms which were made available to the lessee pursuant to this
13 chapter has ceased, the board may take possession of the portable classrooms and
14 may lease them to other eligible districts or county superintendents of schools, or if
15 there is no longer a need for any portable classrooms, the board may dispose of them
16 to public or private parties in any manner that it deems to be in the best interests of the
17 state. Any revenue which is derived from a lease or other disposition of the portable

³⁴⁹ Former Education Code Section 17793, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17093, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁵⁰ Former Education Code Section 17794, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17094, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 classrooms pursuant to this section shall be deposited in the State School Building Aid
2 Fund.”

3 Chapter 277, Statutes of 1996, Section 2, added³⁵¹ Education Code Section
4 17095 to provide that “the State Board of Education may waive application of the
5 penalty provisions of Section 41376 for school districts which during the school year
6 used portable classrooms leased pursuant to this chapter.”

7 Chapter 709, Statutes of 1999, Section 2, added Education Code Section 17096
8 to require that “commencing with leases entered into on or after January 1, 2000, the
9 plans and specifications for portable classrooms funded pursuant to this chapter shall
10 include a provision for a telephone in each portable classroom. The connection from
11 the portable classroom to a public switched telephone network, as set forth in Section
12 17077.10, shall be made by the school district at the time of the installation of the
13 building. However, a school district may meet this requirement by utilizing wireless
14 technology equivalent to a hard-wired connection to a public switched telephone
15 network.”

³⁵¹ Former Education Code Section 17795, (added by Chapter 282, Statutes of 1979, Section 9) relating to similar subject matter as Section 17095, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 CHAPTER 15. SCHOOL DISTRICT REVENUE BONDS

2 ARTICLE 1. GENERAL PROVISIONS

3 Chapter 277, Statutes of 1996, Section 2, added³⁵² Education Code Section
4 17100³⁵³ to declare that the two sources available to school districts to finance the
5 construction of school facilities to relieve overcrowding are: the State School Building
6 Lease-Purchase Fund, pursuant to Section 17008, and the proceeds from the sale or
7 lease of surplus school property.

8 ARTICLE 2. REVENUE BONDS

9 Chapter 277, Statutes of 1996, Section 2, added³⁵⁴ Education Code Section
10 17110³⁵⁵ to require that the governing board of a school district shall, as may be

³⁵² Former Education Code Section 17800, (added by Chapter 774, Statutes of 1982, Section 1) relating to similar subject matter as Section 17100, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁵³ Education Code Section 17100, added by Chapter 277, Statutes of 1996, Section 2:

"The Legislature hereby finds and declares that the State School Building Lease-Purchase Fund, pursuant to Section 17008, and the proceeds from the sale or lease of surplus school property are the two sources available to school districts to finance the construction of school facilities to relieve overcrowding. However, these sources are still insufficient to meet the construction needs statewide of school districts."

³⁵⁴ Former Education Code Section 17810, (added by Chapter 774, Statutes of 1982, Section 1) relating to similar subject matter as Section 17110, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁵⁵ Education Code Section 17110, added by Chapter 277, Statutes of 1996, Section 2:

"The governing board of a school district may issue for sale revenue bonds to

1 necessary, issue for sale revenue bonds to finance the construction of joint occupancy
2 facilities as prescribed in Article 8 "Joint Occupancy" (commencing with Section 17515)
3 of Chapter 4 "Property: Sale, Lease, Exchange" of Part 10.5 "School Facilities," (subject
4 of another Test Claim) which facilities are necessary to relieve overcrowded schools.
5 Proceeds from the rental and lease of the facilities shall be used by the governing
6 board to repay the revenue bonds.

7 Chapter 277, Statutes of 1996, Section 2, added³⁵⁶ Education Code Section
8 17111³⁵⁷ to require the governing board to contract, as may be necessary, with any

finance the construction of joint occupancy facilities as prescribed in Article 8
(commencing with Section 17515) of Chapter 4 of Part 10.5, which facilities are
necessary to relieve overcrowded schools. Proceeds from the rental and lease of the
facilities shall be used by the governing board to repay the revenue bonds.

As used in this chapter:

(a) "To finance the construction of joint occupancy facilities" means to
offset either the cost of constructing the joint occupancy facilities or the cost of
financing the construction of joint occupancy facilities, or both.

(b) "Joint occupancy facilities" means any building constructed pursuant to
this chapter which is occupied jointly by a school district and a private entity
specified in Section 17811 or one or more buildings which are constructed
pursuant to this chapter on the same property used by the district and the private
entity, but are not occupied jointly. Facilities to be acquired by purchase
pursuant to this article for occupancy by pupils shall meet the requirements of
Article 3 (commencing with Section 17280) and Article 6 (commencing with
Section 17365) of Chapter 3 of Part 10.5.

(c) "Construction" includes acquisition by purchase."

³⁵⁶ Former Education Code Section 17811, (added by Chapter 774, Statutes of
1982, Section 1) relating to similar subject matter as Section 17111, was repealed by
Chapter 277, Statutes of 1996, Section 1.

³⁵⁷ Education Code Section 17111, added by Chapter 277, Statutes of 1996,
Section 2:

1 person, firm, partnership, joint venture, or other private entity for the purpose of issuing
2 revenue bonds pursuant to Section 17810 (renumbered as Section 17110 by Chapter
3 277, Statutes of 1996, Section 2) and for the purpose of renting or leasing the facilities
4 constructed pursuant to this chapter.

5 Chapter 277, Statutes of 1996, Section 2, added³⁵⁸ Education Code Section
6 17112³⁵⁹ to prohibit the governing board from issuing revenue bonds for sale unless the
7 facilities are to be constructed on district-owned property, except as to facilities to be
8 acquired by purchase.

9 CHAPTER 16. PUBLIC DISCLOSURE OF NON-VOTER-APPROVED DEBT

10 Chapter 1168, Statutes of 2002, Section 4, amended³⁶⁰ Education Code Section

"The governing board may contract with any person, firm, partnership, joint venture, or other private entity for the purpose of issuing revenue bonds pursuant to Section 17810 and for the purpose of renting or leasing the facilities constructed pursuant to this chapter."

³⁵⁸ Former Education Code Section 17812, (added by Chapter 774, Statutes of 1982, Section 1) relating to similar subject matter as Section 17112, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁵⁹ Education Code Section 17112, as added by Chapter 277, Statutes of 1996, Section 2:

"No revenue bonds may be issued for sale by the governing board unless the facilities are to be constructed on district-owned property, except as to facilities to be acquired by purchase."

³⁶⁰ Former Education Code Section 17850, (added by Chapter 650, Statutes of 1994, Section 4) relating to similar subject matter as Section 17150, was repealed by Chapter 893, Statutes of 1997, Section 105.

1 17150³⁶¹. Subdivision (a) requires a school district to notify the county superintendent
2 of schools and the county auditor upon approval by the governing board of the school
3 district to proceed with the issuance of certificates of participation revenue bonds or to
4 enter into any agreement for financing school construction pursuant to Chapter 18
5 "California School Finance Authority." The superintendent of the school district shall

³⁶¹ Education Code Section 17150, added by Chapter 893, Statutes of 1997, Section 91, as amended by Chapter 1168, Statutes of 2002, Section 4:

"(a) Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 18 (commencing with Section 17170), the school district shall notify the county superintendent of schools and the county auditor. The superintendent of the school district shall provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools and the county auditor may comment publicly to the governing board of the school district regarding the capability of the school district to repay that debt obligation.

(b) Upon the approval by the county board of education to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing pursuant to Chapter 18 (commencing with Section 17170), the county superintendent of schools or superintendent of a school district for which the county board serves as governing board shall notify the Superintendent of Public Instruction. The county superintendent of schools or the superintendent of a school district for which the county board serves as the governing board shall provide the repayment schedules for that debt obligation and evidence of the ability of the county office of education or school district to repay that obligation, to the Superintendent of Public Instruction, the governing board, and the public. Within 15 days of the receipt of the information the Superintendent of Public Instruction may comment publicly to the county board of education regarding the capability of the county office of education or school district to repay that debt obligation.

(c) Prior to delivery of the notice required by subdivision (a) neither the county nor any of its officers shall have any responsibility for the administration of the school district's indebtedness. Failure to comply with the requirements of this section will not affect the validity of the indebtedness."

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1 provide the repayment schedules for that debt obligation, and evidence of the ability of
2 the school district to repay that obligation, to the county auditor, the county
3 superintendent, the governing board, and the public. Within 15 days of the receipt of
4 the information, the county superintendent of schools and the county auditor may
5 comment publicly to the governing board of the school district regarding the capability of
6 the school district to repay that debt obligation. Subdivision (b) requires the county
7 superintendent of schools or superintendent of a school district for which the county
8 board serves as governing board to notify the Superintendent of Public Instruction upon
9 approval by the county board of education to proceed with the issuance of certificates
10 of participation or revenue bonds or to enter into any agreement for financing pursuant
11 to Chapter 18 "California School Finance Authority." The county superintendent of
12 schools or the superintendent of a school district for which the county board serves as
13 the governing board shall provide the repayment schedules for that debt obligation and
14 evidence of the ability of the county office of education or school district to repay that
15 obligation, to the Superintendent of Public Instruction, the governing board, and the
16 public. Within 15 days of the receipt of the information the Superintendent of Public
17 Instruction may comment publicly to the county board of education regarding the
18 capability of the county office of education or school district to repay that debt
19 obligation. Subdivision (c) provides that prior to delivery of the notice required by
20 subdivision (a) neither the county nor any of its officers shall have any responsibility for
21 the administration of the school district's indebtedness. Failure to comply with the

1 requirements of this section will not affect the validity of the indebtedness.

2 CHAPTER 18. CALIFORNIA SCHOOL FINANCE AUTHORITY

3 Chapter 277, Statutes of 1996, Section 2, added³⁶² Education Code Section
4 17170 to state that "this chapter shall be known and may be cited as the California
5 School Finance Authority Act."

6 Chapter 277, Statutes of 1996, Section 2, added³⁶³ Education Code Section
7 17171³⁶⁴ to declare that it is in the interest of the state and its people for the state to do
8 all of the following: (a) reconstruct, remodel, or replace existing school buildings which
9 are educationally inadequate or which do not meet current structural safety
10 requirements; (b) acquire new schoolsites and buildings to be made available to school

³⁶² Former Education Code Section 17870, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17170, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁶³ Former Education Code Section 17871, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17171, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁶⁴ Education Code Section 17171, added by Chapter 277, Statutes of 1996, Section 2:

"The Legislature hereby finds and declares that it is in the interest of the state and its people for the state to do all of the following:

(a) Reconstruct, remodel, or replace existing school buildings which are educationally inadequate or which do not meet current structural safety requirements.

(b) Acquire new schoolsites and buildings to be made available to school districts and community college districts for the pupils of the public education system, which is a matter of general concern inasmuch as the education of the state's children is an obligation and function of the state.

(c) Assist school districts and community college districts by providing access to financing for working capital and capital improvements."

1 districts and community college districts for the pupils of the public education system,
2 which is a matter of general concern inasmuch as the education of the state's children
3 is an obligation and function of the state; and (c) assist school districts and community
4 college districts by providing access to financing for working capital and capital
5 improvements.

6 Chapter 277, Statutes of 1996, Section 2, added Education Code Section
7 17173³⁶⁵ to define that following words and terms, unless the context indicates or

³⁶⁵ Education Code Section 17173, added by Chapter 277, Statutes of 1996,
Section 2:

"As used in this chapter, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) "Act" means the California School Finance Authority Act.

(b) "Agent" means a county or city board of education or superintendent of schools acting with its consent on behalf of one or more school districts for any purpose of this chapter, and the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges acting with its consent on behalf of one or more community college districts for any purpose of this chapter.

(c) "Authority" means the California School Finance Authority, or any board, body, commission, department, or officer succeeding to the principal functions of the authority, or to which the powers conferred upon the authority by this chapter shall be given by law.

(d) "Bonds" means bonds, notes, bond anticipation notes, commercial paper, and any other evidences of indebtedness.

(e) "Cost," as applied to all or part of a project financed pursuant to this chapter, means and includes all or any part of the cost of any of the following:

(1) Construction.

(2) Acquisition or improvement of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project.

(3) Demolition or removal of any buildings or structures on land acquired for a project, including the acquisition of any lands to which the buildings or structures may be moved.

(4) All machinery and equipment.

(5) Financing charges.

(6) Interest prior to, during, and for a period following, the completion of such construction or improvement as determined by the authority.

(7) Provisions for working capital.

(8) Reserves for principal and interest, and for extensions, enlargements, additions, replacements, renovations, and improvements.

(9) Engineering, architectural, financial, and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incident to the construction, acquisition, or improvement of any project or any financing under this chapter.

(f) "Educational facility" means any property, facility, structure, equipment, or furnishings used or operated in conjunction with one or more public schools or community colleges, including, but not limited to, all of the following:

(1) Classrooms.

(2) Auditoriums.

(3) Student centers.

(4) Administrative offices.

(5) Sports facilities.

(6) Maintenance, storage, or utility facilities.

(7) All necessary or usual attendant and related facilities and equipment, including streets, parking, and supportive service facilities or structures required or useful for the effective operation of the educational facility.

(g) "Participating district" means a school district or community college district which undertakes, itself or through an agent, the financing or refinancing of a project or of working capital pursuant to this chapter. "Participating district" shall also be deemed to refer to the agent to the extent the agent is acting on behalf of the school district or community college district for any purpose of this chapter.

(h) "Project" means the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an educational facility to be financed or refinanced pursuant to this chapter. "Project" may include any combination of the foregoing undertaken jointly by any participating district with one or more other participating districts.

(i) "Working capital" means funds to be used by, or on behalf of, a participating district to pay maintenance or operating expenses, or any other costs which would be treated as an expense item under generally accepted accounting principles in connection with the ownership or operation of an educational facility, including, but not limited to, all of the following:

(1) Reserves for maintenance or operating expenses.

(2) Interest for a period not to exceed one year on any loan for working

1 requires another or different meaning or intent: "Act," "Agent," "Authority," "Bonds,"
2 "Cost," "Educational facility," "Participating district," "Project," "Working capital," and
3 "Certificate of participation."

4 Chapter 193, Statutes of 2000, Section 1, amended³⁶⁶ Education Code Section
5 17180³⁶⁷. Subdivision (f)(2) provides that a participating district may be designated as

capital made pursuant to this chapter.

(3) Reserves for debt service, and any other costs necessary or incidental to, financing pursuant to this chapter.

(j) "Certificate of participation" means an undivided interest in one or more bonds, leases, loans, installment sales, or other agreements of a participating district or districts."

³⁶⁶ Former Education Code Section 17880, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17180, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁶⁷ Education Code Section 17180, added by Chapter 277, Statutes of 1996, Section 2, as amended by Chapter 193, Statutes of 2000, Section 1:

"The authority is hereby authorized to do all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal.

(c) Sue and be sued in its own name.

(d) Receive and accept gifts, grants, or donations of money for any of the purposes of this chapter from any of the following:

(1) A federal agency.

(2) A state agency.

(3) A municipality, county, or other political subdivision of the state.

(4) An individual, association, or corporation.

(e) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this chapter.

(f) (1) Determine the location and character of any project to be financed under this chapter, and acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, or regulate the same.

(2) Designate a participating district as its agent, with authority to enter

into contracts, for any of the purposes specified in paragraph (1).

(3) Enter into contracts for any of the purposes specified in paragraph (1).

(4) Enter into contracts for the management and operation of a project owned by the authority.

(g) Acquire, directly or by and through a participating district as its agent, by purchase solely from funds provided pursuant to this chapter, or by gift or devise, and sell, by installment or otherwise, property, rights, rights-of-way, franchises, easements, and other interests in lands, including, but not limited to, lands lying under water, and riparian rights, located within the state which the authority deems necessary or convenient for the acquisition, construction, financing, or operation of a project. The authority may do so upon the terms, and at the prices, it considers reasonable and upon which it can agree with the owner, and may take the title to the interest in the name of the authority or in the name of a participating district as its agent.

(h) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of all or part of a project, in the form of money, property, labor, or other things of value.

(i) Pursuant to an agreement between the authority and the participating district, make, directly or through a lending institution, secured or unsecured loans to, or purchase secured or unsecured loans from, or purchase all or part of any rights to or possibilities regarding the state share of funding for school facilities approved by the State Allocation Board pursuant to Chapter 12.5 (commencing with Section 17070.10) * * . The purchase of all or part of any rights to, or possibilities regarding, the state contribution for funding for school facilities approved by the State Allocation Board shall be limited to amounts approved and funded or amounts approved but not yet funded from proceeds of state bonds already authorized by the electors but not yet issued. Loans or purchases completed pursuant to this section may be used for either of the following purposes:

(1) To finance a project or provide working capital. No loan to finance a project shall exceed the total cost of the project, as determined by the participating district and approved by the authority.

(2) To refinance indebtedness incurred by the participating district in connection with projects undertaken, educational facilities acquired, or working capital financed.

(j) Upon the terms and conditions the authority deems proper, lease a project being financed pursuant to this chapter to a participating district, and charge and collect rent therefor. The authority may terminate a lease pursuant to this subdivision upon the lessee's failure to comply with any of its obligations under the lease. The lease may include any of the following provisions:

(1) That the lessee shall have the option to renew the term of the lease for the period or periods, and at the rent, determined by the authority, or to purchase

1 the authority's agent, with authority to enter into contracts, for any of aforementioned
2 purposes. Subdivision (g) provides that the authority shall, as may be necessary,
3 acquire, directly or by and through a participating district as its agent, by purchase
4 solely from funds provided pursuant to this chapter, or by gift or devise, and sell, by
5 installment or otherwise, property, rights, rights-of-way, franchises, easements, and
6 other interests in lands, including, but not limited to, lands lying under water, and

any or all of the project.

(2) That upon payment by the participating district of all of the indebtedness incurred by the authority for the financing of the project or for the refinancing of the district's outstanding indebtedness, the authority may convey any or all of the project to the lessee or lessees, with or without further consideration.

(k) Charge and equitably apportion among participating districts its administrative costs and expenses incurred pursuant to this chapter.

(l)(1) Obtain, or aid in obtaining, from any state or federal agency or any private company, any insurance, guarantee, letter, or line of credit regarding, or of, or for, the payment or repayment of all or part of the interest, principal, or both, on any loan, lease, or obligation, or any instrument evidencing or securing the same, made or entered into pursuant to this chapter, or on any bonds issued pursuant to this chapter.

(2) Notwithstanding any other provision of this chapter, enter into any agreement, contract, or any other instrument regarding any insurance, guarantee, letter, or line of credit specified in paragraph (1), and accept payment in the manner and form provided therein in the event of default by a participating district.

(3) Assign any insurance, guarantee, letter, or line of credit specified in paragraph (1) as security for bonds issued by the authority.

(m) Enter into any agreements or contracts, including, but not limited to, agreements for liquidity or credit enhancement, execute any instruments, and any other act or thing necessary, convenient, or desirable for the purposes of the authority or to carry out any express power granted the authority pursuant to this chapter.

(n) At the discretion of the authority, invest any moneys held in reserve or in sinking funds, or any moneys not required for immediate use or disbursement, in obligations authorized by the resolution authorizing the bonds secured by the investment, or by law governing the investment of trust funds in the custody of the Treasurer."

1 riparian rights, located within the state which the authority deems necessary or
2 convenient for the acquisition, construction, financing, or operation of a project. The
3 authority may do so upon the terms, and at the prices, it considers reasonable and
4 upon which it can agree with the owner, and shall, as may be necessary, take the title
5 to the interest in the name of the authority or in the name of a participating district as its
6 agent. Subdivision (h) requires that the authority shall, as may be necessary, receive
7 and accept from any source loans, contributions, or grants for, or in aid of, the
8 construction, financing, or refinancing of all or part of a project, in the form of money,
9 property, labor, or other things of value. Subdivision (l) provides that pursuant to an
10 agreement between the authority and the participating district, it may make, directly or
11 through a lending institution, secured or unsecured loans to, or purchase secured or
12 unsecured loans from, or purchase all or part of any rights to or possibilities regarding
13 the state share of funding for school facilities approved by the board pursuant to
14 Chapter 12.5 "Leroy F. Greene School Facilities Act of 1988." The purchase of all or
15 part of any rights to, or possibilities regarding, the state contribution for funding for
16 school facilities approved by the board shall be limited to amounts approved and
17 funded or amounts approved but not yet funded from proceeds of state bonds already
18 authorized by the electors but not yet issued. Loans or purchases completed pursuant
19 to this section may be used for either of the following purposes: (1) to finance a project
20 or provide working capital. No loan to finance a project shall exceed the total cost of
21 the project, as determined by the participating district and approved by the authority, or

1 (2) to refinance indebtedness incurred by the participating district in connection with
2 projects undertaken, educational facilities acquired, or working capital financed.

3 Subdivision (j) provides that upon the terms and conditions the authority deems proper,
4 it may lease a project being financed pursuant to this chapter to a participating district,
5 and charge and collect rent therefor. The authority may terminate a lease pursuant to
6 this subdivision upon the lessee's failure to comply with any of its obligations under the
7 lease. The lease may include any of the following provisions: (1) that the lessee shall
8 have the option to renew the term of the lease for the period or periods, and at the rent,
9 determined by the authority, or to purchase any or all of the project; (2) that upon
10 payment by the participating district of all of the indebtedness incurred by the authority
11 for the financing of the project or for the refinancing of the district's outstanding
12 indebtedness, the authority may convey any or all of the project to the lessee or
13 lessees, with or without further consideration. Subdivision (k) requires that the authority
14 shall, as may be necessary, charge and equitably apportion among participating
15 districts its administrative costs and expenses incurred pursuant to this chapter.

16 Subdivision (l)(1) provides that the authority shall, as may be necessary, obtain, or aid
17 in obtaining, from any state or federal agency or any private company, any insurance,
18 guarantee, letter, or line of credit regarding, or of, or for, the payment or repayment of
19 all or part of the interest, principal, or both, on any loan, lease, or obligation, or any
20 instrument evidencing or securing the same, made or entered into pursuant to this
21 chapter, or on any bonds issued pursuant to this chapter. Subdivision (l)(2) provides

1 that notwithstanding any other provision of this chapter, the authority shall, as may be
2 necessary, enter into any agreement, contract, or any other instrument regarding any
3 insurance, guarantee, letter, or line of credit specified in paragraph (1), and accept
4 payment in the manner and form provided therein in the event of default by a
5 participating district. Subdivision (l)(3) requires that the authority assign any insurance,
6 guarantee, letter, or line of credit specified in paragraph (1) as security for bonds issued
7 by the authority.

8 Chapter 277, Statutes of 1996, Section 2, added Education Code Section
9 17181³⁶⁸ to establish the California School Finance Authority Fund.

³⁶⁸ Education Code Section 17181, added by Chapter 277, Statutes of 1996,
Section 2:

“(a) The California School Finance Authority Fund is hereby created in the State Treasury, to be administered by the authority. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated without regard to fiscal year for the purposes of this chapter. The authority may pledge any or all of the moneys in the fund as security for payment of the principal of, and interest on, any particular issuance of bonds pursuant to this chapter. For that purpose, or as necessary or convenient to the accomplishment of any other purpose of this chapter, the authority may divide the fund into separate accounts. All moneys accruing to the authority pursuant to this chapter from any source shall be deposited in the fund.

(b) Subject to any priorities created by the pledge of particular moneys in the fund to secure any issuance of bonds of the authority, and to reasonable administrative costs incurred by the authority in implementing this chapter, all moneys in the fund, regardless of the source, shall be held in trust for the security and payment of bonds of the authority, and shall not be used or pledged for any other purpose while any bonds are outstanding and unpaid. Nothing in this subdivision shall be construed to limit the power of the authority to make loans with bond proceeds in accordance with the terms of the resolution authorizing the issuance of those bonds.

(c) Pursuant to any agreements with the holders of particular bonds pledging any particular assets, revenues, or moneys, the authority may create separate accounts in the fund to manage the assets, revenues, or moneys in the manner prescribed by the

1 Chapter 485, Statutes of 1998, Section 48, amended Education Code Section
2 17183³⁶⁹ to require that the authority shall, as may be necessary, issue its revenue

agreements.

(d) From time to time, the authority may direct the Treasurer to do any of the following:

(1) Invest moneys in the fund which are not required for its current needs, including, but not limited to, proceeds from the sale of any bonds in eligible securities specified in Section 16430 of the Government Code and designated by the authority, or in any other securities or obligations designated by the authority, in the resolution authorizing the issuance of the bonds payable or secured by the moneys.

(2) Deposit moneys in the fund in interest bearing accounts in state or national banks or other financial institutions having principal offices in the state.

(3) Transfer moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 4 of Division 4 of Title 2 of the Government Code.

Notwithstanding Section 16305.7 of the Government Code, all interest or other earnings resulting from an investment or deposit pursuant to this subdivision shall be deposited in the fund.

(e) Except as otherwise provided in paragraph (3) of subdivision (d), no moneys in the fund shall be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code."

³⁶⁹ Former Education Code Section 17883, added by 1438, Statutes of 1985, Section 1, repealed by Chapter 893, Statutes of 1997, Section 107, re-added by Chapter 893, Statutes of 1997, Section 93, as renumbered Section 17183 and amended by Chapter 485, Statutes of 1998, Section 48:

"(a) From time to time, the authority may, by resolution, issue its revenue bonds in order to provide funds for any of the purposes of this chapter. Bonds may be issued to finance any of the following:

(1) A single project or financing of working capital for a single participating district.

(2) A series of projects or financings of working capital for a single participating district.

(3) A single project or financing of working capital for several participating districts.

(4) Several projects or financing of working capital for several participating

districts.

(5) A joint venture school facilities construction project undertaken pursuant to Article 5 (commencing with Section 17060) of Chapter 12.

(b) Except as otherwise expressly provided by the authority, all revenue bonds shall be payable from any available revenues or moneys of the authority not otherwise pledged, subject only to any agreements with holders of particular bonds or notes pledging any particular revenue or moneys. Notwithstanding that revenue bonds issued pursuant to this section may be payable from a special fund, the revenue bonds shall be, and shall be deemed to be for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds for registration.

(c) The revenue bonds of the authority may be issued as serial bonds, term bonds, or the authority, in its discretion, may issue bonds of both types. The issuance shall be in accordance with the indenture, trust agreement, or resolution relating to the revenue bonds, which shall provide all of the following:

- (1) The date or dates of the bonds.
- (2) The date or dates upon which the bonds will mature, not to exceed 40 years from their respective dates.
- (3) The interest rate or rates, or methods of determining the interest rate or rates, of the bonds.
- (4) When the bonds are payable.
- (5) The denominations of the bonds.
- (6) The form of the bonds, which shall be either bearer or registered.
- (7) The registration privileges of the bonds.
- (8) The manner in which the bonds are to be executed.
- (9) The place or places at which the bonds shall be payable in lawful money of the United States of America.
- (10) The terms of redemption of the bonds.

(d) After giving due consideration to the recommendations of the participating district or districts, the revenue bonds of the authority shall be sold by the Treasurer at either a public or private sale at a price or prices, and upon the terms and conditions prescribed by the authority. The revenue bonds of the authority may be sold at, above, or below the par value of the bonds.

(e) Pending the preparation of the definitive bonds, the authority may issue interim receipts or certificates or temporary bonds which shall be exchanged for the definitive bonds.

(f) Any resolution authorizing the issuance of any bonds of the authority, or any issue of revenue bonds of the authority, may include any of the following provisions:

- (1) Provisions pledging all or any part of the proceeds of the bonds or revenue of a project or loan.
- (2) Provisions concerning the replacement of mutilated, destroyed, stolen,

or lost bonds.

(3) Provisions specifying insurance to be maintained on the project and the authorized uses of the proceeds of the insurance.

(4) Covenants against the mortgaging or otherwise encumbering, selling, leasing, pledging, placing a charge upon, or otherwise disposing of the project prior to the payment of the bonds issued to finance the project.

(5) Provisions specifying the events of default, terms upon which the bonds may be declared due before maturity, and the terms upon which the declaration and its consequences may be waived.

(6) The rights, liabilities, powers, and duties arising upon the breach of any covenants, conditions, or obligations.

(7) Vesting of the right to enforce covenants in a trustee.

(8) The terms upon which all or any percentage of the bondholders may enforce covenants or duties.

(9) Procedures for amending the terms of the resolution, with or without the consent of the holders of a specified number of bonds.

(10) Provision for any other acts or things deemed necessary, convenient, or desirable by the authority to secure the bonds or improve their marketability.

(g) The validity of the authorization and issuance of any bond issue shall not be affected by proceedings for the acquisition, construction, or improvement of any project, or by contracts relating to those proceedings. Any resolution authorizing the issuance of any bonds of the authority may provide authorization for the bonds to bear a statement certifying that they are issued pursuant to this chapter. Bonds bearing * * * that statement shall be conclusively deemed valid and issued in conformity with this chapter. Reference on the face of the bonds to the resolution by its date of adoption shall incorporate the provisions of the resolution and of this chapter into the terms of the bonds.

(h) Members of the authority, or any person executing the revenue bonds of the authority, shall not incur personal liability on the bonds, nor shall these persons incur personal liability or accountability by reason of the issuance of the revenue bonds of the authority.

(i) The authority is authorized, out of any funds available for that purpose, to purchase revenue bonds of the authority. The authority may hold, pledge, cancel, or resell any bonds purchased under the authority of this subdivision, subject to, and in accordance with, agreements with bondholders.

(j) The financing or refinancing of projects or working capital may be provided pursuant to this chapter by means other than revenue bonds, at the discretion of the authority, including financing or refinancing through certificates of participation, or other interests, in bonds, loans, leases, installment sales, or other agreements of the participating district or districts. In this connection, the authority may do all things and

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1 bonds in order to provide funds for any of the purposes of this chapter. Bonds may be
2 issued to finance any of the following: (1) a single project or financing of working capital
3 for a single participating district; (2) a series of projects or financings of working capital
4 for a single participating district; (3) a single project or financing of working capital for
5 several participating districts; (4) several projects or financing of working capital for
6 several participating districts; or (5) a joint venture school facilities construction project
7 undertaken pursuant to Article 5 (commencing with Section 17060) of Chapter 12.

8 Subdivision (b) requires all revenue bonds, except as otherwise expressly provided by
9 the authority, to be payable from any available revenues or moneys of the authority not
10 otherwise pledged, subject only to any agreements with holders of particular bonds or
11 notes pledging any particular revenue or moneys. Notwithstanding that revenue bonds
12 issued pursuant to this section may be payable from a special fund, the revenue bonds
13 shall be, and shall be deemed to be for all purposes, negotiable instruments, subject
14 only to the provisions of the revenue bonds for registration. Subdivision (c) lists specific
15 requirements for issuing revenue bonds as either serial bonds, term bonds, or both.

16 Subdivision (d) requires that after giving due consideration to the recommendations of
17 the participating district or districts, the revenue bonds of the authority shall be sold by
18 the Treasurer at either a public or private sale at a price or prices, and upon the terms

execute and deliver all documents and instruments as may be necessary or desirable
with regard to issuance of the certificates of participation or other means of financing or
refinancing.

(k) The authority may by resolution issue its revenue bonds in the form of
commercial paper."

1 and conditions prescribed by the authority. The revenue bonds of the authority may be
2 sold at, above, or below the par value of the bonds.

3 Chapter 277, Statutes of 1996, Section 2, added³⁷⁰ Education Code Section
4 17183.5³⁷¹ to require that financing only be provided for projects demonstrated by the
5 participating district to be financially feasible. In demonstrating financial feasibility, the
6 participating district may take into account all district funds, and may base future
7 projections upon historical experience or reasonable expectations, or a combination
8 thereof. Nothing in this section shall be construed to imply that any project is required
9 to produce revenue in order to be financed under this chapter.

10 Chapter 277, Statutes of 1996, Section 2, added³⁷² Education Code Section

³⁷⁰ Former Education Code Section 17883.5, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17183.5, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁷¹ Education Code Section 17183.5, added by Chapter 277, Statutes of 1996, Section 2:

“In enacting this chapter, it is the intent of the Legislature to provide financing only for projects demonstrated by the participating district to be financially feasible. In demonstrating financial feasibility, the participating district may take into account all district funds, and may base future projections upon historical experience or reasonable expectations, or a combination thereof. Nothing in this section shall be construed to imply that any project is required to produce revenue in order to be financed under this chapter.”

³⁷² Former Education Code Section 17884, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17184, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 17184³⁷³. Subdivision (a) requires that any revenue bonds of the authority issued under
2 this chapter shall, as necessary, be secured by a trust agreement, or by indenture by
3 and between the authority and a corporate trustee or trustees, including the Treasurer
4 or any trust company or bank having the powers of a trust company within or outside
5 the state. Subdivision (b) provides that any trust agreement, indenture, or any
6 resolution providing for the issuance of bonds of the authority, may pledge or assign the
7 proceeds of the bonds, and the revenues to be received by, a participating district or
8 districts. Subdivision (c) provides that any trust agreement, indenture, or resolution

³⁷³ Education Code Section 17184, added by Chapter 277, Statutes of 1996,
Section 2:

“(a) In the discretion of the authority, any revenue bonds of the authority issued under this chapter may be secured by a trust agreement, or by indenture by and between the authority and a corporate trustee or trustees, including the Treasurer or any trust company or bank having the powers of a trust company within or outside the state.

(b) Any trust agreement, indenture, or any resolution providing for the issuance of bonds of the authority, may pledge or assign the proceeds of the bonds, and the revenues to be received by, a participating district or districts.

(c) Any trust agreement, indenture, or resolution providing for the issuance of revenue bonds of the authority may include any provisions for the protection of, and the enforcement of the rights and remedies of, bondholders as may be reasonable and proper and not in violation of any law, including provisions included in any resolution or resolutions of the authority provided under subdivision (a) or (b).

(d) Any trust agreement or indenture may prescribe the rights and remedies of the bondholders, and of the trustee or trustees, and may restrict the individual right of action of the bondholders.

(e) Any trust agreement, indenture, or resolution may include any other provisions deemed by the authority to be reasonable and proper for the security of the bondholders.

(f) Notwithstanding any other provision of law, the Treasurer shall not be deemed to have a conflict of interest by reason of his or her capacity as trustee pursuant to this chapter.”

1 providing for the issuance of revenue bonds of the authority shall, as may be
2 necessary, include any provisions for the protection of, and the enforcement of the
3 rights and remedies of, bondholders as may be reasonable and proper and not in
4 violation of any law, including provisions included in any resolution or resolutions of the
5 authority provided under subdivision (a) or (b). Subdivision (d) provides that any trust
6 agreement or indenture shall, as may be necessary, prescribe the rights and remedies
7 of the bondholders, and of the trustee or trustees, and may restrict the individual right of
8 action of the bondholders.

9 Chapter 277, Statutes of 1996, Section 2, added³⁷⁴ by Education Code Section
10 17186. Subdivision (a) provides that "any holder of revenue bonds issued under this
11 chapter, or any coupons appertaining thereto, or the trustee or trustees under any trust
12 agreement, indenture, or resolution, may, either at law or in equity, by suit, action,
13 mandamus, or other proceedings, protect and enforce any rights conferred under state
14 law, by this chapter, or under the terms of any trust agreement, indenture, or resolution,
15 except to the extent that these rights may be otherwise restricted by any resolution
16 authorizing the issuance of these bonds, or by any trust agreement or indenture
17 securing these bonds." Subdivision (b) provides that "any holder of revenue bonds
18 issued under this chapter, or any coupons appertaining thereto, or the trustee or
19 trustees under any trust agreement, indenture, or resolution, may enforce and compel

³⁷⁴ Former Education Code Section 17886, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17186, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 the performance of all duties required under this chapter, or by any trust agreement,
2 indenture, or resolution, to be performed by the authority, or by any officer, employee,
3 or agent of the authority.”

4 Chapter 277, Statutes of 1996, Section 2, added³⁷⁵ Education Code Section
5 17193³⁷⁶ to require that any lease entered into by the authority with a participating

³⁷⁵ Former Education Code Section 17893, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17193, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁷⁶ Education Code Section 17193, added by Chapter 277, Statutes of 1996, Section 2:

“(a) The authority shall fix, revise, charge, and collect rents for the use of each project owned by the authority, and may contract with any person, partnership, association, corporation, or other body, whether public or private, for that purpose. Any lease entered into by the authority with a participating district, and each agreement, note, or other instrument evidencing the obligations of a participating district to the authority, shall provide that the rents or principal, interest, and other charges payable by the participating district shall be sufficient to provide for all of the following:

(1) To pay the principal, sinking fund payments, if any, premiums, if any, and the interest on outstanding bonds of the authority issued in respect of the project when due and payable.

(2) To create and maintain reserves which may, but need not necessarily be required or provided for, in the resolution relating to the revenue bonds of the authority.

(3) To pay its share of the administrative costs and expenses of the authority.

(b) The authority shall pledge the revenues derived and to be derived from a project or from a participating district for the purposes specified in paragraphs (1), (2), and (3) of subdivision (a). The authority may issue additional revenue bonds which may be ranked on a parity with other bonds relating to the project to the extent, and under the terms and conditions provided, in the bond resolution.

(c) The authority and a participating district may include in any lease or agreement between them or with a credit provider any terms and conditions relating to insurance, liquidity, or credit enhancement of the bonds, or any other lawful terms and conditions the authority deems necessary or desirable to facilitate the purposes of this

1 district, and each agreement, note, or other instrument evidencing the obligations of a
2 participating district to the authority, shall provide that the rents or principal, interest,
3 and other charges payable by the participating district shall be sufficient to provide for
4 all of the following:

5 (1) To pay the principal, sinking fund payments, if any, premiums, if any, and the
6 interest on outstanding bonds of the authority issued in respect of the project
7 when due and payable;

8 (2) To create and maintain reserves which may, but need not necessarily be
9 required or provided for, in the resolution relating to the revenue bonds of the
10 authority; and

11 (3) To pay its share of the administrative costs and expenses of the authority.

12 Subdivision (b) requires the authority to pledge the revenues derived and to be derived
13 from a project or from a participating district for the purposes specified in paragraphs
14 (1), (2), and (3) of subdivision (a). Subdivision (c) requires that the authority and a
15 participating district shall, as may be necessary, include in any lease or agreement
16 between them or with a credit provider any terms and conditions relating to insurance,
17 liquidity, or credit enhancement of the bonds, or any other lawful terms and conditions
18 the authority deems necessary or desirable to facilitate the purposes of this chapter.

19 Chapter 1076, Statutes of 1998, Section 1, added Education Code Section

chapter."

1 17193.5³⁷⁷ to define "public credit provider" to mean any financial institution or

³⁷⁷ Education Code Section 17193.5, added by Chapter 1076, Statutes of 1998, Section 1:

"(a) For purposes of this section, "public credit provider" means any financial institution or combination of financial institutions, which consists either solely, or has as a member or participant, a public retirement system. Notwithstanding any other provision of law, a public credit provider may, in connection with providing credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of a school district or county office of education, require the school district or county office of education to agree to the following conditions:

(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds, notes, certificates of participation, or other evidence of indebtedness and identify the public credit provider that provided credit enhancement. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason a public credit provider is required to make principal or interest payments or both pursuant to a credit enhancement agreement, the public credit provider shall immediately notify the Controller of that fact and of the amount paid out by the public credit provider.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the public credit provider in the amount of the payments made by the public credit provider for the purpose of reimbursing the public credit provider for its expenditures made pursuant to the credit enhancement agreement. The Controller shall make that apportionment only from moneys designated for apportionments to the school district pursuant to Section 42238 or to the county office of education pursuant to Section 2558 or to the community college district pursuant to Section 84750.

(b) The amount apportioned for a school district, a county office of education, or a community college district pursuant to this section shall be deemed to be an allocation to the district or the county office of education or the community college district for purposes of subdivision (b) or Section 8 of XVI of the California Constitution. For purposes of computing revenue limits or revenue levels pursuant to Section 42338 for any school district or pursuant to Section 2558 for any county office of education or pursuant to Section 84750 for any community college district, the revenue limit or revenue level for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraph (3) of subdivision (a)."

1 combination of financial institutions, which consists either solely, or has as a member or
2 participant, a public retirement system. Notwithstanding any other provision of law, a
3 public credit provider may, in connection with providing credit enhancement for bonds,
4 notes, certificates of participation, or other evidences of indebtedness of a school
5 district or county office of education, require the school district or county office of
6 education to agree to the following conditions: (1) if a participating school district or
7 county office of education adopts a resolution by a majority vote of its board to
8 participate under this section, it shall provide notice to the Controller of that election.
9 The notice shall include a schedule for the repayment of principal and interest on the
10 bonds, notes, certificates of participation, or other evidence of indebtedness and
11 identify the public credit provider that provided credit enhancement. The notice shall be
12 provided not later than the date of issuance of the bonds; (2) if, for any reason a public
13 credit provider is required to make principal or interest payments or both pursuant to a
14 credit enhancement agreement, the public credit provider shall immediately notify the
15 Controller of that fact and of the amount paid out by the public credit provider; and (3)
16 upon receipt of the notice required by paragraph (2), the Controller shall make an
17 apportionment to the public credit provider in the amount of the payments made by the
18 public credit provider for the purpose of reimbursing the public credit provider for its
19 expenditures made pursuant to the credit enhancement agreement. The Controller
20 shall make that apportionment only from moneys designated for apportionments to the
21 school district pursuant to Section 42238 (providing the formulas for apportionment and

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1 determination of the revenue limits for each school district) or to the county office of
2 education pursuant to Section 2558 (providing for the apportionment of state aid to
3 county superintendents of school districts) or to the community college district pursuant
4 to Section 84750 (providing the minimum requirements, standards and criteria for
5 apportionment of annual budget funds to community colleges). Subdivision (b) requires
6 the amount apportioned for a school district, a county office of education, or a
7 community college district pursuant to this section be deemed to be an allocation to the
8 district or the county office of education or the community college district for purposes
9 of subdivision (b) or Section 8 of Article XVI of the California Constitution (providing that
10 from all state revenues there shall first be set apart the moneys to be applied by the
11 State for support of the public school system and public institutions of higher
12 education). For purposes of computing revenue limits or revenue levels pursuant to
13 Section 42338 for any school district or pursuant to Section 2558 for any county office
14 of education or pursuant to Section 84750 for any community college district, the
15 revenue limit or revenue level for any fiscal year in which funds are apportioned for the
16 district or for the county office of education pursuant to this section shall include any
17 amounts apportioned by the Controller pursuant to paragraph (3) of subdivision (a).

18 Chapter 277, Statutes of 1996, Section 2, added³⁷⁸ Education Code Section
19 17194 to provide that "the authority may authorize any participating district to act as its

³⁷⁸ Former Education Code Section 17894, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17194, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 agent in the performance of acts specifically approved by the authority, and all acts
2 required under Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5.

3 The authorizations may include, but are not necessarily limited to, all of the following:

4 (a) the selection of school or college sites; (b) the securing of appraisals; (c) contracts
5 for architectural services; (d) the advertisement for construction bids and the entry into
6 contracts for construction; and (e) the purchase of furniture and equipment.”

7 Chapter 277, Statutes of 1996, Section 2, added³⁷⁹ Education Code Section
8 17195 to require that “whenever the principal and interest on bonds issued by the
9 authority to finance the cost of a project, or to refinance the outstanding indebtedness
10 of one or more participating districts, including any refunding bonds issued to refund
11 and refinance those bonds, have been fully paid or retired, or whenever adequate
12 provision has been made to fully pay and retire the bonds, and all other conditions of
13 the resolution, lease, trust indenture and any security interest, or any other instrument
14 or instruments authorizing and securing the bonds have been satisfied and the lien of
15 security interest has been released in accordance with those provisions, the authority
16 shall promptly provide for and execute any releases, release deeds, reassignments,
17 deeds, and conveyances as are necessary and required to convey or release its rights,
18 title, and interest in the project financed, to the participating districts.”

³⁷⁹ Former Education Code Section 17895, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17195, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 Chapter 277, Statutes of 1996, Section 2, added³⁸⁰ Education Code Section
2 17196. Subdivision (a) requires that "this chapter shall be deemed to provide a
3 complete, additional, and alternative method for accomplishing the acts authorized in
4 this chapter, and shall be deemed as being supplemental and additional to the powers
5 conferred by other applicable laws, except that the issuance of revenue bonds and
6 refunding bonds and the undertaking or projects or financings under this chapter need
7 not comply with the requirements of any other laws applicable to the issuance of bonds,
8 including, without limitation, Division 13 (commencing with Section 21000) of the Public
9 Resources Code." Subdivision (b) requires that "except as provided in subdivision (a),
10 the financing of a project under this chapter shall not exempt a project from any of the
1 requirements of law which are otherwise applicable to the project."

12 Chapter 277, Statutes of 1996, Section 2, added³⁸¹ Education Code Section
13 17197 to state that "to the extent that the provisions of this chapter are inconsistent with
14 any other provisions of any general statute, or a special act or parts thereof, the
15 provisions of this chapter shall be deemed controlling."

³⁸⁰ Former Education Code Section 17896, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17196, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁸¹ Former Education Code Section 17897, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17197, was repealed by Chapter 277, Statutes of 1996, Section 1.

1 Chapter 193, Statutes of 2000, Section 2, amended³⁸² Education Code Section
2 17199.1³⁸³. Subdivision (a) requires that any participating district, exclusively for the

³⁸² Former Education Code Section 17899.1, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17199.1, was repealed by Chapter 277, Statutes of 1996, Section 1.

³⁸³ Education Code Section 17199.1, added by Chapter 277, Statutes of 1996, Section 2, as amended by Chapter 193, Statutes of 2000, Section 2:

“(a) Any participating district, exclusively for the purpose of securing financing or refinancing of projects or working capital pursuant to this chapter through the issuance, by the authority, of revenue bonds, certificates of participation, or other means, and notwithstanding any other provision of law, may: (1) sell to the authority all or part of any rights to or possibilities regarding the state's share of funding for school facilities approved by the State Allocation Board pursuant to Chapter 12.5 (commencing with Sec. 17070.10) including amounts apportioned and funded and amounts approved but not yet funded by the State Allocation Board from proceeds of state bonds already authorized by the electors but not yet issued; (2) issue bonds to the authority; or (3) borrow money or purchase or lease educational facilities from the authority, and in connection therewith, sell or lease property to the authority, in each case at any interest rate or rates, rental provisions, with any maturity date or dates or term, and with any other transfer, assignment, payment, security, default, remedy, and other terms or provisions as may be specified in the sale of rights agreement or the bonds of the participating district or a loan, loan purchase, installment sale, lease, or other agreement between the authority and the participating district, subject to the following conditions:

(A) The sum of the amount borrowed to finance working capital and the interest payable thereon at the initial interest rate if interest is variable, shall not exceed 85 percent of the estimated amount of uncollected taxes, income, revenue, cash receipts, and other district funds which will be available in any fiscal year for the repayment of the loan and the interest thereon. For purposes of this paragraph, "revenue" includes, but is not limited to, federal and state funds received by the district.

(B) In computing the maximum amount which may be borrowed in any fiscal year pursuant to subparagraph (A), the district may exclude the amount of any principal or interest which is secured by a pledge of the amount in any inactive or term deposit of the district which has a term scheduled to terminate during that fiscal year.

(C) A participating district that borrows money to finance working capital

pursuant to this subdivision shall be required to repay and discharge the loan, including interest, within 15 months of the loan date.

(D) In enacting this chapter, it is the intent of the Legislature to provide financing of working capital needed to cover temporary or cash-flow deficits and needs for working capital and not long-term budget deficits or shortfalls in funding. The participating school district must demonstrate to the satisfaction of the authority that, during the term of any working capital loan received pursuant to this chapter, the participating district will receive or otherwise have (without additional borrowing) sufficient funds to repay and discharge the loan. The participating district may take into account all district funds and may base future projections upon historical experience or reasonable expectations, or a combination thereof.

(b) Notwithstanding Sections 700, 703, and 1045 of the Civil Code, the rights and possibilities that a participating district may have or obtain in the future to * * * an approved state contribution to funding for school facilities pursuant to Chapter 12.5 (commencing with Sec. 17070.10) * * * that remains unfunded pending the issuance of state bonds already authorized by the electors shall constitute property for all purposes and may be transferred as provided in subdivision (a). In the case of any transfer or assignment of rights or possibilities relating to funds for which bonds have been approved by the voters but are not yet available, the transfer or assignment shall be approved by resolution of the State Allocation Board prior to becoming effective.

(c) Any participating district may enter into any agreement for liquidity or credit enhancement, with any reimbursement, payment, interest, security, default, remedy, and other terms it may deem necessary or appropriate in connection with the issuance of bonds, the borrowing of money or the lease or purchase of educational facilities, whichever is applicable. Any participating district or districts may also do all things and execute all documents as may be necessary or desirable in connection with the issuance of certificates of participation, or other interests, in any bond, loan, installment sale, lease, or other agreement of the district.

(d) A school district may by resolution authorize any county or city board of education or superintendent of schools, and a community college district may by resolution authorize the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges, to act as its agent in the performance of any of the matters permitted by this section or any other provision of this chapter. Notwithstanding any other provision of law, the agent shall have the powers granted by the resolution for purposes of this chapter. The resolution shall be deemed to bind the school district or community college district, as the case may be, to any contract, agreement, instrument, or other document executed by the agent on behalf of the school district or community college district, and all duties, obligations, or responsibilities contained therein on the part of the school district or community college

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1 purpose of securing financing or refinancing of projects or working capital pursuant to
2 this chapter through the issuance, by the authority, of revenue bonds, certificates of
3 participation, or other means, and notwithstanding any other provision of law, shall, as
4 may be necessary:

5 (1) Sell to the authority all or part of any rights to or possibilities regarding the
6 state's share of funding for school facilities approved by the board pursuant to
7 Chapter 12.5 "Leroy F. Greene School Facilities Act of 1988" including amounts
8 apportioned and funded and amounts approved but not yet funded by the board
9 from proceeds of state bonds already authorized by the electors but not yet

district, to the same extent as if duly authorized, executed, and delivered by the school district or community college district.

(e) This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this section, and the sale or transfer of any rights to or possibilities regarding * * * the state share of funding for school facilities approved by the State Allocation Board including amounts apportioned and funded and amounts approved but not yet funded * * * from proceeds of state bonds already authorized by the electors but not yet issued, issuance of bonds to, borrowing of money from, or sale or purchase or lease of educational facilities from or to, the authority. Any agreement entered into in connection with the transfer of any rights to or possibilities regarding * * * the state contribution for funding for school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10), including amounts apportioned and funded and amounts approved but not yet funded by the State Allocation Board from proceeds of state bonds already authorized by the electors but not yet issued, or the issuance of bonds, the borrowing of money or the sale, purchase, or lease of educational facilities, including, without limitation, any agreement for liquidity or credit enhancement under this section, need not comply with the requirements of any other law applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge, encumbrance, or credit, as the case may be, by a school district or community college district, or by a county or city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges."

1 issued;

2 (2) Issue bonds to the authority; or

3 (3) Borrow money or purchase or lease educational facilities from the authority,
4 and in connection therewith, sell or lease property to the authority, in each case
5 at any interest rate or rates, rental provisions, with any maturity date or dates or
6 term, and with any other transfer, assignment, payment, security, default,
7 remedy, and other terms or provisions as may be specified in the sale of rights
8 agreement or the bonds of the participating district or a loan, loan purchase,
9 installment sale, lease, or other agreement between the authority and the
10 participating district, subject to the following conditions:

11 (A) The sum of the amount borrowed to finance working capital and the
12 interest payable thereon at the initial interest rate if interest is variable,
13 shall not exceed 85 percent of the estimated amount of uncollected taxes,
14 income, revenue, cash receipts, and other district funds which will be
15 available in any fiscal year for the repayment of the loan and the interest
16 thereon. For purposes of this paragraph, "revenue" includes, but is not
17 limited to, federal and state funds received by the district;

18 (B) In computing the maximum amount which may be borrowed in any
19 fiscal year pursuant to subparagraph (A), the district may exclude the
20 amount of any principal or interest which is secured by a pledge of the
21 amount in any inactive or term deposit of the district which has a term

1 scheduled to terminate during that fiscal year;

2 (C) A participating district that borrows money to finance working capital
3 pursuant to this subdivision shall be required to repay and discharge the
4 loan, including interest, within 15 months of the loan date;

5 (D) The participating school district must demonstrate to the satisfaction
6 of the authority that, during the term of any working capital loan received
7 pursuant to this chapter, the participating district will receive or otherwise
8 have (without additional borrowing) sufficient funds to repay and
9 discharge the loan. The participating district may take into account all
10 district funds and may base future projections upon historical experience
11 or reasonable expectations, or a combination thereof.

12 Subdivision (b) requires that the rights and possibilities that a participating district may
13 have or obtain in the future to an approved state contribution to funding for school
14 facilities pursuant to Chapter 12.5 "Leroy F. Green School Facilities Act of 1988" that
15 remains unfunded pending the issuance of state bonds already authorized by the
16 electors shall constitute property for all purposes and may be transferred as provided in
17 subdivision (a). In the case of any transfer or assignment of rights or possibilities
18 relating to funds for which bonds have been approved by the voters but are not yet
19 available, the transfer or assignment shall be approved by resolution of the State
20 Allocation Board prior to becoming effective. Subdivision (c) requires that any
21 participating district shall, as may be necessary, enter into any agreement for liquidity or

1 credit enhancement, with any reimbursement, payment, interest, security, default,
2 remedy, and other terms it may deem necessary or appropriate in connection with the
3 issuance of bonds, the borrowing of money or the lease or purchase of educational
4 facilities, whichever is applicable. Any participating district or districts shall also, as
5 necessary, do all things and execute all documents as may be necessary or desirable
6 in connection with the issuance of certificates of participation, or other interests, in any
7 bond, loan, installment sale, lease, or other agreement of the district. Subdivision (d)
8 requires that a school district shall by resolution authorize, as may be necessary, any
9 county or city board of education or superintendent of schools, and a community
10 college district shall by resolution authorize, as may be necessary, the Board of
11 Governors of the California Community Colleges or the Chancellor of the California
12 Community Colleges, to act as its agent in the performance of any of the matters
13 permitted by this section or any other provision of this chapter. Notwithstanding any
14 other provision of law, the agent shall have the powers granted by the resolution for
15 purposes of this chapter. The resolution shall be deemed to bind the school district or
16 community college district, as the case may be, to any contract, agreement, instrument,
17 or other document executed by the agent on behalf of the school district or community
18 college district, and all duties, obligations, or responsibilities contained therein on the
19 part of the school district or community college district, to the same extent as if duly
20 authorized, executed, and delivered by the school district or community college district.
21 Subdivision (e) provides that this section shall be deemed to provide a complete,

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1 additional, and alternative method for accomplishing the acts authorized by this section,
2 and the sale or transfer of any rights to or possibilities regarding the state share of
3 funding for school facilities approved by the board including amounts apportioned and
4 funded and amounts approved but not yet funded from proceeds of state bonds already
5 authorized by the electors but not yet issued, issuance of bonds to, borrowing of money
6 from, or sale or purchase or lease of educational facilities from or to, the authority. Any
7 agreement entered into in connection with the transfer of any rights to or possibilities
8 regarding the state contribution for funding for school facilities pursuant to Chapter 12.5
9 "Leroy F. Green School Facilities Act of 1988," including amounts apportioned and
10 funded and amounts approved but not yet funded by the State Allocation Board from
11 proceeds of state bonds already authorized by the electors but not yet issued, or the
12 issuance of bonds, the borrowing of money or the sale, purchase, or lease of
13 educational facilities, including, without limitation, any agreement for liquidity or credit
14 enhancement under this section, need not comply with the requirements of any other
15 law applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge,
16 encumbrance, or credit, as the case may be, by a school district or community college
17 district, or by a county or city board of education or superintendent of schools or the
18 Board of Governors of the California Community Colleges or Chancellor of the
19 California Community Colleges.

1 Chapter 741, Statutes of 1998, Section 1, amended³⁸⁴ Education Code Section
2 17199.3³⁸⁵. Subdivision (a) limits the total amount of revenue bonds which may be
3 issued and outstanding at any time for purposes of this chapter, other than those
4 revenue bonds issued under Section 17199.4, to four hundred million dollars
5 (\$400,000,000). Subdivision (b) limits the total amount that may be outstanding at any
6 time under this chapter, for purposes of Section 17199.4 only, to four billion dollars
7 (\$4,000,000,000). Subdivision (c) requires that for purposes of subdivisions (a) and (b),
8 bonds which meet any of the following conditions shall not be deemed to be
9 outstanding: (1) bonds which have been refunded pursuant to Section 17188; (2) bonds
10 for which money or securities in amounts necessary to pay or redeem the principal,

³⁸⁴ Former Education Code Section 17899.3, (added by Chapter 1438, Statutes of 1985, Section 1) relating to similar subject matter as Section 17199.1, was repealed by Chapter 893, Statutes of 1997, Section 108.

³⁸⁵ Education Code Section 17199.3, added by Chapter 893, Statutes of 1997, Section 94, as amended by Chapter 741, Statutes of 1998, Section 1:

“(a) The total amount of revenue bonds which may be issued and outstanding at any time for purposes of this chapter, other than those revenue bonds issued under Section 17199.4, shall not exceed four hundred million dollars (\$400,000,000).

(b) The total amount * * * that may be * * * outstanding at any time under this chapter * * *, for purposes of Section * * * 17199.4 only, shall not exceed four billion dollars (\$4,000,000,000).

(c) For purposes of subdivisions (a) and (b), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17188.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.”

1 interest, or any redemption premium on the bonds have been deposited in trust; or (3)
2 bonds which have been issued to provide working capital.

3 Chapter 741, Statutes of 1998, Section 1, amended³⁸⁶ Education Code Section
4 17199.4³⁸⁷. Subdivision (a) requires that notwithstanding any other law,

³⁸⁶ Former Education Code Section 17899.4, (added by Chapter 1071, Statutes of 1996, Section 5) relating to similar subject matter as Section 17199.4, was repealed by Chapter 893, Statutes of 1997, Section 109.

³⁸⁷ Education Code Section 17199.4, added by Chapter 893, Statutes of 1997, Section 95, as amended by Chapter 741, Statutes of 1998, Section 2:

“(a) Notwithstanding any other law, any participating school district or county office of education, in connection with securing financing or refinancing of projects, except working capital, pursuant to this chapter may elect to guarantee or provide for payment of the bonds in accordance with the following conditions:

(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds and identify a trustee appointed by the participating school district or county office of education or the authority for purposes of this section. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason, the school district or county office of education will not make the payment of principal and interest at the time the payment is required, the participating school district or county office of education shall notify the trustee of that fact and of the amount of the deficiency. The trustee shall immediately communicate that information to the Controller.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the trustee in the amount of the deficiency for the purpose of making the required payment of principal or interest, or both. The Controller shall make that apportionment only from moneys in Section A of the State School Fund designated for apportionment to the district pursuant to Section 42238 or to the county office of education pursuant to Section 2558.

(4) As an alternative to the procedures set forth in paragraphs (2) and (3), the participating school district or county office of education may provide a transfer schedule in its notice to the Controller of its election to participate under this section. The transfer schedule shall set forth amounts to be transferred to

the trustee and the date for the transfers. The Controller shall, subject to the limitation in the last sentence of paragraph (3), make apportionments to the trustee of those amounts on the specified date for the purpose of making those transfers.

(b) The amount apportioned for a school district or for a county office of education pursuant to this section shall be deemed to be an allocation to the district or the county office of education for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution (providing that from all state revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education). For purposes of computing revenue limits pursuant to Section 42238 for any school district or pursuant to Section 2558 for any county office of education, the revenue limit for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraphs (3) and (4) of subdivision (a).

(c)(1) School districts or county offices of education that elect to participate under this section shall apply to the authority. The authority shall consider each of the following priorities in making funds available:

(A) First priority shall be given to school districts or county offices of education that apply for funding for instructional classroom space.

(B) Second priority shall be given to school districts or county offices of education that apply for funding of modernization of instructional classroom space.

(C) Third priority shall be given to all other eligible costs, as defined in Section 17173.

(2) The authority shall prioritize applications at appropriate intervals.

(3) A school district electing to participate under this section that has applied for revenue bond moneys for the purposes of joint venture school facilities construction projects, pursuant to Article 5 (commencing with Section 17060) of Chapter 12, shall not be subject to the priorities set forth in paragraph (1) * * * .

(d) This section shall not be construed to make the State of California liable for any payment of principal or interest on any bonds or certificates of participation within the meaning of Section 1 of Article XVI of the California Constitution or otherwise, except as expressly provided in this section.

(e) A school district that has a qualified or negative certification pursuant to Section 42131, or a county office of education that has a qualified or negative certification pursuant to Section 1240, may not participate under this section.

(f) The authority shall report to the Legislature by January 1, 2001, on the number of school districts or county offices of education electing to participate under

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1 any participating school district or county office of education, in connection with
2 securing financing or refinancing of projects, except working capital, pursuant to this
3 chapter shall, as may be necessary, elect to guarantee or provide for payment of the
4 bonds in accordance with the following conditions:

5 (1) If a participating school district or county office of education adopts a
6 resolution by a majority vote of its board to participate under this section, it shall
7 provide notice to the Controller of that election. The notice shall include a
8 schedule for the repayment of principal and interest on the bonds and identify a
9 trustee appointed by the participating school district or county office of education
10 or the authority for purposes of this section. The notice shall be provided not
11 later than the date of issuance of the bonds;

12 (2) If, for any reason, the school district or county office of education will not
13 make the payment of principal and interest at the time the payment is required,
14 the participating school district or county office of education shall notify the
15 trustee of that fact and of the amount of the deficiency. The trustee shall
16 immediately communicate that information to the Controller;

17 (3) Upon receipt of the notice required by paragraph (2), the Controller shall
18 make an apportionment to the trustee in the amount of the deficiency for the
19 purpose of making the required payment of principal or interest, or both. The

this section and on the financial stability of the participating school districts and county
offices of education.

* * * "

1 Controller shall make that apportionment only from moneys in Section A of the
2 State School Fund designated for apportionment to the district pursuant to
3 Section 42238 or to the county office of education pursuant to Section 2558;
4 (4) As an alternative to the procedures set forth in paragraphs (2) and (3), the
5 participating school district or county office of education may provide a transfer
6 schedule in its notice to the Controller of its election to participate under this
7 section. The transfer schedule shall set forth amounts to be transferred to the
8 trustee and the date for the transfers. The Controller shall, subject to the
9 limitation in the last sentence of paragraph (3), make apportionments to the
10 trustee of those amounts on the specified date for the purpose of making those
11 transfers.

12 Subdivision (b) requires that the amount apportioned for a school district or for a county
13 office of education pursuant to this section shall be deemed to be an allocation to the
14 district or the county office of education for purposes of subdivision (b) of Section 8 of
15 Article XVI of the California Constitution (providing that from all state revenues there
16 shall first be set apart the moneys to be applied by the State for support of the public
17 school system and public institutions of higher education). For purposes of computing
18 revenue limits pursuant to Section 42238 for any school district or pursuant to Section
19 2558 for any county office of education, the revenue limit for any fiscal year in which
20 funds are apportioned for the district or for the county office of education pursuant to
21 this section shall include any amounts apportioned by the Controller pursuant to

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1 paragraphs (3) and (4) of subdivision (a). Subdivision (c)(1) requires that school
2 districts or county offices of education that elect to participate under this section shall
3 apply to the authority. The authority shall consider each of the following priorities in
4 making funds available: (A) first priority shall be given to school districts or county
5 offices of education that apply for funding for instructional classroom space; (B) second
6 priority shall be given to school districts or county offices of education that apply for
7 funding of modernization of instructional classroom space; (C) third priority shall be
8 given to all other eligible costs, as defined in Section 17173. Subdivision (c)(2) requires
9 the authority to prioritize applications at appropriate intervals. Subdivision (c)(3)
10 provides that a school district electing to participate under this section that has applied
11 for revenue bond moneys for the purposes of joint venture school facilities construction
12 projects, pursuant to Article 5 (commencing with Section 17060) of Chapter 12, shall
13 not be subject to the priorities set forth in paragraph (1). Subdivision (d) requires that
14 this section shall not be construed to make the State of California liable for any
15 payment of principal or interest on any bonds or certificates of participation within the
16 meaning of Section 1 of Article XVI of the California Constitution or otherwise, except
17 as expressly provided in this section. Subdivision (e) requires that a school district that
18 has a qualified or negative certification pursuant to Section 42131, or a county office of
19 education that has a qualified or negative certification pursuant to Section 1240, may
20 not participate under this section. Subdivision (f) requires the authority to report to the
21 Legislature by January 1, 2001, on the number of school districts or county offices of

1 education electing to participate under this section and on the financial stability of the
2 participating school districts and county offices of education.

3 Chapter 1076, Statutes of 1998, Section 2 added Education Code Section
4 17199.5 which requires that "notwithstanding Section 17199.4, if the bonds were
5 subject to a credit enhancement agreement provided by a public credit provider
6 pursuant to Section 17193.5 for which a payment for principal or interest, or both, has
7 been made by the public credit provider, the Controller shall allocate to the public credit
8 provider, rather than the trustee, the percentage of the apportionment to be made
9 pursuant to this paragraph equal to the percentage of the outstanding indebtedness
10 which is subject to the credit enhancement agreement."

PART 40. DONAHOE HIGHER EDUCATION ACT

12 CHAPTER 14.3. HIGHER EDUCATION FACILITIES BOND ACT OF 1988

13 ARTICLE 1. GENERAL PROVISIONS

14 Chapter 44, Statutes of 1988, Section 1, added Education Code Section 67330
15 to state that "this chapter shall be known and may be cited as the Higher Education
16 Facilities Bond Act of 1988."

17 Chapter 44, Statutes of 1988, Section 1, added Education Code Section
18 67331³⁸⁸. Subdivision (b) defines the system of public higher education in California to

³⁸⁸ Education Code Section 67331, added by Chapter 44, Statutes of 1988,
Section 1:

"The Legislature finds and declares all of the following:
(a) California's economic and social prosperity relies on a higher education

1 include the University of California, the California State University, the California
2 community colleges, and the California Maritime Academy. Each of these institutions
3 plays a vital role in maintaining California's dominance in higher education in the United
4 States. Subdivisions (c) and (d) establish the purpose of the Higher Education Facilities
5 Bond Act of 1988 in assisting in meeting the capital outlay financing needs, totaling
6 several billion dollars in the aggregate, of California's public higher education system.

7 Chapter 44, Statutes of 1988, Section 1, added Education Code Section
8 67332³⁸⁹ to define the term "Committee" to mean, as used in this chapter, the Higher
9 Education Facilities Finance Committee created pursuant to Section 67353 (consisting

system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the California State University, the California community colleges, and the California Maritime Academy. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California community colleges to assess their long-term and short-term capital needs, which studies demonstrate that these needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of 1988 is to assist in meeting the capital outlay financing needs of California's public higher education system."

³⁸⁹ Education Code Section 67332, added by Chapter 44, Statutes of 1988, Section 1:

"As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Higher Education Facilities Finance Committee created pursuant to Section 67353.

(b) "Fund" means the 1988 Higher Education Capital Outlay Bond Fund created pursuant to Section 67333."

1 of the Governor, the Controller, the Treasurer, the Director of Finance, the President of
2 the University of California, the Chancellor of the California State University, and the
3 Chancellor of the California Community Colleges, or their designees), and the term
4 "Fund" to mean, as used in this chapter, the 1988 Higher Education Capital Outlay
5 Bond Fund created pursuant to Section 67333.

6 ARTICLE 2. HIGHER EDUCATION FACILITIES BOND ACT PROGRAM

7 Chapter 44, Statutes of 1988, Section 1, added Education Code Section 67333
8 which requires that "the proceeds of bonds issued and sold pursuant to this chapter
9 shall be deposited in the 1988 Higher Education Capital Outlay Bond Fund, which is
10 hereby created."

1 Chapter 44, Statutes of 1988, Section 1, added Education Code Section
12 67334³⁹⁰. Subdivision (a) authorizes the committee to create a debt or debts, liability or

³⁹⁰ Education Code Section 67334, added by Chapter 44, Statutes of 1988,
Section 1:

"(a) The committee shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California community colleges, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, for the equipping of new, renovated, or reconstructed facilities, and to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings.

(b) Moneys made available under Section 67340 or 67342 may be used to provide short-term loans to community colleges for the purchase of instructional equipment. Those loans shall be repaid from the first moneys available in the Capital Outlay Fund for Public Higher Education beginning in the 1989-90 fiscal year, or from proceeds of the bonds."

1 liabilities, of the State of California pursuant to this chapter for the purpose of funding
2 aid to the California community colleges for the construction, including the construction
3 of buildings and the acquisition of related fixtures, renovation, and reconstruction of
4 facilities, for the acquisition of sites upon which these facilities are to be constructed, for
5 the equipping of new, renovated, or reconstructed facilities, and to provide funds for
6 payment of preconstruction costs, including, but not limited to, preliminary plans and
7 working drawings. Subdivision (b) requires that moneys made available under Section
8 67340 (providing that the Director of Finance may remove any amount, not to exceed
9 the amount of unsold bonds that have been authorized to be sold for the purpose of this
10 chapter, from the General Fund and deposit them into the 1988 Higher Education
11 Capital Outlay Bond Fund) or 67342 shall be used, as may be necessary, to provide
12 short-term loans to community colleges for the purchase of instructional equipment.
13 Those loans shall be repaid from the first moneys available in the Capital Outlay Fund
14 for Public Higher Education beginning in the 1989-90 fiscal year, or from proceeds of
15 the bonds.

16 ARTICLE 3. FISCAL PROVISIONS

17 Chapter 44, Statutes of 1998, Section 1, added Education Code Section
18 67335³⁹¹ to provide for the issuance and sale of bonds in the total amount of six

³⁹¹ Education Code Section 67335, added by Chapter 44, Statutes of 1998,
Section 1:

"(a) Bonds in the total amount of six hundred million dollars (\$600,000,000), not
including the amount of any refunding bonds issued in accordance with Section 67343,

1 hundred million dollars (\$600,000,000).

2 Chapter 44, Statutes of 1988, Section 1, added Education Code Section 67337
3 which requires that "the committee shall authorize the issuance of bonds under this
4 chapter only to the extent necessary to fund the apportionments that are expressly
5 authorized by the Legislature in the annual Budget Act. Pursuant to that legislative
6 direction, the committee shall determine whether or not it is necessary or desirable to
7 issue bonds authorized pursuant to this chapter in order to carry out the actions
8 specified in Section 67334 and, if so, the amount of bonds to be issued and sold.
9 Successive issues of bonds may be authorized and sold to carry out those actions
10 progressively, and it is not necessary that all of the bonds authorized to be issued be
11 sold at any one time."

12 Chapter 44, Statutes of 1988, Section 1, added Education Code Section 67342
13 to provide that "the board may request the Pooled Money Investment Board for a loan
14 from the Pooled Money Investment Account, in accordance with Section 16312 of the
15 Government Code [(a) notwithstanding and in addition to any other provision of law

or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at such different times as necessary to service expenditures required by the apportionments."

1 permitting withdrawal of moneys from the General Fund for deposit into a special fund
2 for the purpose of carrying out a program or project with repayment to the General Fund
3 to come from the proceeds of the later sale of state bonds or notes, the Pooled Money
4 Investment Board may instead make a loan from the Pooled Money Investment
5 Account directly to any such special fund, on such terms and conditions as the board
6 may determine, upon request made to the board by an appropriate official. Any official
7 authorized by law to seek, authorize, or approve a withdrawal of moneys from the
8 General Fund for these purposes may in the alternative request a loan from the board
9 as provided in this section and execute such documents as are required by the board to
10 obtain and repay the loan. . . . (b) the Pooled Money Investment Board may also make
11 a loan from the Pooled Money Investment Account to any special fund for the purpose
12 of carrying out a program or project that is authorized to be financed by issuing bonds,
13 notes, or other evidence of indebtedness, where the special fund does not qualify under
14 subdivision (a)'], and may execute those documents required by the Pooled Money
15 Investment Board to obtain and repay the loan. The loan shall be deposited in the fund
16 for the purpose of carrying out the provisions of this chapter. The amount of the loan
17 shall not exceed the amount of the unsold bonds that the committee, by resolution, has
18 authorized to be sold for the purposes of this chapter."

19 CHAPTER 14.4. HIGHER EDUCATION FACILITIES BOND ACT OF JUNE 1990

20 ARTICLE 1. GENERAL PROVISIONS

21 Chapter 6, Statutes of 1990, Section 1, added Education Code Section 67345 to

1 state that "this chapter shall be known and may be cited as the Higher Education
2 Facilities Bond Act of June 1990."

3 Chapter 6, Statutes of 1990, Section 1, added Education Code Section
4 67345.1³⁹² to provide that, under subdivision (b), the system of public higher education
5 in this state includes the University of California, the California State University, the
6 California Community Colleges, and the California Maritime Academy. Each of these
7 institutions plays a vital role in maintaining California's dominance in higher education in
8 the United States. Subdivisions (c) and (d) provide that the purpose of the Higher
9 Education Facilities Bond Act of June 1990 is to assist in meeting the capital outlay
10 financing needs, totaling several billion dollars in the aggregate, of California's public
higher education system.

³⁹² Education Code Section 67345.1, added by Chapter 6, Statutes of 1990,
Section 1:

"The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the California State University, the California Community Colleges, and the California Maritime Academy. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of June 1990 is to assist in meeting the capital outlay financing needs of California's public higher education system."

1 Chapter 6, Statutes of 1990, Section 1, added Education Code Section
2 67345.2³⁹³ to define the term "Committee," as used in this chapter, to mean the Higher
3 Education Facilities Finance Committee created pursuant to Section 67353 (consisting
4 of the Governor, the Controller, the Treasurer, the Director of Finance, the President of
5 the University of California, the Chancellor of the California State University, and the
6 Chancellor of the California Community Colleges, or their designees), and the term
7 "Fund" to mean the June 1990 Higher Education Capital Outlay Bond Fund created
8 pursuant to Section 67346.

9 ARTICLE 2. HIGHER EDUCATION FACILITIES BOND ACT PROGRAM

10 Chapter 6, Statutes of 1990, Section 1, added Education Code Section 67346 to
11 require that "the proceeds of bonds issued and sold pursuant to this chapter shall be
12 deposited in the June 1990 Higher Education Capital Outlay Bond Fund, which is
13 hereby created."

14 Chapter 6, Statutes of 1990, Section 1, added Education Code Section
15 67346.5³⁹⁴. Subdivision (a) authorizes the committee to create a debt or debts, liability

³⁹³ Education Code Section 67345.2, added by Chapter 6, Statutes of 1990,
Section 1:

"As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Higher Education Facilities Finance Committee
created pursuant to Section 67353.

(b) "Fund" means the June 1990 Higher Education Capital Outlay Bond Fund
created pursuant to Section 67346."

³⁹⁴ Education Code Section 67346.5, added by Chapter 6, Statutes of 1990,
Section 1:

1 or liabilities, of the State of California pursuant to this chapter for the purpose of funding
2 aid to the California Community Colleges for the construction, including the construction
3 of buildings and the acquisition of related fixtures, renovation, and reconstruction of
4 facilities, for the acquisition of sites upon which these facilities are to be constructed,
5 and for the equipping of new, renovated, or reconstructed facilities, and to provide
6 funds for payment of preconstruction costs, including, but not limited to, preliminary
7 plans and working drawings. Subdivision (b) requires that moneys made available
8 under Section 67347.5 (providing that the Director of Finance may, by executive order,
9 authorize the withdrawal from the General Fund of an amount or amounts not to exceed
10 the amount of the unsold bonds which have been authorized by the committee to be

“(a) The committee shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California Community Colleges, and the Hastings College of the Law, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures, the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, and for the equipping of new, renovated, or reconstructed facilities, and to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings. The addition of the Hastings College of the Law to this section is not intended to mark a change from the funding authorizations made by Section 67354, as contained in the Higher Education Facilities Bond Act of 1986, or Section 67334, as contained in the Higher Education Facilities Bond Act of 1988, but is intended to more clearly state what was intended by the Legislature in those sections as well.

(b) Moneys made available under Section 67347.5 or 67347.7 may be used to provide short-term loans to community colleges for the purchase of instructional equipment. Those loans shall be repaid from the first moneys available in the Capital Outlay Fund for Public Higher Education beginning in the 1990-91 fiscal year, or from proceeds of the bonds.”

1 sold for the purpose of carrying out this chapter) or 67347.7 shall be used, as
2 necessary, to provide short-term loans to community colleges for the purchase of
3 instructional equipment. Those loans shall be repaid from the first moneys available in
4 the Capital Outlay Fund for Public Higher Education beginning in the 1990-91 fiscal
5 year, or from proceeds of the bonds.

6 ARTICLE 3. FISCAL PROVISIONS

7 Chapter 6, Statutes of 1990, Section 1, added Education Code Section 67347³⁹⁵
8 to authorize the issuance and sale of bonds in the total amount of four hundred fifty
9 million dollars (\$450,000,000).

10 Chapter 6, Statutes of 1990, Section 1, added Education Code Section 67347.2
11 which requires that "the committee shall authorize the issuance of bonds under this
12 chapter only to the extent necessary to fund the apportionments that are expressly
13 authorized by the Legislature in the annual Budget Act. Pursuant to that legislative

³⁹⁵ Education Code Section 67347, added by Chapter 6, Statutes of 1990,
Section 1:

"(a) Bonds in the total amount of four hundred fifty million dollars (\$450,000,000), not including the amount of any refunding bonds issued in accordance with Section 67347.8, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at any different times necessary to service expenditures required by the apportionments."

1 direction, the committee shall determine whether or not it is necessary or desirable to
2 issue bonds authorized pursuant to this chapter in order to carry out the actions
3 specified in Section 67346.5 and, if so, the amount of bonds to be issued and sold.
4 Successive issues of bonds may be authorized and sold to carry out those actions
5 progressively, and it is not necessary that all of the bonds authorized to be issued be
6 sold at any one time.”

7 Chapter 6, Statutes of 1990, Section 1, added Education Code Section 67347.7
8 to provide that “the board may request the Pooled Money Investment Board for a loan
9 from the Pooled Money Investment Account, in accordance with Section 16312 of the
10 Government Code [(a) notwithstanding and in addition to any other provision of law
11 permitting withdrawal of moneys from the General Fund for deposit into a special fund
12 for the purpose of carrying out a program or project with repayment to the General Fund
13 to come from the proceeds of the later sale of state bonds or notes, the Pooled Money
14 Investment Board may instead make a loan from the Pooled Money Investment
15 Account directly to any such special fund, on such terms and conditions as the board
16 may determine, upon request made to the board by an appropriate official. Any official
17 authorized by law to seek, authorize, or approve a withdrawal of moneys from the
18 General Fund for these purposes may in the alternative request a loan from the board
19 as provided in this section and execute such documents as are required by the board to
20 obtain and repay the loan. . . . (b) the Pooled Money Investment Board may also make
21 a loan from the Pooled Money Investment Account to any special fund for the purpose

1 of carrying out a program or project that is authorized to be financed by issuing bonds,
2 notes, or other evidence of indebtedness, where the special fund does not qualify under
3 subdivision (a)”, and may execute those documents” required by the Pooled Money
4 Investment Board to obtain and repay the loan. The loan shall be deposited in the fund
5 for the purpose of carrying out the provisions of this chapter. The amount of the loan
6 shall not exceed the amount of the unsold bonds that the committee, by resolution, has
7 authorized to be sold for the purposes of this chapter. For the purposes of requesting
8 Pooled Money Investment Board loans in accordance with this section, "board" means:
9 the President of the University of California, the Dean of the Hastings College of the
10 Law, the Chancellor of the California State University, the President of the California
11 Maritime Academy, and the Chancellor of the California Community Colleges, each
12 acting independently on his or her own behalf.”

13 CHAPTER 14.5. HIGHER EDUCATION FACILITIES BOND ACT OF 1986

14 Chapter 424, Statutes of 1986, Section 2, added Education Code Section 67350
15 to provide that “this chapter shall be known and may be cited as the Higher Education
16 Facilities Bond Act of 1986.”

17 Chapter 424, Statutes of 1986, Section 2, added Education Code Section
18 67352³⁹⁶ to define the term “Board,” as used in this chapter, to mean the State Public

³⁹⁶ Education Code Section 67352, added by chapter 424, Statutes of 1986,
Section 1:

“As used in this chapter, and for the purposes of this chapter as used in the
State General Obligation Bond Law, the following words shall have the following

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1 Works Board, the term "Committee," as used in this chapter, to mean the Higher
2 Education Facilities Finance Committee, created pursuant to Section 67353, and the
3 term "Fund," as used in this chapter, to mean the Higher Education Capital Outlay Bond
4 Fund, created pursuant to subdivision (e) of Section 67354.

5 Chapter 424, Statutes of 1986, Section 2, added Education Code Section 67353
6 to provide that "the Higher Education Facilities Finance Committee is hereby created,
7 consisting of the Governor, the Controller, the Treasurer, the Director of Finance, the
8 President of the University of California, the Chancellor of the California State
9 University, and the Chancellor of the California Community Colleges, or their
10 designees. The Treasurer shall serve as chairperson of the committee."

1 Chapter 424, Statutes of 1986, Section 2, added Education Code Section
12 67354³⁹⁷. Subdivision (a) authorizes and empowers the committee to create a debt or

meanings:

- (a) "Board" means the State Public Works Board.
- (b) "Committee" means the Higher Education Facilities Finance Committee, created pursuant to Section 67353.
- (c) "Fund" means the Higher Education Capital Outlay Bond Fund, created pursuant to subdivision (e) of Section 67354."

³⁹⁷ Education Code Section 67354, added by Chapter 424, Statutes of 1986, Section 2:

"(a) For the purpose of funding aid to the University of California, the California State University, the California Community Colleges, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, for the equipping of new, renovated, or reconstructed facilities, which equipment shall have a useful life of at least 10 years, to provide funds for payment of preconstruction costs, including, but not limited to,

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1 debts, liability or liabilities, of the State of California, in the aggregate amount of four
2 hundred million dollars (\$400,000,000) in the manner provided in this chapter, but not in
3 excess thereof. The committee shall, as may be necessary, utilize this funding aid to
4 the California Community Colleges for the construction, including the construction of
5 buildings and the acquisition of related fixtures, renovation, and reconstruction of
6 facilities, for the acquisition of sites upon which these facilities are to be constructed, for
7 the equipping of new, renovated, or reconstructed facilities, which equipment shall have
8 a useful life of at least 10 years, to provide funds for payment of preconstruction costs,
9 including, but not limited to, preliminary plans and working drawings, and to provide

preliminary plans and working drawings, and to provide funds to reimburse the General
Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the
Government Code, the committee shall be and is hereby authorized and empowered to
create a debt or debts, liability or liabilities, of the State of California, in the aggregate
amount of four hundred million dollars (\$400,000,000) in the manner provided in this
chapter, but not in excess thereof.

(b) The committee shall authorize the issuance of bonds under this chapter only
to the extent necessary to fund the apportionments that are expressly authorized by the
Legislature in the annual Budget Act. Pursuant to that legislative direction, the
committee shall determine when the bonds authorized under this chapter shall be
issued in order to fund the authorized apportionments, and the amount of the bonds to
be issued and sold.

(c) Up to two hundred fifty million dollars (\$250,000,000) shall be available for
apportionment in the 1986-87 fiscal year, and up to one hundred fifty million dollars
(\$150,000,000) shall be available for apportionment for the 1987-88 fiscal year, and in
each subsequent fiscal year, except that the maximum aggregate debt or liability
amount set forth in subdivision (a) shall not be exceeded.

(d) Pursuant to this section, the Treasurer shall sell the bonds authorized by the
committee at such different times as necessary to service expenditures required by the
apportionments.

(e) The proceeds of bonds issued and sold pursuant to this chapter shall be
deposited in the Higher Education Capital Outlay Bond Fund, which is hereby created in
the State Treasury."

1 funds to reimburse the General Obligation Bond Expense Revolving Fund pursuant to
2 Section 16724.5 of the Government Code [providing that all money in the revolving fund
3 is appropriated and available without regard to fiscal years for the payment of the
4 expenses incurred by the State Treasurer in having the bonds prepared and in
5 advertising their sale or their prior redemption, for expenses incurred by the committee
6 pursuant to Section 16758 (providing that all actual and necessary expenses of the
7 committee and of the members thereof incurred in the performance of their duties shall
8 be paid out of the fund. Such expenses incurred by members of the committee shall be
9 so paid upon claims filed with the State Controller by the member or members who
10 incurred such expenses), and for payment for legal services pursuant to Section 16760
11 (providing that whenever the committee deems that it will increase the salability or the
12 price of the bonds to obtain, prior to or after sale, a legal opinion, other than that of the
13 Attorney General, as to the validity of the bonds, the committee may authorize the State
14 Treasurer or the Department of Finance, or both, to obtain such a legal opinion).
15 Whenever bonds are sold, out of the first money realized from their sale, there shall be
16 redeposited in the revolving fund such sums as have been expended for the above
17 purposes, which may be used for the same purposes and repaid in the same manner
18 whenever additional sales are made]. Subdivision (b) requires the committee to
19 authorize the issuance of bonds under this chapter only to the extent necessary to fund
20 the apportionments that are expressly authorized by the Legislature in the annual
21 Budget Act. Pursuant to that legislative direction, the committee shall determine when

1 the bonds authorized under this chapter shall be issued in order to fund the authorized
2 apportionments, and the amount of the bonds to be issued and sold. Subdivision (c)
3 requires that up to two hundred fifty million dollars (\$250,000,000) be available for
4 apportionment in the 1986-87 fiscal year, and up to one hundred fifty million dollars
5 (\$150,000,000) shall be available for apportionment for the 1987-88 fiscal year, and in
6 each subsequent fiscal year, except that the maximum aggregate debt or liability
7 amount set forth in subdivision (a) shall not be exceeded. Subdivision (d) requires the
8 Treasurer to sell the bonds authorized by the committee at such different times as
9 necessary to service expenditures required by the apportionments. Subdivision (e)
10 requires that the proceeds of bonds issued and sold pursuant to this chapter shall be
11 deposited in the Higher Education Capital Outlay Bond Fund, which is hereby created in
12 the State Treasury.

13 Chapter 424, Statutes of 1986, Section 2, added Education Code Section
14 67354.5 to provide that "the proceeds of the bonds may also be used to provide
15 short-term loans to community colleges for the purchase of instructional equipment.
16 Those loans shall be repaid from the first moneys available in the Capital Outlay Fund
17 for Public Higher Education beginning in the 1987-88 fiscal year."

18 CHAPTER 14.6. HIGHER EDUCATION FACILITIES BOND ACT OF JUNE 1992

19 ARTICLE 1. GENERAL PROVISIONS

20 Chapter 13, Statutes of 1992, Section 1, added Education Code Section 67358
21 to provide that "this chapter shall be known and may be cited as the Higher Education

1 Facilities Bond Act of June 1992.”

2 Chapter 13, Statutes of 1992, Section 1, added Education Code Section
3 67358.1³⁹⁸. Subdivision (b) defines the system of public higher education in California
4 to include the California Community Colleges consisting of 71 districts containing 107
5 campuses, and their respective off-campus centers. Subdivisions (c) and (d) provide
6 that the purpose of the Higher Education Facilities Bond Act of June 1992 is to assist in
7 meeting the capital outlay financing needs, totaling several billion dollars in the
8 aggregate, of California's public higher education system.

9 Chapter 13, Statutes of 1992, Section 1, added Education Code Section

³⁹⁸ Education Code Section 67358.1, added by Chapter 13, Statutes of 1992,
Section 1:

“The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California containing nine campuses, the California State University containing 20 campuses, the California Community Colleges consisting of 71 districts containing 107 campuses, the Hastings College of the Law, the California Maritime Academy, and their respective off-campus centers. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of June 1992 is to assist in meeting the capital outlay financing needs of California's public higher education system.”

1 67358.2³⁹⁹ to define the term, "Committee," as used in this chapter, to mean the Higher
2 Education Facilities Finance Committee created pursuant to Section 67353 (consisting
3 of the Governor, the Controller, the Treasurer, the Director of Finance, the President of
4 the University of California, the Chancellor of the California State University, and the
5 Chancellor of the California Community Colleges, or their designees), and the term
6 "Fund," as used in this chapter, to mean the 1992 Higher Education Capital Outlay
7 Bond Fund created pursuant to Section 67358.3.

8 ARTICLE 2. HIGHER EDUCATION FACILITIES BOND ACT PROGRAM

9 Chapter 13, Statutes of 1992, Section 1, added Education Code Section 67358.3
10 to require that "the proceeds of bonds issued and sold pursuant to this chapter shall be
11 deposited in the 1992 Higher Education Capital Outlay Bond Fund, which is hereby
12 created."

13 Chapter 13, Statutes of 1992, Section 1, added Education Code Section
14 67358.4⁴⁰⁰ to authorize the committee to create a debt or debts, liability or liabilities, of

³⁹⁹ Education Code Section 67358.2, added by Chapter 13, Statutes of 1992,
Section 1:

"As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Higher Education Facilities Finance Committee
created pursuant to Section 67353.

(b) "Fund" means the 1992 Higher Education Capital Outlay Bond Fund created
pursuant to Section 67358.3."

⁴⁰⁰ Education Code Section 67358.4, added by Chapter 13, Statutes of 1992,
Section 1:

"The committee shall be and is hereby authorized to create a debt or debts,

1 the State of California pursuant to this chapter for the purpose of funding aid to the
2 California Community Colleges for the construction, including the construction of
3 buildings and the acquisition of related fixtures; the equipping of new, renovated, or
4 reconstructed facilities; funding for the payment of preconstruction costs, including, but
5 not limited to, preliminary plans and working drawings, and the renovation and
6 reconstruction of facilities.

7 ARTICLE 3. FISCAL PROVISIONS

8 Chapter 13, Statutes of 1992, Section 1, added Education Code Section
9 67358.5⁴⁰¹. Subdivision (a) requires that bonds in the total amount of nine hundred

liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California Community Colleges, the Hastings College of the Law, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures; the equipping of new, renovated, or reconstructed facilities; funding for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings; renovation and reconstruction of facilities; and the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990, including the acquisition of sites upon which these facilities are to be constructed.

The addition of the Hastings College of the Law to this section is not intended to mark a change from the funding authorizations made by Section 67354, as contained in the Higher Education Facilities Bond Act of 1986, or Section 67334, as contained in the Higher Education Facilities Bond Act of 1988, but is intended to state more clearly what was intended by the Legislature in those sections as well."

⁴⁰¹ Education Code Section 67358.5, added by Chapter 13, Statutes of 1992, Section 1:

"(a) Bonds in the total amount of nine hundred million dollars (\$900,000,000), not including the amount of any refunding bonds issued in accordance with Section 67359.3, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the

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1 million dollars (\$900,000,000), or so much thereof as is necessary, shall be issued and
2 sold, as may be necessary, to provide a fund to be used for carrying out the purposes
3 expressed in this chapter and to reimburse the General Obligation Bond Expense
4 Revolving Fund. Subdivision (b) requires the Treasurer to sell the bonds authorized by
5 the committee at any different times necessary to service expenditures required by the
6 apportionments.

7 Chapter 13, Statutes of 1992, Section 1, added Education Code Section 67358.7
8 to require that "the committee shall authorize the issuance of bonds under this chapter
9 only to the extent necessary to fund the apportionments that are expressly authorized
10 by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the
11 committee shall determine whether or not it is necessary or desirable to issue bonds
12 authorized pursuant to this chapter in order to carry out the actions specified in Section
13 67358.4 and, if so, the amount of bonds to be issued and sold. Successive issues of
14 bonds may be authorized and sold to carry out those actions progressively, and it is not
15 necessary that all of the bonds authorized to be issued be sold at any one time."

16 Chapter 13, Statutes of 1992, Section 1, added Education Code Section

General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at any different times necessary to service expenditures required by the apportionments."

1 67359⁴⁰² requires that any amounts withdrawn from the General Fund by executive
2 order of the Director of Finance shall be deposited in the Higher Education Capital
3 Outlay Bond Fund. The amount or amounts withdrawn from the General Fund may not
4 exceed the amount of the unsold bonds that have been authorized by the committee to
5 be sold for the purpose of carrying out this chapter. Any money made available under
6 this section shall be returned to the General Fund, together with interest at the rate paid
7 on moneys in the Pooled Money Investment Account, from money received from the
8 sale of bonds for the purpose of carrying out this chapter. Subdivision (b) prohibits the
9 expenditure of funds pursuant to this chapter for the acquisition and development of

⁴⁰² Education Code Section 67359, added by Chapter 13, Statutes of 1992,
Section 1:

“(a) For the purposes of carrying out this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund.

Any money made available under this section shall be returned to the General Fund, together with interest at the rate paid on moneys in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this chapter.

(b) No funds shall be expended pursuant to this chapter for the acquisition and development of new campuses that would increase the number of campuses designated in Section 67358.1.

(c) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in Section 67358.4 by the University of California, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan of the particular university or college and shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, by the 2000-01 fiscal year, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college.”

1 new campuses that would increase the number of campuses designated in Section
2 67358.1 (71 districts containing 107 campuses, and their respective off-campus
3 centers). Subdivision (c) requires that any request forwarded to the Legislature and
4 the Department of Finance for funds from this bond issue for expenditure for the
5 purposes described in Section 67358.4 by the California Community Colleges shall be
6 accompanied by the five-year capital outlay plan of the particular college and shall
7 include a schedule that prioritizes the seismic retrofitting needed to significantly reduce,
8 by the 2000-01 fiscal year, in the judgment of the particular college, seismic hazards in
9 buildings identified as high priority by the college.

10 Chapter 13, Statutes of 1992, Section 1, added Education Code Section 67359.2
11 to provide that "the board may request the Pooled Money Investment Board for a loan
12 from the Pooled Money Investment Account, in accordance with Section 16312 of the
13 Government Code, and may execute those documents required by the Pooled Money
14 Investment Board to obtain and repay the loan. The loan shall be deposited in the fund
15 for the purpose of carrying out the provisions of this chapter. The amount of the loan
16 shall not exceed the amount of the unsold bonds that the committee, by resolution, has
17 authorized to be sold for the purposes of this chapter."

18 CHAPTER 14.9. BOND FUND TRANSFERS

19 Chapter 745, Statutes of 2001, Section 34, amended⁴⁰³ Education Code Section

⁴⁰³ Education Code Section 67359.20, added by Chapter 896, Statutes of 1996, Section 1, as amended by Chapter 745, Statutes of 2001, Section 34:

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1 67359.20 to provide that "any funds from the 1988 Higher Education Capital Outlay
2 Bond Fund, the June 1990 Higher Education Capital Outlay Bond Fund, and the 1992
3 Higher Education Capital Outlay Bond Fund, not to exceed a combined total of
4 seventy-five million dollars (\$75,000,000), are hereby appropriated to the Director of
5 Finance for allocation to the University of California, the California State University, and
6 the California Community Colleges to meet the timely allocation of matching grants to
7 repair, replace, reconstruct, renovate, or retrofit on-campus buildings or facilities,
8 including utilities, and streets and roads that were damaged in the Northridge
9 earthquake of January 17, 1994."

10 PART 66. PUBLIC EDUCATION BONDS

1 CHAPTER 1. PUBLIC EDUCATION FACILITIES BOND ACT OF 1996

12 Chapter 1, Statutes of 1996, Section 1, added Chapter 1, "Public Education
13 Facilities Act of 1996," approved by passage of Initiative Measure [Prop. 203] on March
14 26, 1996.

"Any funds from the 1988 Higher Education Capital Outlay Bond Fund, the June 1990 Higher Education Capital Outlay Bond Fund, and the 1992 Higher Education Capital Outlay Bond Fund, not to exceed a combined total of seventy-five million dollars (\$75,000,000), are hereby appropriated to the Director of Finance for allocation to the University of California, the California State University, and the California Community Colleges to meet the timely allocation of matching grants to repair, replace, reconstruct, renovate, or retrofit on-campus buildings or facilities, including utilities, and streets and roads that were damaged in the Northridge earthquake of January 17, 1994.

~~(b) On or before March 31, June 30, September 30, and December 31 of each year, the Director of Finance shall notify, in writing, the Chair of the Joint Legislative Budget Committee and the chairs of the fiscal committees of both houses of the Legislature of any transfer of funds made pursuant to this section in the preceding three months."~~

1 ARTICLE 1. GENERAL PROVISIONS

2 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100000
3 to state that "this chapter shall be known and may be cited as the Public Education
4 Facilities Bond Act of 1996."

5 ARTICLE 2. SCHOOL FACILITIES PROGRAM PROVISIONS

6 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100010
7 to require that "two billion twenty-five million dollars (\$2,025,000,000) of the proceeds of
8 bonds issued and sold pursuant to this chapter shall be deposited in the State School
9 Building Lease-Purchase Fund."

10 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100015
11 to require that "all moneys deposited in the State School Building Lease-Purchase Fund
12 shall be available to provide aid to school districts of the state in accordance with the
13 Leroy F. Greene State School Building Lease-Purchase Law of 1976, and of all acts
14 amendatory thereof and supplementary thereto, to provide aid to school districts,
15 county superintendents of schools, and county boards of education of the state in
16 accordance with Sections 100020, 100025, 100030, and 100035, to provide funds to
17 repay any money advanced or loaned to the State School Building Lease-Purchase
18 Fund under any act of the Legislature, together with interest provided for in that act, and
19 to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section
20 16724.5 of the Government Code [providing that whenever bonds are sold, out of the
21 first money realized from their sale, there shall be redeposited in the revolving fund

1 such expended sums, which may be used for the same purposes and repaid in the
2 same manner whenever additional sales are made].”

3 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100020
4 to provide that “of the proceeds from the sale of bonds pursuant to this chapter, not
5 more than nine hundred million dollars (\$900,000,000) may be used for one or more of
6 the following purposes:

7 (a) The acquisition of portable classrooms for use in accordance with Chapter 25
8 (commencing with Section 17785) of Part 10 [repealed by Chapter 277, Statutes
9 of 1996, Section 1, but relating to similar subject matter as new Section 17085,
10 added by Chapter 277, Statutes of 1996, Section 2].

11 (b) The reconstruction or modernization of facilities pursuant to Chapter 22
12 (commencing with Section 17700) of Part 10 [repealed by Chapter 277, Statutes
13 of 1996, Section 1, but relating to similar subject matter as new Section 17000,
14 added by Chapter 277, Statutes of 1996, Section 2]. In addition to the current
15 program requirements, the State Allocation Board may allocate funding pursuant
16 to this subdivision for the reconstruction or modernization of any existing
17 structure, including the wiring and cabling in that structure, to enable that
18 structure to accommodate computers and other high technology equipment.

19 (c) The purchase and installation of air-conditioning equipment and insulation
20 materials, and related costs, pursuant to Section 42250.1, for schools operated
21 on a year-round multitrack schedule in a manner that increases school capacity

1 and reduces or eliminates the school district's need for the construction of
2 additional classroom space.

3 (d) Project funding for applicant districts under Chapter 22 (commencing with
4 Section 17700) of Part 10 [repealed by Chapter 277, Statutes of 1996, Section 1,
5 but relating to similar subject matter as new Section 17000, added by Chapter
6 277, Statutes of 1996, Section 2] that have incurred or will incur enrollment
7 increases due to the locating or expansion of state or federal prisons.

8 (e) The acquisition of relocatable child care and development facilities for the
9 purpose of providing extended day care services pursuant to Article 22
10 (commencing with Section 8460) of Chapter 2 of Part 6.

11 (f) Project funding, without regard to funding priorities, for applicant county
12 boards of education under Chapter 22 (commencing with Section 17700) of Part
13 10 [repealed by Chapter 277, Statutes of 1996, Section 1, but relating to similar
14 subject matter as new Section 17000, added by Chapter 277, Statutes of 1996,
15 Section 2] that are eligible for that funding for classrooms for severely
16 handicapped pupils.

17 (g) Project funding for applicant districts under Chapter 22 (commencing with
18 Section 17700) of Part 10 [repealed by Chapter 277, Statutes of 1996, Section 1,
19 but relating to similar subject matter as new Section 17000, added by Chapter
20 277, Statutes of 1996, Section 2] that are eligible for that funding, but that lack
21 funding priority due to the size of pupil enrollment in the district.

1 (h) Project funding for high priority roof replacement projects.

2 (i) Construction projects or the purchase of furniture or equipment designed to
3 increase school security.

4 (j) The identification, assessment, or abatement in school facilities of hazardous
5 asbestos pursuant to either Chapter 22 (commencing with Section 17700) of
6 Part 10 [repealed by Chapter 277, Statutes of 1996, Section 1, but relating to
7 similar subject matter as new Section 17000, added by Chapter 277, Statutes of
8 1996, Section 2] or Section 39619.6 [the "Asbestos Abatement Fund," repealed
9 by Chapter 277, Statutes 1996, Section 6, but relating to similar subject matter
10 as new Section 17590, added by Chapter 277, Statutes of 1996, Section 3] and
11 of lead.

12 (k) The reconstruction or modernization of facilities pursuant to Chapter 22
13 (commencing with Section 17700) of Part 10 [repealed by Chapter 277, Statutes
14 of 1996, Section 1, but relating to similar subject matter as new Section 17000,
15 added by Chapter 277, Statutes of 1996, Section 2]. Notwithstanding Section
16 17721.3 [repealed by Chapter 277, Statutes of 1996, Section 1, but relating to
17 similar subject matter as new Section 17021.3, added by Chapter 277, Statutes
18 of 1996, Section 2, which provides that for the purposes of the Leroy F. Greene
19 State School Building Lease-Purchase Law of 1976, "modernization" or
20 "renovation" means any modification of an existing structure, the costs of which
21 do not exceed 25 percent of the replacement cost of that structure], the State

1 Allocation Board may allocate funding pursuant to this subdivision for the
2 reconstruction or modernization of an existing structure in an amount that
3 exceeds 25 percent of the replacement cost of that structure in order to finance
4 structural improvements needed to avert future earthquake damage.”

5 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100025
6 to limit the proceeds from the sale of bonds pursuant to this chapter used for seismic
7 retrofit projects of existing public school facilities to not more than one hundred million
8 dollars (\$100,000,000).

9 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100030
10 to limit the proceeds from the sale of bonds pursuant to this chapter used for projects
11 for school districts that agree to contribute 60 percent or more of the cost of those
12 projects to not more than forty million dollars (\$40,000,000).

13 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100035
14 to limit the proceeds from the sale of bonds pursuant to this chapter used for projects
15 that include joint use of facilities pursuant to Section 17750 or 17751 [repealed by
16 Chapter 277, Statutes of 1996, Section 1, but relating to similar subject matter as new
17 Sections 17050 and 17051, as added by Chapter 277, Statutes of 1996, Section 2.] to
18 not more than twenty-five million dollars (\$25,000,000).

19 ARTICLE 3. HIGHER EDUCATION FACILITIES PROGRAM

20 Chapter 1, Statutes of 1996, Section 1, added Education Code Section

1 100110⁴⁰⁴ to provide that the purpose of the "Higher Education Facilities Program" is to
2 assist in meeting the capital outlay financing needs of California's public higher
3 education system, including the California Community Colleges, consisting of 71
4 districts and 107 campuses.

5 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100115
6 to require that "nine hundred seventy-five million dollars (\$975,000,000) of the proceeds
7 of bonds issued and sold pursuant to this chapter shall be deposited in the 1996 Higher
8 Education Capital Outlay Bond Fund, which is hereby created."

9 Chapter 1, Statutes of 1996, Section 1, added Education Code Section

⁴⁰⁴ Education Code Section 100110, added by Chapter 1, Statutes of 1996,
Section 1:

"The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, comprising nine campuses, the California State University, comprising 22 campuses, including the California Maritime Academy, a specialized institution, the California Community Colleges, consisting of 71 districts and 107 campuses, the Hastings College of the Law, and their respective off-campus centers. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, several billion dollars.

(d) The purpose of this article is to assist in meeting the capital outlay financing needs of California's public higher education system."

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1 100120⁴⁰⁵ to authorize the Higher Education Facilities Finance Committee to create a
2 debt or debts, liability or liabilities, of the State of California pursuant to this chapter for
3 the purpose of funding aid to the California Community Colleges for the construction,
4 including the construction of buildings and the acquisition of related fixtures; the
5 equipping of new, renovated, or reconstructed facilities; funding for the payment of
6 preconstruction costs, including, but not limited to, preliminary plans and working
7 drawings, and the renovation and reconstruction of facilities.

8 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100121
9 to require that "the Board of Governors of the California Community Colleges shall
10 consider the historic significance of community college district buildings that are 50

⁴⁰⁵ Education Code Section 100120, added by Chapter 1, Statutes of 1996,
Section 1:

"The Higher Education Facilities Finance Committee created pursuant to Section 67353 shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California Community Colleges, and the Hastings College of the Law for the construction, including the construction of buildings and the acquisition of related fixtures; the equipping of new, renovated, or reconstructed facilities; funding for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings; renovation and reconstruction of facilities; and the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990, including the acquisition of sites upon which these facilities are to be constructed.

The addition of the Hastings College of the Law to this section is not intended to mark a change from the funding authorizations made by Section 67354, as contained in the Higher Facilities Bond Act of 1986, or Section 67334, as contained in the Higher Education Facilities Bond Act of 1988, but is intended to state more clearly what was intended by the Legislature in those sections as well."

1 years of age or older if those buildings are to be renovated, reconstructed, or
2 demolished in connection with the construction of buildings utilizing the funds provided
3 by this chapter.”

4 ARTICLE 4. FISCAL PROVISIONS

5 Chapter 1, Statutes of 1996, Section 1, added Education Code Section
6 100125⁴⁰⁶ to require that bonds in the total amount of three billion dollars
7 (\$3,000,000,000), not including the amount of any refunding bonds issued in
8 accordance with Section 100175, or so much thereof as is necessary, shall be issued
9 and sold, as may be necessary, to provide a fund to be used for carrying out the
10 purposes expressed in this chapter and to reimburse the General Obligation Bond
Expense Revolving Fund.

12 Chapter 1, Statutes of 1996, Section 1, added Education Code Section

⁴⁰⁶ Education Code Section 100125, added by Chapter 1, Statutes of 1996,
Section 1:

“(a) Bonds in the total amount of three billion dollars (\$3,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 100175, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee created pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.”

1 100135⁴⁰⁷. Subdivision (a) requires that bonds authorized by this chapter shall be
2 prepared, executed, issued, sold, paid, and redeemed as provided in the State General
3 Obligation Bond Law [providing a procedure which may be adopted by other acts for
4 use with whatever modifications are necessary in authorizing the issuance and sale of
5 state general obligation bonds and providing for the repayment of such bonds], and all
6 of the provisions of that law apply to the bonds and to this chapter and are hereby
7 incorporated in this chapter as though set forth in full in this chapter.

8 Chapter 1, Statutes of 1996, Section 1, added Education Code Section
9 100140⁴⁰⁸. Subdivision (b) requires the Higher Education Facilities Finance Committee

⁴⁰⁷ Education Code Section 100135, added by Chapter 1, Statutes of 1996,
Section 1:

“(a) The bonds authorized by this chapter shall be prepared, executed, issued,
sold, paid, and redeemed as provided in the State General Obligation Bond Law
(Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the
Government Code), and all of the provisions of that law apply to the bonds and to this
chapter and are hereby incorporated in this chapter as though set forth in full in this
chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation
Board is designated the "board" for purposes of administering the State School Building
Lease-Purchase Fund.

(c) For purposes of the State General Obligation Bond Law, each state agency
administering an appropriation of the 1996 Higher Education Capital Outlay Bond Fund
is designated as the "board" for projects funded by those appropriations.”

⁴⁰⁸ Education Code Section 100140, added by Chapter 1, Statutes of 1996,
Section 1:

“(a) Upon request of the State Allocation Board from time to time, supported by a
statement of the apportionments made and to be made for the purposes described in
Sections 100015, 100020, 100025, 100030, and 100035, the State School Building
Finance Committee created pursuant to Section 15909 shall determine whether or not it

1 to authorize the issuance of bonds under this chapter only to the extent necessary to
2 fund the apportionments for the purposes described in Section 100120 that are
3 expressly authorized by the Legislature in the annual Budget Act. Pursuant to that
4 legislative direction, the committee shall determine whether or not it is necessary or
5 desirable to issue bonds authorized pursuant to this chapter in order to carry out the
6 actions specified in Section 100120 and, if so, the amount of bonds to be issued and
7 sold. Successive issues of bonds shall be authorized and sold, as may be necessary, to
8 carry out those actions progressively, and it is not necessary that all of the bonds
9 authorized to be issued be sold at any one time.

10 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100145
11 to provide that "there shall be collected each year and in the same manner and at the
12 same time as other state revenue is collected, in addition to the ordinary revenues of
13 the state, a sum in an amount required to pay the principal of, and interest on, the

is necessary or desirable to issue bonds authorized pursuant to this chapter in order to
fund the apportionments and, if so, the amount of bonds to be issued and sold.
Successive issues of bonds may be authorized and sold to fund those apportionments
progressively, and it is not necessary that all of the bonds authorized to be issued be
sold at any one time.

(b) The Higher Education Facilities Finance Committee created pursuant to
Section 67353 shall authorize the issuance of bonds under this chapter only to the
extent necessary to fund the apportionments for the purposes described in Section
100120 that are expressly authorized by the Legislature in the annual Budget Act.
Pursuant to that legislative direction, the committee shall determine whether or not it is
necessary or desirable to issue bonds authorized pursuant to this chapter in order to
carry out the actions specified in Section 100120 and, if so, the amount of bonds to be
issued and sold. Successive issues of bonds may be authorized and sold to carry out
those actions progressively, and it is not necessary that all of the bonds authorized to
be issued be sold at any one time."

1 bonds each year, and it is the duty of all officers charged by law with any duty in regard
2 to the collection of the revenue to do and perform each and every act which is
3 necessary to collect that additional sum."

4 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100150
5 to provide that "notwithstanding Section 13340 of the Government Code [providing that
6 on and after July 1, 1998, no moneys in that fund that, by any statute other than a
7 Budget Act, is continuously appropriated without regard to fiscal years, may be
8 encumbered unless the Legislature, by statute, specifies that the moneys in the fund
9 are appropriated for encumbrance], there is hereby appropriated from the General Fund
10 in the State Treasury, for the purposes of this chapter, an amount that will equal the
11 total of the following: (a) the sum annually necessary to pay the principal of, and
12 interest on, bonds issued and sold pursuant to this chapter, as the principal and interest
13 become due and payable, and (b) the sum that is necessary to carry out the provisions
14 of Section 100165, appropriated without regard to fiscal years."

15 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100155
16 to provide that "the board may request the Pooled Money Investment Board to make a
17 loan from the Pooled Money Investment Account, in accordance with Section 16312 of
18 the Government Code [providing that the Pooled Money Investment Board may make a
19 loan from the Pooled Money Investment Account directly to any such special fund, on
20 such terms and conditions as the board may determine, upon request made to the
21 board by an appropriate official, or for the purpose of carrying out a program or project

1 that is authorized to be financed by issuing bonds, notes, or other evidence of
2 indebtedness], for the purpose of carrying out this chapter. The amount of the request
3 shall not exceed the amount of the unsold bonds that the committee has, by resolution,
4 authorized to be sold for the purpose of carrying out this chapter. The board shall
5 execute those documents required by the Pooled Money Investment Board to obtain
6 and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated
7 by the board in accordance with this chapter.”

8 Chapter 1, Statutes of 1996, Section 1, added Education Code Section
9 100165⁴⁰⁹. Subdivision (a) requires that any amounts authorized by the Director of
10 Finance withdrawn from the General Fund shall be deposited in the State School

⁴⁰⁹ Education Code Section 100165, added by Chapter 1, Statutes of 1996,
Section 1:

“(a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee or the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the State School Building Lease-Purchase Fund and the 1996 Higher Education Capital Outlay Bond Fund. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in Section 100120 by the University of California, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan of the particular university or college and shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, by the 2002-03 fiscal year, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college.”

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1 Building Lease-Purchase Fund and the 1996 Higher Education Capital Outlay Bond
2 Fund. The amount or amounts withdrawn shall not exceed the amount of the unsold
3 bonds that have been authorized by the State School Building Finance Committee or
4 the Higher Education Facilities Finance Committee to be sold for the purpose of
5 carrying out this chapter. Any money made available under this section shall be
6 returned to the General Fund, plus an amount equal to the interest the money would
7 have earned in the Pooled Money Investment Account, from proceeds received from
8 the sale of bonds for the purpose of carrying out this chapter. Subdivision (b) requires
9 that any request forwarded to the Legislature and the Department of Finance for funds
10 from this bond issue for expenditure for the purposes described in Section 100120 by
11 the California Community Colleges shall be accompanied by the five-year capital outlay
12 plan of the particular college and shall include a schedule that prioritizes the seismic
13 retrofitting needed to significantly reduce, by the 2002-03 fiscal year, in the judgment of
14 the particular college, seismic hazards in buildings identified as high priority by the
15 college.

16 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100170
17 to require that "all money deposited in the State School Building Lease-Purchase Fund,
18 the Education Technology Fund, and the 1996 Higher Education Capital Outlay Bond
19 Fund that is derived from premium and accrued interest on bonds sold shall be
20 reserved in the fund and shall be available for transfer to the General Fund as a credit
21 to expenditures for bond interest."

1 Chapter 1, Statutes of 1996, Section 1, added Education Code Section 100175
2 to provide that "the bonds may be refunded in accordance with Article 6 (commencing
3 with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government
4 Code [providing that the committee may provide for the issuance and sale or exchange
5 of refunding bonds for the purpose of redeeming, retiring, or purchasing for retirement,
6 outstanding bonds at or before their maturity, if the committee determines that
7 refunding is necessary or advisable in order (a) to effect a favorable reorganization of
8 the debt structure of the state, or (b) to effect a saving in debt service cost to the state,
9 as measured by the present value of that saving], which is a part of the State General
10 Obligation Bond Law. Approval by the electors of the state for the issuance of the
11 bonds described in this chapter shall include approval of the issuance of any bonds
12 issued to refund any bonds originally issued under this chapter or any previously issued
13 refunding bonds."

14 Chapter 1, Statutes of 1996, Section 1, added Education Code Section
15 100180⁴¹⁰ to provide that the proceeds from the sale of bonds authorized by this
16 chapter are not subject to the tax limitations imposed by Article XIII B of the California
17 Constitution.

⁴¹⁰ Education Code Section 100180, added by Chapter 1, Statutes of 1996,
Section 1:

"The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article."

1 ARTICLE 5. MISCELLANEOUS

2 Chapter 1, Statutes of 1996, Section 1, added Education Code Section

3 100185⁴¹¹ Subdivision (a) requires that any remaining funds resulting or derived from
4 the sale of bonds pursuant to Part 10 shall be transferred to the State School Building
5 Lease-Purchase Fund and may be apportioned by the State Allocation Board for the
6 purposes of the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

7 Subdivision (b) requires that any unsold bonds, authorized for issuance under Part 10,
8 shall be sold, as may be necessary, by the Treasurer, upon authorization by the State

⁴¹¹ Education Code Section 100185, added by Chapter 1, Statutes of 1996,
Section 1:

“(a) Any remaining funds resulting or derived from the sale of bonds pursuant to Chapter 9 (commencing with Section 16400), Chapter 10 (commencing with Section 16500), Chapter 11 (commencing with Section 16600), Chapter 12 (commencing with Section 16700), Chapter 13 (commencing with Section 16800), Chapter 15 (commencing with Section 17000), Chapter 16 (commencing with Section 17100), Chapter 17 (commencing with Section 17200), Chapter 18 (commencing with Section 17300), Chapter 19 (commencing with Section 17400), and Chapter 20 (commencing with Section 17500), of Part 10, shall be transferred to the State School Building Lease-Purchase Fund and may be apportioned by the State Allocation Board for the purposes of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10).

(b) Any unsold bonds, authorized for issuance under Chapter 9 (commencing with Section 16400), Chapter 10 (commencing with Section 16500), Chapter 11 (commencing with Section 16600), Chapter 12 (commencing with Section 16700), Chapter 13 (commencing with Section 16800), Chapter 15 (commencing with Section 17000), Chapter 16 (commencing with Section 17100), Chapter 17 (commencing with Section 17200), Chapter 18 (commencing with Section 17300), Chapter 19 (commencing with Section 17400), and Chapter 20 (commencing with Section 17500), of Part 10 may be sold by the Treasurer, upon authorization by the State School Building Finance Committee for the purposes of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10).”

1 School Building Finance Committee for the purposes of the Leroy F. Greene State
2 School Building Lease-Purchase Law of 1976.

3 PART 68. PUBLIC EDUCATION BONDS

4 CHAPTER 1. CLASS SIZE REDUCTION KINDERGARTEN-UNIVERSITY

5 PUBLIC EDUCATION FACILITIES BOND ACT OF 1998

6 Chapter 407, Statutes of 1998, Section 16, added Chapter 1, "Class Size
7 Reduction Kindergarten-University Public Education Facilities Bond Act of 1998,"
8 approved by Initiative Measure [Prop. 1A] on November 3, 1998.

9 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
10 100400 to provide that "this part shall be known and may be cited as the Class Size
Reduction Kindergarten-University Public Education Facilities Bond Act of 1998."

12 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
13 100401 to provide that "the incorporation of, or reference to, any provisions of California
14 statutory law in this part includes all acts amendatory thereof and supplementary
15 thereto."

16 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
17 100403⁴¹² to require that bonds in the total amount of nine billion two hundred million

⁴¹² Education Code Section 100403, added by Chapter 407, Statutes of 1998, Section 16:

"(a) Bonds in the total amount of nine billion two hundred million dollars (\$9,200,000,000), not including the amount of any refunding bonds issued in accordance with Chapter 2 (commencing with Section 100410) and Chapter 3 (commencing with Section 100450), or so much thereof as is necessary, may be issued

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1 dollars (\$9,200,000,000), not including the amount of any refunding bonds issued in
2 accordance with Chapter 2 (commencing with Section 100410) and Chapter 3
3 (commencing with Section 100450), or so much thereof as is necessary, shall be issued
4 and sold, as may be necessary, to provide a fund to be used for carrying out the
5 purposes expressed in this part and to reimburse the General Obligation Bond Expense
6 Revolving Fund pursuant to Section 16724.5 of the Government Code [providing that
7 whenever bonds are sold, out of the first money realized from their sale, there shall be
8 redeposited in the revolving fund such expended sums, which may be used for the
9 same purposes and repaid in the same manner whenever additional sales are made].
10 The bonds, when sold, shall be and constitute a valid and binding obligation of the
11 State of California, and the full faith and credit of the State of California is hereby
12 pledged for the punctual payment of the principal of, and interest on, the bonds as the
13 principal and interest become due and payable. Subdivision (b) requires the Treasurer

and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 and the Higher Education Facilities Finance Committee established pursuant to Section 67353 (consisting of the Governor, the Controller, the Treasurer, the Director of Finance, the President of the University of California, the Chancellor of the California State University, and the Chancellor of the California Community Colleges, or their designees) at any different times necessary to service expenditures required by the apportionments.”

1 to sell the bonds authorized by the State School Building Finance Committee and the
2 Higher Education Facilities Finance Committee at any different times necessary to
3 service expenditures required by the apportionments.

4 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
5 100405⁴¹³ to provide that for purposes of Part 68, "Chapter 12" refers to the Leroy F.
6 Greene State School Building Lease-Purchase Law of 1976 and "Chapter 12.5" refers
7 to the Leroy F. Greene School Facilities Act of 1998.

8 CHAPTER 2. KINDERGARTEN THROUGH 12TH GRADE

9 Chapter 407, Statutes of 1998, Section 16, added Chapter 2, "Kindergarten
10 Through 12th Grade," approved by Initiative Measure [Prop. 1A] on November 3, 1998.

11 ARTICLE 1. KINDERGARTEN THROUGH 12TH GRADE SCHOOL FACILITIES
12 PROGRAM PROVISIONS

13 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
14 100410. Subdivision (a) requires that "three billion three hundred fifty million dollars
15 (\$3,350,000,000) of the proceeds of bonds issued and sold pursuant to this part shall
16 be deposited in the 1998 State School Facilities Fund, which is established by Section
17 17070.40, and allocated by the State Allocation Board pursuant to this chapter. Before

⁴¹³ Education Code Section 100405, added by Chapter 407, Statutes of 1998, Section 16:

"For purposes of this part, "Chapter 12" means Chapter 12 (commencing with Section 17000) of Part 10 and "Chapter 12.5" means Chapter 12.5 (commencing with Section 17070.10) of Part 10"

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1 requesting the sale of bonds pursuant to Section 100432 for deposit in the State School
2 Facilities Fund, the State Allocation Board shall request, pursuant to Section 100432,
3 the sale of bonds sufficient to finance all projects for which application was made
4 pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976
5 (Chapter 12 (commencing with Section 17000) of Part 10) and for which an application
6 was approved for construction, but funding was not available, prior to November 4,
7 1998." Subdivision (b) requires that "in addition to the amount specified in subdivision
8 (a), three billion three hundred fifty million dollars (\$3,350,000,000) of the bonds
9 authorized by this chapter shall only be issued and sold pursuant to this chapter on or
10 after July 1, 2000, and the proceeds of those bonds shall be deposited in the 1998
11 State School Facilities Fund and allocated by the State Allocation Board pursuant to
12 this chapter."

13 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
14 100415. Subdivision (a) requires that "all moneys deposited in the 1998 State School
15 Facilities Fund pursuant to this chapter shall be available and, notwithstanding any
16 other provision of law to the contrary, are hereby appropriated to provide aid to school
17 districts of the state in accordance with the Leroy F. Greene State School Building
18 Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part
19 10) and in accordance with the Leroy F. Greene School Facilities Act of 1998 (Chapter
20 12.5 (commencing with Section 17070.10) of Part 10), to provide aid to school districts,
21 county superintendents of schools, and county boards of education of the state in

1 accordance with Section 100420, to provide funds to repay any money advanced or
2 loaned to the 1998 State School Facilities Fund under any act of the Legislature,
3 together with interest provided for in that act, and to reimburse the General Obligation
4 Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.”

5 Subdivision (b) requires that “the bonds issued and sold pursuant to this chapter shall
6 fund kindergarten and grades 1 through 12, inclusive, school constructions for a
7 four-year period.”

8 Chapter 858, Statutes of 1999, Section 14, amended Education Code Section
9 100420⁴¹⁴. Subdivision (a) requires that of the proceeds from the sale of bonds, issued

⁴¹⁴ Education Code Section 100420, added by Chapter 407, Statutes of 1998,
Section 16, as amended by Chapter 858, Statutes of 1999, Section 14:

“(a) Of the proceeds from the sale of bonds, issued and sold pursuant to this
chapter, as specified in subdivision (a) of Section 100410, not more than three billion
three hundred fifty million dollars (\$3,350,000,000) shall be allocated beginning in the
1998-99 fiscal year in accordance with the following schedule:

(1) Not less than one billion three hundred fifty million dollars
(\$1,350,000,000) for project funding related to the growth in enrollment of
applicant school districts under Chapter 12 and Chapter 12.5 that have incurred
or will incur enrollment increases.

(2) Not less than eight hundred million dollars (\$800,000,000) for the
reconstruction or modernization of facilities pursuant to Chapter 12 and Chapter
12.5.

(3) Not more than five hundred million dollars (\$500,000,000) shall be
deposited in the Public School Critical Hardship Account, which is hereby
established in the 1998 State School Facilities Fund and shall be allocated by
the State Allocation Board to fund critical hardships as defined in Chapter 12.5.
These funds may be expended for the acquisition of portable classrooms for use
in accordance with Chapter 14 (commencing with Section 17085) of Part 10.

(4) (A) Not more than seven hundred million dollars (\$700,000,000)
may be allocated to assist school districts with site acquisition and
facilities-related costs of kindergarten and grades 1 to 3, inclusive, that

are in the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28 and Chapter 19 (commencing with Section 17200) of Part 10, and to assist districts with the restoration of facilities that previously accommodated other programs and were displaced as a result of the implementation of class size reduction. On and after July 1, 2000, if applications for the total funds available under this paragraph have not been filed with the State Allocation Board, the funds for which applications have not been received may be allocated by the board to other high priority needs as the board determines. On and after July 1, 2003, any funds not allocated are available for other high priority needs.

(B) The funds allocated in subparagraph (A) shall be allocated to the State Department of Education to provide class size reduction facilities grants necessary to implement the K-3 Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 and Chapter 19 (commencing with Section 17200) of Part 10. The department shall certify to the State Allocation Board the amount of funds needed for this purpose. The board shall transfer the amount of funds needed to the department. From these funds, the department shall award eligible districts forty thousand dollars (\$40,000) for each new option one class established for class size reduction for which the district had not previously received funding under class size reduction facilities programs.

(C) The remaining funds provided pursuant to subparagraph (A) shall be to provide funding for schoolsites that were eligible to receive a class size reduction land-locked waiver pursuant to Section 52122.6. The funds may be provided to districts to provide 50 percent of the cost of funding a facilities mitigation plan developed for the impacted site pursuant to Section 52122.7.

(D) Any funds not expended pursuant to subparagraphs (A), (B), or (C) may be allocated to districts that request funding of forty thousand dollars (\$40,000) for each teaching station that (1) was displaced as a result of the implementation of class size reduction and (2) received less than forty thousand dollars (\$40,000) per teaching station in 1996-97 pursuant to Chapter 19 (commencing with Section 17200) of Part 10. Programs for which teaching stations may be restored may include child care, extended day care, school libraries, computer labs, and special education classrooms.

(b) Of the proceeds from the sale of bonds issued and sold pursuant to this chapter, as specified in subdivision (b) of Section 100410, not more than three billion

three hundred fifty million dollars (\$3,350,000,000) shall be allocated beginning in the 2000-01 fiscal year in accordance with the following schedule:

(1) Not less than one billion five hundred fifty million dollars (\$1,550,000,000) for project funding related to the growth in enrollment of applicant school districts under Chapter 12.5 that have incurred or will incur enrollment increases.

(2) Not less than one billion three hundred million dollars (\$1,300,000,000) for the reconstruction or modernization of facilities pursuant to Chapter 12.5.

(3) Not more than five hundred million dollars (\$500,000,000) shall be deposited in the Public School Critical Hardship Account in the 1998 State School Facilities Fund and shall be allocated by the State Allocation Board to fund critical hardships as defined in Chapter 12.5. These funds may be expended for the acquisition of portable classrooms for use in accordance with Chapter 14 (commencing with Section 17085) of Part 10.

(c) Districts may use funds allocated pursuant to paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) for one or more of the following purposes in accordance with Chapter 12.5:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other renovation or modernization of facilities pursuant to Chapter 12.5.

(d) Funds allocated pursuant to paragraph (1) of subdivision (a) and paragraph (1) of subdivision (b) may be utilized to provide new construction grants, without regard to funding priorities, for applicant county boards of education under Chapter 12.5 that are eligible for that funding or classrooms for severely handicapped pupils and funding for classrooms for county community school pupils.

(e)(1) The Legislature may amend this section to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (a) and the maximum funding amounts specified in paragraphs (3) and (4) of subdivision (a), and to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (b) and the maximum funding amount specified in paragraph (3) of subdivision (b), by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with,

1 and sold pursuant to this chapter, as specified in subdivision (a) of Section 100410, not
2 more than three billion three hundred fifty million dollars (\$3,350,000,000) shall be
3 allocated beginning in the 1998-99 fiscal year in accordance with the following
4 schedule:

5 (1) Not less than one billion three hundred fifty million dollars (\$1,350,000,000)
6 for project funding related to the growth in enrollment of applicant school districts
7 under Chapter 12 and Chapter 12.5 that have incurred or will incur enrollment
8 increases;

9 (2) Not less than eight hundred million dollars (\$800,000,000) for the
10 reconstruction or modernization of facilities pursuant to Chapter 12 and Chapter
11 12.5;

12 (3) Not more than five hundred million dollars (\$500,000,000) shall be deposited
13 in the Public School Critical Hardship Account, which is hereby established in the
14 1998 State School Facilities Fund and shall be allocated by the State Allocation
15 Board to fund critical hardships as defined in Chapter 12.5. These funds may be
16 expended for the acquisition of portable classrooms for use in accordance with
17 Chapter 14, "State Relocatable Classroom Law of 1979";

and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) or paragraphs (1) to (3), inclusive, of subdivision (b) or both, but may not increase or decrease the total amount to be expended pursuant to either subdivision."

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1 (4)(A) Not more than seven hundred million dollars (\$700,000,000) may be
2 allocated to assist school districts with site acquisition and facilities-related costs
3 of kindergarten and grades 1 to 3, inclusive, that are in the Class Size Reduction
4 Programs, and to assist districts with the restoration of facilities that previously
5 accommodated other programs and were displaced as a result of the
6 implementation of class size reduction. On and after July 1, 2000, if applications
7 for the total funds available under this paragraph have not been filed with the
8 State Allocation Board, the funds for which applications have not been received
9 may be allocated by the board to other high priority needs as the board
10 determines. On and after July 1, 2003, any funds not allocated are available for
1 other high priority needs;

12 (4)(B) The funds allocated in subparagraph (A) shall be allocated to the State
13 Department of Education to provide class size reduction facilities grants
14 necessary to implement the K-3 Class Size Reduction Programs. The
15 department shall certify to the State Allocation Board the amount of funds
16 needed for this purpose. The board shall transfer the amount of funds needed to
17 the department. From these funds, the department shall award eligible districts
18 forty thousand dollars (\$40,000) for each new option one class established for
19 class size reduction for which the district had not previously received funding
20 under class size reduction facilities programs;

21 (4)(C) The remaining funds provided pursuant to subparagraph (A) shall be to

1 provide funding for schoolsites that were eligible to receive a class size reduction
2 land-locked waiver pursuant to Section 52122.6. The funds may be provided to
3 districts to provide 50 percent of the cost of funding a facilities mitigation plan
4 developed for the impacted site pursuant to Section 52122.7; and

5 (4)(D) Any funds not expended pursuant to subparagraphs (A), (B), or (C) may
6 be allocated to districts that request funding of forty thousand dollars (\$40,000)
7 for each teaching station that was displaced as a result of the implementation of
8 class size reduction and received less than forty thousand dollars (\$40,000) per
9 teaching station in 1996-97. Programs for which teaching stations may be
10 restored shall include, as may be necessary, child care, extended day care,
11 school libraries, computer labs, and special education classrooms.

12 Subdivision (b) requires that not more than three billion three hundred fifty million
13 dollars (\$3,350,000,000) of the proceeds from the sale of bonds issued and sold
14 pursuant to this chapter, as specified in subdivision (b) of Section 100410, shall be
15 allocated beginning in the 2000-01 fiscal year in accordance with the following
16 schedule:

17 (1) Not less than one billion five hundred fifty million dollars (\$1,550,000,000) for
18 project funding related to the growth in enrollment of applicant school districts
19 under Chapter 12.5 that have incurred or will incur enrollment increases;

20 (2) Not less than one billion three hundred million dollars (\$1,300,000,000) for
21 the reconstruction or modernization of facilities pursuant to Chapter 12.5; and

1 (3) Not more than five hundred million dollars (\$500,000,000) shall be deposited
2 in the Public School Critical Hardship Account in the 1998 State School Facilities
3 Fund and shall be allocated by the State Allocation Board to fund critical
4 hardships as defined in Chapter 12.5. These funds may be expended for the
5 acquisition of portable classrooms for use in accordance with Chapter 14
6 (commencing with Section 17085) of Part 10.

7 Subdivision (c) provides that districts may use funds allocated pursuant to paragraph
8 (2) of subdivision (a) and paragraph (2) of subdivision (b) for one or more of the
9 following purposes in accordance with Chapter 12.5:

10 (1) The purchase and installation of air-conditioning equipment and insulation
11 materials, and related costs;

12 (2) Construction projects or the purchase of furniture or equipment designed to
13 increase school security or playground safety;

14 (3) The identification, assessment, or abatement in school facilities of hazardous
15 asbestos;

16 (4) Project funding for high priority roof replacement projects; and

17 (5) Any other renovation or modernization of facilities pursuant to Chapter 12.5.

18 Subdivision (d) provides that funds allocated pursuant to paragraph (1) of subdivision
19 (a) and paragraph (1) of subdivision (b) may be utilized to provide new construction
20 grants, without regard to funding priorities, for applicant county boards of education
21 under Chapter 12.5 that are eligible for that funding for classrooms for severely

1 handicapped pupils and funding for classrooms for county community school pupils.

2 Subdivision (e) refers to Legislative amendments to adjust funding amounts.

3 ARTICLE 2. KINDERGARTEN THROUGH 12TH GRADE SCHOOL FACILITIES

4 PROVISION

5 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
6 100425. Subdivision (a) provides that “bonds in the total amount of six billion seven
7 hundred million dollars (\$6,700,000,000), not including the amount of any refunding
8 bonds issued in accordance with Section 100444, or so much thereof as is necessary,
9 may be issued and sold to provide a fund to be used for carrying out the purposes
10 expressed in this chapter and to reimburse the General Obligation Bond Expense
11 Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds,
12 when sold, shall be and constitute a valid and binding obligation of the State of
13 California, and the full faith and credit of the State of California is hereby pledged for
14 the punctual payment of the principal of, and interest on, the bonds as the principal and
15 interest become due and payable. Subdivision (b) requires that, “pursuant to this
16 section, the Treasurer shall sell the bonds authorized by the State School Building
17 Finance Committee established pursuant to Section 15909 at any different times
18 necessary to service expenditures required by the apportionments.”

19 Chapter 407, Statutes of 1998, Section 16, added Education Code Section

1 100427⁴¹⁵ to provide that the State School Building Finance Committee is continued in
2 existence for the purpose of this chapter.

3 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
4 100430. Subdivision (a) requires that "the bonds authorized by this chapter shall be
5 prepared, executed, issued, sold, paid, and redeemed as provided in the State General
6 Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division
7 4 of Title 2 of the Government Code) [providing a procedure which may be adopted by
8 other acts for use with whatever modifications are necessary in authorizing the
9 issuance and sale of state general obligation bonds and providing for the repayment of
10 such bonds], and all of the provisions of that law, except Section 16727 of the
1 Government Code [providing that proceeds from the sale of any bonds issued pursuant

⁴¹⁵ Education Code Section 100427, added by Chapter 407, Statutes of 1998,
Section 16:

"The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide the assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee."

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1 to the State General Obligation Bond Law shall be used only for the following purposes:
2 the costs of construction or acquisition of capital assets, to make grants or loans, if the
3 proceeds of the grants or loans are used for the costs of construction or acquisition of
4 capital assets, to pay the costs of a state agency for administering the grant or loan
5 program, to repay funds borrowed in anticipation of the sale of the bonds, including
6 interest, or to pay interest on the bonds themselves, to pay the costs of a state agency
7 with responsibility for administering the bond program, or the costs of the Treasurer's
8 office directly associated with the sale and payment of the bonds, including, but not
9 limited to, underwriting discounts, costs of printing, bond counsel, registration, and fees
10 of trustees], apply to the bonds and to this chapter and are hereby incorporated in this
11 chapter as though set forth in full in this chapter. Subdivision (b) provides that "for
12 purposes of the State General Obligation Bond Law, the State Allocation Board is
13 designated the "board" for purposes of administering the 1998 State School Facilities
14 Fund."

15 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
16 100432 which requires that "upon request of the State Allocation Board from time to
17 time, supported by a statement of the apportionments made and to be made for the
18 purposes described in Sections 100415 and 100420, the State School Building Finance
19 Committee shall determine whether or not it is necessary or desirable to issue bonds
20 authorized pursuant to this chapter in order to fund the apportionments and, if so, the
21 amount of bonds to be issued and sold. Successive issues of bonds may be authorized

1 and sold to fund those apportionments progressively, and it is not necessary that all of
2 the bonds authorized to be issued be sold at any one time.”

3 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
4 100434 to require that “there shall be collected each year and in the same manner and
5 at the same time as other state revenue is collected, in addition to the ordinary
6 revenues of the state, a sum in an amount required to pay the principal of, and interest
7 on, the bonds each year. It is the duty of all officers charged by law with any duty in
8 regard to the collection of the revenue to do and perform each and every act which is
9 necessary to collect that additional sum.”

10 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
1 100435 to provide that “notwithstanding Section 13340 of the Government Code
12 [providing that on and after July 1, 1998, no moneys in that fund that, by any statute
13 other than a Budget Act, is continuously appropriated without regard to fiscal years,
14 may be encumbered unless the Legislature, by statute, specifies that the moneys in the
15 fund are appropriated for encumbrance], there is hereby appropriated from the General
16 Fund in the State Treasury, for the purposes of this chapter, an amount that will equal
17 the total of the following: (a) the sum annually necessary to pay the principal of, and
18 interest on, bonds issued and sold pursuant to this chapter, as the principal and interest
19 become due and payable, and (b) the sum necessary to carry out Section 100440,
20 appropriated without regard to fiscal years.”

21 Chapter 407, Statutes of 1998, Section 16, added Education Code Section

1 100436 to provide that "the State Allocation Board may request the Pooled Money
2 Investment Board to make a loan from the Pooled Money Investment Account or any
3 other approved form of interim financing, in accordance with Section 16312 of the
4 Government Code [providing that the Pooled Money Investment Board may make a
5 loan from the Pooled Money Investment Account directly to any such special fund, on
6 such terms and conditions as the board may determine, upon request made to the
7 board by an appropriate official, or for the purpose of carrying out a program or project
8 that is authorized to be financed by issuing bonds, notes, or other evidence of
9 indebtedness], for the purpose of carrying out this chapter. The amount of the request
10 shall not exceed the amount of the unsold bonds that the committee, by resolution, has
11 authorized to be sold for the purpose of carrying out this chapter. The board shall
12 execute any documents required by the Pooled Money Investment Board to obtain and
13 repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by
14 the board in accordance with this chapter."

15 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
16 100438 to provide that "notwithstanding any other provision of this chapter, or of the
17 State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this
18 chapter that include a bond counsel opinion to the effect that the interest on the bonds
19 is excluded from gross income for federal tax purposes, subject to designated
20 conditions, the Treasurer may maintain separate accounts for the investment of bond
21 proceeds and for the investment earnings on those proceeds. The Treasurer may use

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1 or direct the use of those proceeds or earnings to pay any rebate, penalty, or other
2 payment required under federal law or take any other action with respect to the
3 investment and use of those bond proceeds required or desirable under federal law to
4 maintain the tax-exempt status of those bonds and to obtain any other advantage under
5 federal law on behalf of the funds of this state.”

6 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
7 100440 to provide that “for the purposes of carrying out this chapter, the Director of
8 Finance may authorize the withdrawal from the General Fund of an amount not to
9 exceed the amount of the unsold bonds that have been authorized by the State School
10 Building Finance Committee to be sold for the purpose of carrying out this chapter. Any
11 amounts withdrawn shall be deposited in the 1998 State School Facilities Fund
12 consistent with this chapter. Any money made available under this section shall be
13 returned to the General Fund, plus an amount equal to the interest that the money
14 would have earned in the Pooled Money Investment Account, from proceeds received
15 from the sale of bonds for the purpose of carrying out this chapter.”

16 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
17 100442 to require that “all money deposited in the 1998 State School Facilities Fund,
18 that is derived from premium and accrued interest on bonds sold shall be reserved in
19 the fund and shall be available for transfer to the General Fund as a credit to
20 expenditures for bond interest.”

21 Chapter 407, Statutes of 1998, Section 16, added Education Code Section

1 100444 to provide that "the bonds may be refunded in accordance with Article 6
2 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the
3 Government Code [providing that the committee may provide for the issuance and sale
4 or exchange of refunding bonds for the purpose of redeeming, retiring, or purchasing
5 for retirement, outstanding bonds at or before their maturity, if the committee
6 determines that refunding is necessary or advisable in order (a) to effect a favorable
7 reorganization of the debt structure of the state, or (b) to effect a saving in debt service
8 cost to the state, as measured by the present value of that saving], which is a part of
9 the State General Obligation Bond Law. Approval by the voters of the state for the
10 issuance of the bonds described in this chapter includes the approval of the issuance of
11 any bonds issued to refund any bonds originally issued under this chapter or any
12 previously issued refunding bonds."

13 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
14 100446 to declare "that, inasmuch as the proceeds from the sale of bonds authorized
15 by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the
16 California Constitution, the disbursement of these proceeds is not subject to the
17 limitations imposed by that article."

18 CHAPTER 3. HIGHER EDUCATION FACILITIES

19 Chapter 407, Statutes of 1998, Section 16, added Chapter 3, "Higher Education
20 Facilities," approved by Initiative Measure [Prop. 1A] on November 3, 1998.
21

1 ARTICLE 1. PROGRAM PROVISION

2 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
3 100450⁴¹⁶. Subdivision (d) requires that proceeds from the sale of bonds issued and
4 sold pursuant to this chapter shall be used, as may be necessary, to fund construction
5 on existing or new campuses and off-campus centers, including the construction of

⁴¹⁶ Education Code Section 100450, added by Chapter 407, Statutes of 1998,
Section 16:

“The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, and their respective off-campus centers. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the California Postsecondary Education Commission, the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, seven hundred fifty million dollars (\$750,000,000) per year into the next century.

(d) Proceeds from the sale of bonds issued and sold pursuant to this chapter may be used to fund construction on existing or new campuses and off-campus centers, including the construction of buildings and the acquisition of related fixtures, the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings at the University of California, the Hastings College of the Law, the California State University and the California Community Colleges.

(e) The purposes of this article include assisting in meeting the capital outlay financing needs of California's public higher education system.”

1 buildings and the acquisition of related fixtures, the renovation and reconstruction of
2 facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities,
3 which equipment shall have an average useful life of 10 years; and to provide funds for
4 the payment of preconstruction costs, including, but not limited to, preliminary plans and
5 working drawings at the California Community Colleges. The purposes of this article
6 include assisting in meeting the capital outlay financing needs of California's public
7 higher education system.

8 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
9 100455. Subdivision (a) requires that "two billion five hundred million dollars
10 (\$2,500,000,000) of the proceeds of bonds issued and sold pursuant to this part shall
11 be deposited in the 1998 Higher Education Capital Outlay Bond Fund which is hereby
12 established in the State Treasury. These funds shall be available for expenditure when
13 appropriated." Subdivision (b) requires that "one billion two hundred fifty million dollars
14 (\$1,250,000,000) of the bonds described in subdivision (a), shall only be issued and
15 sold pursuant to this chapter on or after July 1, 2000."

16 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
17 100457. Subdivision (a) requires that "of the amount of bonds issued and sold
18 pursuant to subdivision (b) of Section 100455, one hundred sixty-five million dollars
19 (\$165,000,000) shall be allocated in the 2000-01 fiscal year to be available only for the
20 following purposes: (1) the development of new campuses of the University of
21 California, and (2) the development of new campuses, small campuses with

1 enrollments of less than 5,000 full-time equivalent students, and off-campus centers at
2 the California State University and the California Community Colleges. Subdivision (b)
3 provides that “the amount of the allocation of funds required pursuant to this section for
4 the development of new campuses may be reduced by a future legislative act if the
5 Legislature finds that state funds have been provided from sources other than the
6 proceeds of bonds for capital outlay costs. The reduction shall be limited to the amount
7 actually provided from sources other than bond proceeds.”

8 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
9 100460⁴¹⁷ to authorize the Higher Education Facilities Finance Committee to create a
10 debt or debts, liability or liabilities, of the State of California pursuant to this chapter for
11 the purpose of providing funds to aid the California Community Colleges.

12 ARTICLE 2. HIGHER EDUCATION FISCAL PROVISIONS

13 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
14 100500. Subdivision (a) provides that “bonds in the total amount of two billion five
15 hundred million dollars (\$2,500,000,000), not including the amount of any refunding
16 bonds issued in accordance with Section 100555, or so much thereof as is necessary,

⁴¹⁷ Education Code Section 100460, added by Chapter 407, Statutes of 1998,
Section 16:

“The Higher Education Facilities Finance Committee established pursuant to
Section 67353 is hereby authorized to create a debt or debts, liability or liabilities, of the
State of California pursuant to this chapter for the purpose of providing funds to aid the
University of California, the Hastings College of the Law, the California State University,
and the California Community Colleges.”

1 may be issued and sold to provide a fund to be used for carrying out the purposes
2 expressed in this chapter and to reimburse the General Obligation Bond Expense
3 Revolving Fund pursuant to Section 16724.5 of the Government Code [providing that
4 whenever bonds are sold, out of the first money realized from their sale, there shall be
5 redeposited in the revolving fund such expended sums, which may be used for the
6 same purposes and repaid in the same manner whenever additional sales are made].
7 The bonds, when sold, shall be and constitute a valid and binding obligation of the
8 State of California, and the full faith and credit of the State of California is hereby
9 pledged for the punctual payment of the principal of, and interest on, the bonds as the
10 principal and interest become due and payable." Subdivision (b) requires that, "pursuant
11 to this section, the Treasurer shall sell the bonds authorized by the Higher Education
12 Facilities Finance Committee established pursuant to Section 67353 at any different
13 times necessary to service expenditures required by the apportionments."

14 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
15 100510. Subdivision (a) requires that "the bonds authorized by this chapter shall be
16 prepared, executed, issued, sold, paid, and redeemed as provided in the State General
17 Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division
18 4 of Title 2 of the Government Code) [providing a procedure which may be adopted by
19 other acts for use with whatever modifications are necessary in authorizing the
20 issuance and sale of state general obligation bonds and providing for the repayment of
21 such bonds], and all of the provisions of that law, except Section 16727 of the

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1 Government Code [providing that proceeds from the sale of any bonds issued pursuant
2 to the State General Obligation Bond Law shall be used only for the following purposes:
3 the costs of construction or acquisition of capital assets, to make grants or loans, if the
4 proceeds of the grants or loans are used for the costs of construction or acquisition of
5 capital assets, to pay the costs of a state agency for administering the grant or loan
6 program, to repay funds borrowed in anticipation of the sale of the bonds, including
7 interest, or to pay interest on the bonds themselves, to pay the costs of a state agency
8 with responsibility for administering the bond program, or the costs of the Treasurer's
9 office directly associated with the sale and payment of the bonds, including, but not
10 limited to, underwriting discounts, costs of printing, bond counsel, registration, and fees
11 of trustees], apply to the bonds and to this chapter and are hereby incorporated in this
12 chapter as though set forth in full in this chapter." Subdivision (b) requires that "for the
13 purposes of the State General Obligation Bond Law, each state agency administering
14 an appropriation of the 1998 Higher Education Capital Outlay Bond Fund is designated
15 as the "board" for projects funded pursuant to this chapter." Subdivision (c) requires
16 that the proceeds of the bonds issued and sold pursuant to this chapter shall be
17 available for the purpose of funding aid to the California Community Colleges, for the
18 construction on existing or new campuses, and their respective off-campus centers,
19 including the construction of buildings and the acquisition of related fixtures, renovation,
20 and reconstruction of facilities, for the acquisition of sites upon which these facilities are
21 to be constructed, for the equipping of new, renovated, or reconstructed facilities, which

1 equipment shall have a useful life of at least 10 years, to provide funds for payment of
2 preconstruction costs, including, but not limited to, preliminary plans and working
3 drawings.

4 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
5 100520 to require that "the Higher Education Facilities Finance Committee established
6 pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only
7 to the extent necessary to fund the apportionments for the purposes described in this
8 chapter that are expressly authorized by the Legislature in the annual Budget Act.

9 Pursuant to that legislative direction, the committee shall determine whether or not it is
10 necessary or desirable to issue bonds authorized pursuant to this chapter in order to
11 carry out the purposes described in this chapter and, if so, the amount of bonds to be
12 issued and sold. Successive issues of bonds may be authorized and sold to carry out
13 those actions progressively, and it is not necessary that all of the bonds authorized to
14 be issued be sold at any one time."

15 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
16 100525 to require that "there shall be collected each year and in the same manner and
17 at the same time as other state revenue is collected, in addition to the ordinary
18 revenues of the state, a sum in an amount required to pay the principal of, and interest
19 on, the bonds each year. It is the duty of all officers charged by law with any duty in
20 regard to the collection of the revenue to do and perform each and every act which is
21 necessary to collect that additional sum."

1 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
2 100530 to provide that “notwithstanding Section 13340 of the Government Code
3 [providing that on and after July 1, 1998, no moneys in that fund that, by any statute
4 other than a Budget Act, is continuously appropriated without regard to fiscal years,
5 may be encumbered unless the Legislature, by statute, specifies that the moneys in the
6 fund are appropriated for encumbrance], there is hereby appropriated from the General
7 Fund in the State Treasury, for the purposes of this chapter, an amount that will equal
8 the total of the following: (a) the sum annually necessary to pay the principal of, and
9 interest on, bonds issued and sold pursuant to this chapter, as the principal and interest
10 become due and payable, and (b) the sum necessary to carry out Section 100545,
11 appropriated without regard to fiscal years.”

12 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
13 100535 to provide that “the board, as defined in subdivision (b) of Section 100510, may
14 request the Pooled Money Investment Board to make a loan from the Pooled Money
15 Investment Account or any other approved form of interim financing, in accordance with
16 Section 16312 of the Government Code [providing that the Pooled Money Investment
17 Board may make a loan from the Pooled Money Investment Account directly to any
18 such special fund, on such terms and conditions as the board may determine, upon
19 request made to the board by an appropriate official, or for the purpose of carrying out a
20 program or project that is authorized to be financed by issuing bonds, notes, or other
21 evidence of indebtedness], for the purpose of carrying out this chapter. The amount of

1 the request shall not exceed the amount of the unsold bonds that the committee, by
2 resolution, has authorized to be sold for the purpose of carrying out this chapter. The
3 board, as defined in subdivision (b) of Section 100510, shall execute any documents
4 required by the Pooled Money Investment Board to obtain and repay the loan. Any
5 amounts loaned shall be deposited in the fund to be allocated by the board in
6 accordance with this chapter.”

7 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
8 100540 to provide that “notwithstanding any other provision of this chapter, or of the
9 State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this
10 chapter that include a bond counsel opinion to the effect that the interest on the bonds
11 is excluded from gross income for federal tax purposes, subject to designated
12 conditions, the Treasurer may maintain separate accounts for the investment of bond
13 proceeds and for the investment earnings on those proceeds. The Treasurer may use
14 or direct the use of those proceeds or earnings to pay any rebate, penalty, or other
15 payment required under federal law or take any other action with respect to the
16 investment and use of those bond proceeds required or desirable under federal law to
17 maintain the tax-exempt status of those bonds and to obtain any other advantage under
18 federal law on behalf of the funds of this state.”

19 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
20 100545. Subdivision (a) provides that “for the purposes of carrying out this chapter, the
21 Director of Finance may authorize the withdrawal from the General Fund of an amount

1 not to exceed the amount of the unsold bonds that have been authorized by the Higher
2 Education Facilities Finance Committee to be sold for the purpose of carrying out this
3 chapter. Any amounts withdrawn shall be deposited in the 1998 Higher Education
4 Capital Outlay Bond Fund consistent with this chapter. Any money made available
5 under this section shall be returned to the General Fund, plus an amount equal to the
6 interest that the money would have earned in the Pooled Money Investment Account,
7 from proceeds received from the sale of bonds for the purpose of carrying out this
8 chapter.” Subdivision (b) requires that any request forwarded to the Legislature and the
9 Department of Finance for funds from this bond issue for expenditure for the purposes
10 described in this chapter by the California Community Colleges shall be accompanied
11 by the five-year capital outlay plan. Requests forwarded by the California Community
12 Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs
13 and priorities of the community college system, prioritized on a statewide basis.

14 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
15 100550 which requires that “all money deposited in the 1998 Higher Education Capital
16 Outlay Bond Fund that is derived from premium and accrued interest on bonds sold
17 shall be reserved in the fund and shall be available for transfer to the General Fund as
18 a credit to expenditures for bond interest.”

19 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
20 100555 to provide that “the bonds may be refunded in accordance with Article 6
21 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the

1 Government Code [providing that the committee may provide for the issuance and sale
2 or exchange of refunding bonds for the purpose of redeeming, retiring, or purchasing
3 for retirement, outstanding bonds at or before their maturity, if the committee
4 determines that refunding is necessary or advisable in order (a) to effect a favorable
5 reorganization of the debt structure of the state, or (b) to effect a saving in debt service
6 cost to the state, as measured by the present value of that saving], which is a part of
7 the State General Obligation Bond Law. Approval by the voters of the state for the
8 issuance of the bonds described in this chapter includes the approval of the issuance of
9 any bonds issued to refund any bonds originally issued under this chapter or any
10 previously issued refunding bonds."

11 Chapter 407, Statutes of 1998, Section 16, added Education Code Section
12 100560 to declare "that, inasmuch as the proceeds from the sale of bonds authorized
13 by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the
14 California Constitution, the disbursement of these proceeds is not subject to the
15 limitations imposed by that article."

16 PART 68.1. KINDERGARTEN-UNIVERSITY PUBLIC EDUCATION FACILITIES
17 BOND ACT OF 2002

18 Chapter 33, Statutes of 2002, Section 30, added Part 68.1, "the
19 Kindergarten-University Public Education Facilities Bond Act of 2002," operative upon
20 passage of Initiative Measure (Prop. 47) at the November 5, 2002 general election.
21

1 CHAPTER 1. GENERAL

2 Chapter 33, Statutes of 2002, Section 30 , added Education Code Section
3 100600 to provide that "this part shall be known and may be cited as the
4 Kindergarten-University Public Education Facilities Bond Act of 2002."

5 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
6 100601 to provide that "the incorporation of, or reference to, any provision of California
7 statutory law in this part includes all acts amendatory thereof and supplementary
8 thereto."

9 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
10 100603 to provide that "bonds in the total amount of thirteen billion fifty million dollars
1 (\$13,050,000,000), not including the amount of any refunding bonds issued in
12 accordance with Sections 100644 and 100755, or so much thereof as is necessary,
13 may be issued and sold to provide a fund to be used for carrying out the purposes
14 expressed in this part and to reimburse the General Obligation Bond Expense
15 Revolving Fund pursuant to Section 16724.5 of the Government Code [providing that
16 whenever bonds are sold, out of the first money realized from their sale, there shall be
17 redeposited in the revolving fund such expended sums, which may be used for the
18 same purposes and repaid in the same manner whenever additional sales are made].
19 The bonds, when sold, shall be and constitute a valid and binding obligation of the
20 State of California, and the full faith and credit of the State of California is hereby
21 pledged for the punctual payment of the principal of, and interest on, the bonds as the

1 principal and interest become due and payable.” Subdivision (b) requires that,
2 “pursuant to this section, the Treasurer shall sell the bonds authorized by the State
3 School Building Finance Committee established by Section 15909 or the Higher
4 Education Facilities Finance Committee established pursuant to Section 67353, as the
5 case may be, at any different times necessary to service expenditures required by the
6 apportionments.”

7 CHAPTER 2 KINDERGARTEN THROUGH 12TH GRADE
8 ARTICLE 1. KINDERGARTEN THROUGH 12TH GRADE SCHOOL FACILITIES
9 PROGRAM

10 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
11 100610 which requires that “the proceeds of bonds issued and sold pursuant to Article
12 2 (commencing with Section 100625) shall be deposited in the 2002 State School
13 Facilities Fund, which is established in Section 17070.40, and shall be allocated by the
14 State Allocation Board pursuant to this chapter.”

15 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
16 100615 to require that “all moneys deposited in the 2002 State Facilities Fund for the
17 purposes of this chapter shall be available and, notwithstanding any other provision of
18 law to the contrary, are hereby appropriated to provide aid to school districts, county
19 superintendents of schools, and county boards of education of the state in accordance
20 with the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with
21 Section 17070.10) of Part 10), as set forth in Section 100620, to provide funds to repay

1 any money advanced or loaned to the 2002 State School Facilities Fund under any act
2 of the Legislature, together with interest provided for in that act, and to reimburse the
3 General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the
4 Government Code.”

5 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
6 100620⁴¹⁸. Subdivision (a) requires that “the proceeds from the sale of bonds, issued

⁴¹⁸ Education Code Section 100620, added by Chapter 33, Statutes of 2002,
Section 30:

“(a) the proceeds from the sale of bonds, issued and sold for the purposes of this chapter, shall be allocated in accordance with the following schedule:

(1) The amount of three billion four hundred fifty million dollars (\$3,450,000,000) for new construction of school facilities of applicant school districts under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school districts that file an application with the Office of Public School Construction after February 1, 2002, including, but not limited to, hardship applications.

(A) Of the amount allocated pursuant to this paragraph, up to one hundred million dollars (\$100,000,000) shall be available for providing school facilities to charter schools pursuant to a statute enacted after the effective date of the act enacting this section.

(B) If the Housing and Emergency Shelter Trust Fund Act of 2002 is submitted to the voters at the November 5, 2002, general election and fails passage by the voters, of the amount allocated pursuant to this paragraph, twenty-five million dollars (\$25,000,000) shall be available for the purposes of Sections 51451.5, 51453, and 51455 of the Health and Safety Code.

(2) The amount of one billion four hundred million dollars (\$1,400,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school districts that file an application with the Office of Public School Construction after February 1, 2002, including, but not limited to, hardship applications.

(3) The amount of two billion nine hundred million dollars (\$2,900,000,000) for new construction of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school districts

that have filed an application with the Office of Public School Construction on or before February 1, 2002, including, but not limited to, hardship applications. If the amount made available for purposes of this paragraph is not needed and expended for the purposes of this paragraph, the State Allocation Board may allocate the remainder of these funds for purposes of paragraph (1).

(4) The amount of one billion nine hundred million dollars (\$1,900,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, for those school districts that have filed an application with the Office of Public School Construction on or before February 1, 2002, including, but not limited to, hardship applications. If the amount made available for purposes of this paragraph is not needed and expended for the purposes of this paragraph, the State Allocation Board may allocate these funds for purposes of paragraph (2).

(5) The amount of one billion seven hundred million dollars (\$1,700,000,000) for deposit into the 2002 Critically Overcrowded School Facilities Account established within the 2002 State School Facilities Fund pursuant to subdivision (e) of Section 17078.10, for the purposes set forth in Article 11 (commencing with Section 17078.10) of Chapter 12.5 of Part 10 relating to critically overcrowded schools, including, but not limited to, hardship applications, and any other new construction or modernization projects as authorized pursuant to Section 17078.30.

(6) The amount of fifty million dollars (\$50,000,000) for the purposes set forth in Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10 relating to joint-use projects, including, but not limited to, hardship applications.

(b) School districts may use funds allocated pursuant to paragraphs (2) and (4) of subdivision (a) only for one or more of the following purposes in accordance with Chapter 12.5 (commencing with Section 17070.10) of Part 10:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10.

(c) Funds allocated pursuant to paragraphs (1) and (3) of subdivision (a) may, also, be utilized to provide new construction grants for eligible applicant county boards of education under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for

1 and sold for the purposes of this chapter, shall be allocated in accordance with the
2 following schedule:

3 (1) The amount of three billion four hundred fifty million dollars (\$3,450,000,000)
4 for new construction of school facilities of applicant school districts under
5 Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school
6 districts that file an application with the Office of Public School Construction after
7 February 1, 2002, including, but not limited to, hardship applications. Up to one
8 hundred million dollars (\$100,000,000) shall be available for providing school
9 facilities to charter schools pursuant to a statute enacted after the effective date
10 of the act enacting this section. If the Housing and Emergency Shelter Trust

funding classrooms for severely handicapped pupils, or for funding classrooms for county community school pupils.

(d)(1) The Legislature may amend this section to adjust the funding amounts specified in paragraphs (1) to (6), inclusive, of subdivision (a), only by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (6), inclusive, of subdivision (a), but may not increase or decrease the total amount to be expended pursuant to that subdivision.

(e) From the total amounts set forth in paragraphs (1) to (6), inclusive, of subdivision (a), a total of no more than twenty million dollars (\$20,000,000) shall be used for the costs of energy conservation adjustments authorized pursuant to Section 17077.35.

(f) Funds available pursuant to this section may be used for acquisition of school facilities authorized pursuant to Section 17280.5. "

1 Fund Act of 2002 is submitted to the voters at the November 5, 2002, general
2 election and fails passage by the voters, of the amount allocated pursuant to this
3 paragraph, twenty-five million dollars (\$25,000,000) shall be available for the
4 purposes of Sections 51451.5, 51453, and 51455 of the Health and Safety Code
5 [Proposition 46, the Housing and Emergency Shelter Trust Fund Act of 2002 was
6 passed by voters];

7 (2) The amount of one billion four hundred million dollars (\$1,400,000,000) for
8 the modernization of school facilities pursuant to Chapter 12.5 (commencing with
9 Section 17070.10) of Part 10 for those school districts that file an application with
10 the Office of Public School Construction after February 1, 2002, including, but
11 not limited to, hardship applications;

12 (3) The amount of two billion nine hundred million dollars (\$2,900,000,000) for
13 new construction of school facilities pursuant to Chapter 12.5 (commencing with
14 Section 17070.10) of Part 10 for those school districts that have filed an
15 application with the Office of Public School Construction on or before February 1,
16 2002, including, but not limited to, hardship applications. If the amount made
17 available for purposes of this paragraph is not needed and expended for the
18 purposes of this paragraph, the State Allocation Board may allocate the
19 remainder of these funds for purposes of paragraph (1);

20 (4) The amount of one billion nine hundred million dollars (\$1,900,000,000) for
21 the modernization of school facilities pursuant to Chapter 12.5 (commencing with

1 Section 17070.10) of Part 10, for those school districts that have filed an
2 application with the Office of Public School Construction on or before February 1,
3 2002, including, but not limited to, hardship applications. If the amount made
4 available for purposes of this paragraph is not needed and expended for the
5 purposes of this paragraph, the State Allocation Board may allocate these funds
6 for purposes of paragraph (2);

7 (5) The amount of one billion seven hundred million dollars (\$1,700,000,000) for
8 deposit into the 2002 Critically Overcrowded School Facilities Account
9 established within the 2002 State School Facilities Fund pursuant to subdivision
10 (e) of Section 17078.10, for the purposes set forth in Article 11 (commencing
1 with Section 17078.10) of Chapter 12.5 of Part 10 relating to critically
12 overcrowded schools, including, but not limited to, hardship applications, and any
13 other new construction or modernization projects as authorized pursuant to
14 Section 17078.30;

15 (6) The amount of fifty million dollars (\$50,000,000) for the purposes set forth in
16 Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10
17 relating to joint-use projects, including, but not limited to, hardship applications.

18 Subdivision (b) requires that school districts shall, as may be necessary, use funds
19 allocated pursuant to paragraphs (2) and (4) of subdivision (a) only for one or more of
20 the following purposes in accordance with Chapter 12.5 (commencing with Section
21 17070.10) of Part 10:

1 (1) The purchase and installation of air-conditioning equipment and insulation
2 materials, and related costs;

3 (2) Construction projects or the purchase of furniture or equipment designed to
4 increase school security or playground safety;

5 (3) The identification, assessment, or abatement in school facilities of hazardous
6 asbestos;

7 (4) Project funding for high priority roof replacement projects; and

8 (5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing
9 with Section 17070.10) of Part 10.

10 Subdivision (c) requires that funds allocated pursuant to paragraphs (1) and (3) of
11 subdivision (a) shall, also, be utilized, as may be necessary, to provide new
12 construction grants for eligible applicant county boards of education under Chapter 12.5
13 (commencing with Section 17070.10) of Part 10 for funding classrooms for severely
14 handicapped pupils, or for funding classrooms for county community school pupils.

15 Subdivision (d) refers to Legislative amendments to adjust funding amounts.

16 Subdivision (e) provides that from the total amounts set forth in paragraphs (1) to (6),
17 inclusive, of subdivision (a), a total of no more than twenty million dollars (\$20,000,000)
18 shall be used for the costs of energy conservation adjustments authorized pursuant to
19 Section 17077.35. Subdivision (f) requires that funds available pursuant to this section
20 shall be used, as may be necessary, for acquisition of school facilities authorized
21 pursuant to Section 17280.5.

1 ARTICLE 2. KINDERGARTEN THROUGH 12TH GRADE SCHOOL FACILITIES
2 FISCAL PROVISIONS

3 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
4 100625. Subdivision (a) provides that “of the total amount of bonds authorized to be
5 issued and sold pursuant to Chapter 1 (commencing with Section 100600), bonds in the
6 total amount of eleven billion four hundred million dollars (\$11,400,000,000) not
7 including the amount of any refunding bonds issued in accordance with Section
8 100644, or so much thereof as is necessary, may be issued and sold to provide a fund
9 to be used for carrying out the purposes expressed in this chapter and to reimburse the
10 General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the
11 Government Code. The bonds, when sold, shall be and constitute a valid and binding
12 obligation of the State of California, and the full faith and credit of the State of California
13 is hereby pledged for the punctual payment of the principal of, and interest on, the
14 bonds as the principal and interest become due and payable.” Subdivision (b) requires
15 that, “pursuant to this section, the Treasurer shall sell the bonds authorized by the State
16 School Building Finance Committee established pursuant to Section 15909 at any
17 different times necessary to service expenditures required by the apportionments.”

18 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
19 100627⁴¹⁹ to provide that the State School Building Finance Committee is continued in

⁴¹⁹ Education Code Section 100627, added by Chapter 33, Statutes of 2002,
Section 30:

1 existence for the purpose of this chapter.

2 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
3 100630. Subdivision (a) requires that "the bonds authorized by this chapter shall be
4 prepared, executed, issued, sold, paid, and redeemed as provided in the State General
5 Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division
6 4 of Title 2 of the Government Code) [providing a procedure which may be adopted by
7 other acts for use with whatever modifications are necessary in authorizing the
8 issuance and sale of state general obligation bonds and providing for the repayment of
9 such bonds], and all of the provisions of that law, except Section 16727 of the
10 Government Code [providing that proceeds from the sale of any bonds issued pursuant
11 to the State General Obligation Bond Law shall be used only for the following purposes:
12 the costs of construction or acquisition of capital assets, to make grants or loans, if the
13 proceeds of the grants or loans are used for the costs of construction or acquisition of

"The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers granted to, and duties imposed upon, those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee. "

1 capital assets, to pay the costs of a state agency for administering the grant or loan
2 program, to repay funds borrowed in anticipation of the sale of the bonds, including
3 interest, or to pay interest on the bonds themselves, to pay the costs of a state agency
4 with responsibility for administering the bond program, or the costs of the Treasurer's
5 office directly associated with the sale and payment of the bonds, including, but not
6 limited to, underwriting discounts, costs of printing, bond counsel, registration, and fees
7 of trustees], apply to the bonds and to this chapter and are hereby incorporated into this
8 chapter as though set forth in full within this chapter.” Subdivision (b) provides that “for
9 purposes of the State General Obligation Bond Law, the State Allocation Board is
10 designated the "board" for purposes of administering the 2002 State School Facilities
1 Fund. “

12 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
13 100632 which requires that, “upon request of the State Allocation Board from time to
14 time, supported by a statement of the apportionments made and to be made for the
15 purposes described in Sections 100615 and 100620, the State School Building Finance
16 Committee shall determine whether or not it is necessary or desirable to issue bonds
17 authorized pursuant to this chapter in order to fund the apportionments and, if so, the
18 amount of bonds to be issued and sold. Successive issues of bonds may be authorized
19 and sold to fund those apportionments progressively, and it is not necessary that all of
20 the bonds authorized to be issued be sold at any one time.”

21 Chapter 33, Statutes of 2002, Section 30, added Education Code Section

Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1 100634 to require that, "there shall be collected each year and in the same manner and
2 at the same time as other state revenue is collected, in addition to the ordinary
3 revenues of the state, a sum in an amount required to pay the principal of, and interest
4 on, the bonds each year. It is the duty of all officers charged by law with any duty in
5 regard to the collection of the revenue to do and perform each and every act that is
6 necessary to collect that additional sum."

7 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
8 100635 to provide that "notwithstanding Section 13340 of the Government Code
9 [providing that on and after July 1, 1998, no moneys in that fund that, by any statute
10 other than a Budget Act, is continuously appropriated without regard to fiscal years,
11 may be encumbered unless the Legislature, by statute, specifies that the moneys in the
12 fund are appropriated for encumbrance], there is hereby appropriated from the General
13 Fund in the State Treasury, for the purposes of this chapter, an amount that will equal
14 the total of the following: (a) the sum annually necessary to pay the principal of, and
15 interest on, bonds issued and sold pursuant to this chapter, as the principal and interest
16 become due and payable, and (b) the sum necessary to carry out Section 100640,
17 appropriated without regard to fiscal years."

18 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
19 100636 to provide that, "the State Allocation Board may request the Pooled Money
20 Investment Board to make a loan from the Pooled Money Investment Account or any
21 other approved form of interim financing, in accordance with Section 16312 of the

1 Government Code [providing that the Pooled Money Investment Board may make a
2 loan from the Pooled Money Investment Account directly to any such special fund, on
3 such terms and conditions as the board may determine, upon request made to the
4 board by an appropriate official, or for the purpose of carrying out a program or project
5 that is authorized to be financed by issuing bonds, notes, or other evidence of
6 indebtedness], for the purpose of carrying out this chapter. The amount of the request
7 shall not exceed the amount of the unsold bonds that the committee, by resolution, has
8 authorized to be sold for the purpose of carrying out this chapter. The board shall
9 execute any documents required by the Pooled Money Investment Board to obtain and
10 repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by
11 the board in accordance with this chapter.”

12 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
13 100638 to provide that, “notwithstanding any other provision of this chapter, or of the
14 State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this
15 chapter that include a bond counsel opinion to the effect that the interest on the bonds
16 is excluded from gross income for federal tax purposes, subject to designated
17 conditions, the Treasurer may maintain separate accounts for the investment of bond
18 proceeds and for the investment earnings on those proceeds. The Treasurer may use
19 or direct the use of those proceeds or earnings to pay any rebate, penalty, or other
20 payment required under federal law or take any other action with respect to the
21 investment and use of those bond proceeds required or desirable under federal law to

1 maintain the tax-exempt status of those bonds and to obtain any other advantage under
2 federal law on behalf of the funds of this state.”

3 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
4 100640 to provide that “for the purposes of carrying out this chapter, the Director of
5 Finance may authorize the withdrawal from the General Fund of an amount not to
6 exceed the amount of the unsold bonds that have been authorized by the State School
7 Building Finance Committee to be sold for the purpose of carrying out this chapter. Any
8 amounts withdrawn shall be deposited in the 2002 State School Facilities Fund
9 consistent with this chapter. Any money made available under this section shall be
10 returned to the General Fund, plus an amount equal to the interest that the money
11 would have earned in the Pooled Money Investment Account, from proceeds received
12 from the sale of bonds for the purpose of carrying out this chapter.”

13 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
14 100642 to require that “all money deposited in the 2002 State School Facilities Fund,
15 that is derived from premium and accrued interest on bonds sold shall be reserved in
16 the fund and shall be available for transfer to the General Fund as a credit to
17 expenditures for bond interest.”

18 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
19 100644 to provide that “the bonds may be refunded in accordance with Article 6
20 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the
21 Government Code [providing that the committee may provide for the issuance and sale

1 or exchange of refunding bonds for the purpose of redeeming, retiring, or purchasing
2 for retirement, outstanding bonds at or before their maturity, if the committee
3 determines that refunding is necessary or advisable in order (a) to effect a favorable
4 reorganization of the debt structure of the state, or (b) to effect a saving in debt service
5 cost to the state, as measured by the present value of that saving], which is a part of
6 the State General Obligation Bond Law. Approval by the voters of the state for the
7 issuance of the bonds described in this chapter includes the approval of the issuance of
8 any bonds issued to refund any bonds originally issued under this chapter or any
9 previously issued refunding bonds.”

10 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
1 100646 to declare that “inasmuch as the proceeds from the sale of bonds authorized by
12 this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the
13 California Constitution, the disbursement of these proceeds is not subject to the
14 limitations imposed by that article.”

15 CHAPTER 3. HIGHER EDUCATION FACILITIES

16 ARTICLE 1. GENERAL

17 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
18 100650 to provide that “(a) the system of public higher education in this state includes
19 the University of California, the Hastings College of the Law, the California State
20 University, the California Community Colleges, and their respective off-campus centers,
21 (b) the 2002 Higher Education Capital Outlay Bond Fund is hereby established in the

1 State Treasury for deposit of funds from the proceeds of bonds issued and sold for the
2 purposes of this chapter, and (c) the Higher Education Facilities Finance Committee
3 established pursuant to Section 67353 is hereby authorized to create a debt or debts,
4 liability or liabilities, of the State of California pursuant to this chapter for the purpose of
5 providing funds to aid the University of California, the Hastings College of the Law, the
6 California State University, and the California Community Colleges.”

7 ARTICLE 4. PROGRAM PROVISIONS APPLICABLE TO THE CALIFORNIA
8 COMMUNITY COLLEGES

9 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
10 100654. Subdivision (a) requires that “from the proceeds of bonds issued and sold
11 pursuant to Article 5 (commencing with Section 100700), the sum of seven hundred
12 forty-five million eight hundred fifty-three thousand dollars (\$745,853,000) shall be
13 deposited in the 2002 Higher Education Capital Outlay Bond Fund for the purposes of
14 this article. When appropriated, these funds shall be available for expenditure for the
15 purposes of this article.” Subdivision (b) declares that “the purposes of this article
16 include assisting in meeting the capital outlay financing needs of the California
17 Community Colleges.” Subdivision (c) provides that “proceeds from the sale of bonds
18 issued and sold for the purposes of this article may be used to fund construction on
19 existing campuses, including the construction of buildings and the acquisition of related
20 fixtures, construction of facilities that may be used by more than one segment of public
21 higher education (intersegmental), the renovation and reconstruction of facilities, site

1 acquisition, the equipping of new, renovated, or reconstructed facilities, which
2 equipment shall have an average useful life of 10 years; and to provide funds for the
3 payment of preconstruction costs, including, but not limited to, preliminary plans and
4 working drawings for facilities of the California Community Colleges.”

5 ARTICLE 5. HIGHER EDUCATION FISCAL PROVISIONS

6 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
7 100700. Subdivision (a) provides that “of the total amount of bonds authorized to be
8 issued and sold pursuant to Chapter 1 (commencing with Section 100600), bonds in the
9 total amount of one billion six hundred fifty million dollars (\$1,650,000,000), not
10 including the amount of any refunding bonds issued in accordance with Section
1 100755, or so much thereof as is necessary, may be issued and sold to provide a fund
12 to be used for carrying out the purposes expressed in this chapter and to reimburse the
13 General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the
14 Government Code. The bonds, when sold, shall be and constitute a valid and binding
.5 obligation of the State of California, and the full faith and credit of the State of California
16 is hereby pledged for the punctual payment of the principal of, and interest on, the
17 bonds as the principal and interest become due and payable. Subdivision (b) declares
18 that “it is the intent of the Legislature that the University of California, the California
19 State University, and the California Community Colleges annually consider, as part of
20 their annual capital outlay planning process, the inclusion of facilities that may be used
21 by more than one segment of public higher education (intersegmental), and, that on or

1 before May 15th of each year, those entities report their findings to the budget
2 committees of each house of the Legislature.” Subdivision (c) requires that, “pursuant
3 to this section, the Treasurer shall sell the bonds authorized by the Higher Education
4 Facilities Finance Committee established pursuant to Section 67353 at any different
5 times necessary to service expenditures required by the apportionments.”

6 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
7 100710. Subdivision (a) requires that “the bonds authorized by this chapter shall be
8 prepared, executed, issued, sold, paid, and redeemed as provided in the State General
9 Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division
10 4 of Title 2 of the Government Code) [providing a procedure which may be adopted by
11 other acts for use with whatever modifications are necessary in authorizing the
12 issuance and sale of state general obligation bonds and providing for the repayment of
13 such bonds], and all of the provisions of that law, except Section 16727 of the
14 Government Code [providing that proceeds from the sale of any bonds issued pursuant
15 to the State General Obligation Bond Law shall be used only for the following purposes:
16 the costs of construction or acquisition of capital assets, to make grants or loans, if the
17 proceeds of the grants or loans are used for the costs of construction or acquisition of
18 capital assets, to pay the costs of a state agency for administering the grant or loan
19 program, to repay funds borrowed in anticipation of the sale of the bonds, including
20 interest, or to pay interest on the bonds themselves, to pay the costs of a state agency
21 with responsibility for administering the bond program, or the costs of the Treasurer's

1 office directly associated with the sale and payment of the bonds, including, but not
2 limited to, underwriting discounts, costs of printing, bond counsel, registration, and fees
3 of trustees], apply to the bonds and to this chapter and are hereby incorporated into this
4 chapter as though set forth in full within this chapter. Subdivision (b) provides that "for
5 the purposes of the State General Obligation Bond Law, each state agency
6 administering an appropriation of the 2002 Higher Education Capital Outlay Bond Fund
7 is designated as the "board" for projects funded pursuant to this chapter. Subdivision
8 (c) requires that the proceeds of the bonds issued and sold pursuant to this chapter
9 shall be available for the purpose of funding aid to the California Community Colleges,
10 for the construction on existing or new campuses, and their respective off-campus
11 centers and joint use and intersegmental facilities, as set forth in this chapter.

12 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
13 100720 to require that "the Higher Education Facilities Finance Committee established
14 pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only
15 to the extent necessary to fund the apportionments for the purposes described in this
16 chapter that are expressly authorized by the Legislature in the annual Budget Act.
17 Pursuant to that legislative direction, the committee shall determine whether or not it is
18 necessary or desirable to issue bonds authorized pursuant to this chapter in order to
19 carry out the purposes described in this chapter and, if so, the amount of bonds to be
20 issued and sold. Successive issues of bonds may be authorized and sold to carry out
21 those actions progressively, and it is not necessary that all of the bonds authorized to

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1 be issued be sold at any one time.”

2 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
3 100725 which requires that “there shall be collected each year and in the same manner
4 and at the same time as other state revenue is collected, in addition to the ordinary
5 revenues of the state, a sum in an amount required to pay the principal of, and interest
6 on, the bonds each year. It is the duty of all officers charged by law with any duty in
7 regard to the collection of the revenue to do and perform each and every act which is
8 necessary to collect that additional sum.”

9 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
10 100730 to provide that “notwithstanding Section 13340 of the Government Code
11 [providing that on and after July 1, 1998, no moneys in that fund that, by any statute
12 other than a Budget Act, is continuously appropriated without regard to fiscal years,
13 may be encumbered unless the Legislature, by statute, specifies that the moneys in the
14 fund are appropriated for encumbrance], there is hereby appropriated from the General
15 Fund in the State Treasury, for the purposes of this chapter, an amount that will equal
16 the total of the following: (a) the sum annually necessary to pay the principal of, and
17 interest on, bonds issued and sold pursuant to this chapter, as the principal and interest
18 become due and payable, and (b) the sum necessary to carry out Section 100745,
19 appropriated without regard to fiscal years.”

20 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
21 100735 to provide that “the board, as defined in subdivision (b) of Section 100710, may

1 request the Pooled Money Investment Board to make a loan from the Pooled Money
2 Investment Account or any other approved form of interim financing, in accordance with
3 Section 16312 of the Government Code [providing that the Pooled Money Investment
4 Board may make a loan from the Pooled Money Investment Account directly to any
5 such special fund, on such terms and conditions as the board may determine, upon
6 request made to the board by an appropriate official, or for the purpose of carrying out a
7 program or project that is authorized to be financed by issuing bonds, notes, or other
8 evidence of indebtedness], for the purpose of carrying out this chapter. The amount of
9 the request shall not exceed the amount of the unsold bonds that the committee, by
10 resolution, has authorized to be sold for the purpose of carrying out this chapter. The
11 board, as defined in subdivision (b) of Section 100710, shall execute any documents
12 required by the Pooled Money Investment Board to obtain and repay the loan. Any
13 amounts loaned shall be deposited in the fund to be allocated by the board in
14 accordance with this chapter."

15 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
16 100740 to provide that "notwithstanding any other provision of this chapter, or of the
17 State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this
18 chapter that include a bond counsel opinion to the effect that the interest on the bonds
19 is excluded from gross income for federal tax purposes, subject to designated
20 conditions, the Treasurer may maintain separate accounts for the investment of bond
21 proceeds and for the investment earnings on those proceeds. The Treasurer may use

1 or direct the use of those proceeds or earnings to pay any rebate, penalty, or other
2 payment required under federal law or take any other action with respect to the
3 investment and use of those bond proceeds required or desirable under federal law to
4 maintain the tax-exempt status of those bonds and to obtain any other advantage under
5 federal law on behalf of the funds of this state.”

6 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
7 100745. Subdivision (a) provides that “for the purposes of carrying out this chapter, the
8 Director of Finance may authorize the withdrawal from the General Fund of an amount
9 not to exceed the amount of the unsold bonds that have been authorized by the Higher
10 Education Facilities Finance Committee to be sold for the purpose of carrying out this
11 chapter. Any amounts withdrawn shall be deposited in the 2002 Higher Education
12 Capital Outlay Bond Fund consistent with this chapter. Any money made available
13 under this section shall be returned to the General Fund, plus an amount equal to the
14 interest that the money would have earned in the Pooled Money Investment Account,
15 from proceeds received from the sale of bonds for the purpose of carrying out this
16 chapter.” Subdivision (b) requires any request forwarded to the Legislature and the
17 Department of Finance for funds from this bond issue for expenditure for the purposes
18 described in this chapter by the California Community Colleges shall be accompanied
19 by the five-year capital outlay plan. Requests forwarded by the California Community
20 Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs
21 and priorities of the community college system, prioritized on a statewide basis.

1 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
2 100750 which requires that "all money deposited in the 2002 Higher Education Capital
3 Outlay Bond Fund that is derived from premium and accrued interest on bonds sold
4 shall be reserved in the fund and shall be available for transfer to the General Fund as
5 a credit to expenditures for bond interest."

6 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
7 100755 to provide that "the bonds may be refunded in accordance with Article 6
8 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the
9 Government Code [providing that the committee may provide for the issuance and sale
10 or exchange of refunding bonds for the purpose of redeeming, retiring, or purchasing
11 for retirement, outstanding bonds at or before their maturity, if the committee
12 determines that refunding is necessary or advisable in order (a) to effect a favorable
13 reorganization of the debt structure of the state, or (b) to effect a saving in debt service
14 cost to the state, as measured by the present value of that saving], which is a part of
15 the State General Obligation Bond Law. Approval by the voters of the state for the
16 issuance of the bonds described in this chapter includes the approval of the issuance of
17 any bonds issued to refund any bonds originally issued under this chapter or any
18 previously issued refunding bonds."

19 Chapter 33, Statutes of 2002, Section 30, added Education Code Section
20 100760 to declare "that, inasmuch as the proceeds from the sale of bonds authorized
21 by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the

1 California Constitution, the disbursement of these proceeds is not subject to the
2 limitations imposed by that article.”

3 PART 68.2. KINDERGARTEN-UNIVERSITY PUBLIC EDUCATION FACILITIES
4 BOND ACT OF 2004

5 Chapter 33, Statutes of 2002, Section 31, added Part 68.2, “the
6 Kindergarten-University Public Education Facilities Bond Act of 2004,” effective if
7 approved by voters at the 2004 direct primary election.

8 Chapter 33, Statutes of 2002, Section 31.5, added Part 68.2, “the
9 Kindergarten-University Public Education Facilities Bond Act of 2004,” effective if
10 approved by voters at the November 4, 2004, statewide general election in the event
11 this section is not approved at the 2004 direct primary election.

12 CHAPTER 1. GENERAL

13 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
14 Section 100800 to provide that “this part shall be known and may be cited as the
15 Kindergarten-University Public Education Facilities Bond Act of 2004.”

16 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
17 Section 100801 to provide that “the incorporation of, or reference to, any provision of
18 California statutory law in this part includes all acts amendatory thereof and
19 supplementary thereto.”

20 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
21 Section 100803. Subdivision (a) provides that “bonds in the total amount of twelve

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1 billion three hundred million dollars (\$12,300,000,000), not including the amount of any
2 refunding bonds issued in accordance with Sections 100844 and 100955, or so much
3 thereof as is necessary, may be issued and sold to provide a fund to be used for
4 carrying out the purposes expressed in this part and to reimburse the General
5 Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the
6 Government Code [providing that whenever bonds are sold, out of the first money
7 realized from their sale, there shall be redeposited in the revolving fund such expended
8 sums, which may be used for the same purposes and repaid in the same manner
9 whenever additional sales are made]. The bonds, when sold, shall be and constitute a
10 valid and binding obligation of the State of California, and the full faith and credit of the
11 State of California is hereby pledged for the punctual payment of the principal of, and
12 interest on, the bonds as the principal and interest become due and payable.”

13 Subdivision (b) requires that, “pursuant to this section, the Treasurer shall sell the
14 bonds authorized by the State School Building Finance Committee established by
15 Section 15909 or the Higher Education Facilities Finance Committee established
16 pursuant to Section 67353, as the case may be, at any different times necessary to
17 service expenditures required by the apportionments.”

1 CHAPTER 2. KINDERGARTEN THROUGH 12TH GRADE

2 ARTICLE 1. KINDERGARTEN THROUGH 12TH GRADE SCHOOL FACILITIES
3 PROGRAM

4 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
5 Section 100810 to require that, "the proceeds of bonds issued and sold pursuant to
6 Article 2 (commencing with Section 100825) shall be deposited in the 2004 State
7 School Facilities Fund, which is established in Section 17070.40, and shall be allocated
8 by the State Allocation Board pursuant to this chapter."

9 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
10 Section 100815 to require that, "all moneys deposited in the 2004 State Facilities Fund
11 for the purposes of this chapter shall be available and, notwithstanding any other
12 provision of law to the contrary, are hereby appropriated to provide aid to school
13 districts, county superintendents of schools, and county boards of education of the state
14 in accordance with the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5
15 (commencing with Section 17070.10) of Part 10), as set forth in Section 100820, to
16 provide funds to repay any money advanced or loaned to the 2004 State School
17 Facilities Fund under any act of the Legislature, together with interest provided for in
18 that act, and to reimburse the General Obligation Bond Expense Revolving Fund
19 pursuant to Section 16724.5 of the Government Code."

20 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code

1 Section 100820⁴²⁰. Subdivision (a) requires the proceeds from the sale of bonds,

⁴²⁰ Education Code Section 100820, added by Chapter 33, Statutes of 2002, Sections 31 and 31.5:

“(a) The proceeds from the sale of bonds, issued and sold for the purposes of this chapter, as specified in subdivision (a) of Section 100810 shall be allocated in accordance with the following schedule:

(1) The amount of five billion two hundred sixty million dollars (\$5,260,000,000) for project funding for new construction of school facilities of applicant school districts under Chapter 12.5 (commencing with Section 17070.10) of Part 10, including, but not limited to, hardship applications.

(A) Of the amount allocated pursuant to this paragraph, up to three hundred million dollars (\$300,000,000) shall be available for providing school facilities to charter schools pursuant to a statute enacted after the effective date of the act enacting this section.

(B) If the Housing and Emergency Shelter Trust Fund Act of 2002 is submitted to the voters at the November 5, 2002, general election and fails passage by the voters, of the amount allocated pursuant to this paragraph, twenty-five million dollars (\$25,000,000) shall be available for the purposes of Sections 51451.5, 51453, and 51455 of the Health and Safety Code.

(2) The amount of two billion two hundred fifty million dollars (\$2,250,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, including, but not limited to, hardship applications.

(3) The amount of two billion four hundred forty million dollars (\$2,440,000,000) for deposit into the 2004 Critically Overcrowded School Facilities Account established within the 2004 State School Facilities Fund pursuant to subdivision (e) of Section 17078.10 for the purposes set forth in Article 11 (commencing with Section 17078.10) of Chapter 12.5 of Part 10 relating to critically overcrowded schools, including, but not limited to, hardship applications, and any other new construction or modernization projects as authorized pursuant to Section 17078.30.

(4) The amount of fifty million dollars (\$50,000,000) for the purposes set forth in Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10 relating to joint-use projects, including, but not limited to, hardship applications.

(b) School districts may use funds allocated pursuant to paragraph (2) of subdivision (a) only for one or more of the following purposes in accordance with Chapter 12.5 (commencing with Section 17070.10) of Part 10:

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1 issued and sold for the purposes of this chapter, as specified in subdivision (a) of
2 Section 100810 shall be allocated in accordance with the following schedule:

3 (1) The amount of five billion two hundred sixty million dollars (\$5,260,000,000)
4 for project funding for new construction of school facilities of applicant school

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10.

(c) Funds allocated pursuant to paragraph (1) of subdivision (a) may, also, be utilized to provide new construction grants for eligible applicant county boards of education under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for funding classrooms for severely handicapped pupils, or for funding classrooms for county community school pupils.

(d)(1) The Legislature may amend this section to adjust the funding amounts specified in paragraphs (1) to (4), inclusive, of subdivision (a), only by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a), but may not increase or decrease the total amount to be expended pursuant to that subdivision.

(e) From the total amounts set forth in paragraphs (1) to (6), inclusive, of subdivision (a), a total of no more than twenty million dollars (\$20,000,000) shall be used for the costs of energy conservation adjustments authorized pursuant to Section 17077.35.

(f) Funds available pursuant to this section may be used for acquisition of school facilities authorized pursuant to Section 17280.5."

1 districts under Chapter 12.5 (commencing with Section 17070.10) of Part 10,
2 including, but not limited to, hardship applications. Of the amount allocated
3 pursuant to this paragraph, up to three hundred million dollars (\$300,000,000)
4 shall be available for providing school facilities to charter schools pursuant to a
5 statute enacted after the effective date of the act enacting this section. If the
6 Housing and Emergency Shelter Trust Fund Act of 2002 is submitted to the
7 voters at the November 5, 2002, general election and fails passage by the
8 voters, of the amount allocated pursuant to this paragraph, twenty-five million
9 dollars (\$25,000,000) shall be available for the purposes of Sections 51451.5,
10 51453, and 51455 of the Health and Safety Code [Proposition 46, the Housing
11 and Emergency Shelter Trust Fund Act of 2002 was passed by voters];

12 (2) The amount of two billion two hundred fifty million dollars (\$2,250,000,000)
13 for the modernization of school facilities pursuant to Chapter 12.5 (commencing
14 with Section 17070.10) of Part 10, including, but not limited to, hardship
15 applications;

16 (3) The amount of two billion four hundred forty million dollars (\$2,440,000,000)
17 for deposit into the 2004 Critically Overcrowded School Facilities Account
18 established within the 2004 State School Facilities Fund pursuant to subdivision
19 (e) of Section 17078.10 for the purposes set forth in Article 11 (commencing with
20 Section 17078.10) of Chapter 12.5 of Part 10 relating to critically overcrowded
21 schools, including, but not limited to, hardship applications, and any other new

1 construction or modernization projects as authorized pursuant to Section
2 17078.30; and

3 (4) The amount of fifty million dollars (\$50,000,000) for the purposes set forth in
4 Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10
5 relating to joint-use projects, including, but not limited to, hardship applications.

6 Subdivision (b) requires that school districts shall use, as may be necessary, funds
7 allocated pursuant to paragraph (2) of subdivision (a) only for one or more of the
8 following purposes in accordance with Chapter 12.5 (commencing with Section
9 17070.10) of Part 10:

10 (1) The purchase and installation of air-conditioning equipment and insulation
11 materials, and related costs;

12 (2) Construction projects or the purchase of furniture or equipment designed to
13 increase school security or playground safety;

14 (3) The identification, assessment, or abatement in school facilities of hazardous
15 asbestos;

16 (4) Project funding for high priority roof replacement projects; and

17 (5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing
18 with Section 17070.10) of Part 10.

19 Subdivision (c) requires that funds allocated pursuant to paragraph (1) of subdivision (a)
20 shall be utilized, as may be necessary, to provide new construction grants for eligible
21 applicant county boards of education under Chapter 12.5 (commencing with Section

1 17070.10) of Part 10 for funding classrooms for severely handicapped pupils, or for
2 funding classrooms for county community school pupils. Subdivision (d) refers to
3 Legislative amendments to adjust funding amounts. Subdivision (e) requires that from
4 the total amounts set forth in paragraphs (1) to (6), inclusive, of subdivision (a), a total
5 of no more than twenty million dollars (\$20,000,000) shall be used for the costs of
6 energy conservation adjustments authorized pursuant to Section 17077.35.

7 Subdivision (f) requires that funds available pursuant to this section shall be used, as
8 may be necessary, for the acquisition of school facilities authorized pursuant to Section
9 17280.5.

10 ARTICLE 2. KINDERGARTEN THROUGH 12TH GRADE SCHOOL FACILITIES
1 FISCAL PROVISIONS

12 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
13 Section 100825. Subdivision (a) provides that "of the total amount of bonds authorized
14 to be issued and sold pursuant to Chapter 1 (commencing with Section 100800), bonds
15 in the total amount of ten billion dollars (\$10,000,000,000), not including the amount of
16 any refunding bonds issued in accordance with Section 100844, or so much thereof as
17 is necessary, may be issued and sold to provide a fund to be used for carrying out the
18 purposes expressed in this chapter and to reimburse the General Obligation Bond
19 Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The
20 bonds, when sold, shall be and constitute a valid and binding obligation of the State of
21 California, and the full faith and credit of the State of California is hereby pledged for

1 the punctual payment of the principal of, and interest on, the bonds as the principal and
2 interest become due and payable." Subdivision (b) requires that, "pursuant to this
3 section, the Treasurer shall sell the bonds authorized by the State School Building
4 Finance Committee established pursuant to Section 15909 at any different times
5 necessary to service expenditures required by the apportionments."

6 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
7 Section 100827⁴²¹ to provide that the State School Building Finance Committee is
8 continued in existence for the purpose of this chapter.

9 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
10 Section 100830. Subdivision (a) requires that "the bonds authorized by this chapter
11 shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State

⁴²¹ Education code Section 100827, added by Chapter 33, Statutes of 2002,
Sections 31 and 31.5:

"The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers granted to, and duties imposed upon, those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee."

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1 General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of
2 Division 4 of Title 2 of the Government Code), and all of the provisions of that law,
3 except Section 16727 of the Government Code [providing that proceeds from the sale
4 of any bonds issued pursuant to the State General Obligation Bond Law shall be used
5 only for the following purposes: the costs of construction or acquisition of capital assets,
6 to make grants or loans, if the proceeds of the grants or loans are used for the costs of
7 construction or acquisition of capital assets, to pay the costs of a state agency for
8 administering the grant or loan program, to repay funds borrowed in anticipation of the
9 sale of the bonds, including interest, or to pay interest on the bonds themselves, to pay
10 the costs of a state agency with responsibility for administering the bond program, or
11 the costs of the Treasurer's office directly associated with the sale and payment of the
12 bonds, including, but not limited to, underwriting discounts, costs of printing, bond
13 counsel, registration, and fees of trustees], apply to the bonds and to this chapter and
14 are hereby incorporated into this chapter as though set forth in full within this chapter.”
15 Subdivision (b) provides that “for purposes of the State General Obligation Bond Law,
16 the State Allocation Board is designated the "board" for purposes of administering the
17 2004 State School Facilities Fund.”

18 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
19 Section 100832 to provide that, “upon request of the State Allocation Board from time
20 to time, supported by a statement of the apportionments made and to be made for the
21 purposes described in Sections 100815 and 100820, the State School Building Finance

1 Committee shall determine whether or not it is necessary or desirable to issue bonds
2 authorized pursuant to this chapter in order to fund the apportionments and, if so, the
3 amount of bonds to be issued and sold. Successive issues of bonds may be authorized
4 and sold to fund those apportionments progressively, and it is not necessary that all of
5 the bonds authorized to be issued be sold at any one time.”

6 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
7 Section 100834 to require that, “there shall be collected each year and in the same
8 manner and at the same time as other state revenue is collected, in addition to the
9 ordinary revenues of the state, a sum in an amount required to pay the principal of, and
10 interest on, the bonds each year. It is the duty of all officers charged by law with any
11 duty in regard to the collection of the revenue to do and perform each and every act
12 that is necessary to collect that additional sum.”

13 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
14 Section 100835 to provide that, “notwithstanding Section 13340 of the Government
15 Code [providing that on and after July 1, 1998, no moneys in that fund that, by any
16 statute other than a Budget Act, is continuously appropriated without regard to fiscal
17 years, may be encumbered unless the Legislature, by statute, specifies that the
18 moneys in the fund are appropriated for encumbrance], there is hereby appropriated
19 from the General Fund in the State Treasury, for the purposes of this chapter, an
20 amount that will equal the total of the following: (a) the sum annually necessary to pay
21 the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the

1 principal and interest become due and payable, and (b) the sum necessary to carry out
2 Section 100840, appropriated without regard to fiscal years.”

3 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
4 Section 100836 to provide that, “the State Allocation Board may request the Pooled
5 Money Investment Board to make a loan from the Pooled Money Investment Account or
6 any other approved form of interim financing, in accordance with Section 16312 of the
7 Government Code [providing that the Pooled Money Investment Board may make a
8 loan from the Pooled Money Investment Account directly to any such special fund, on
9 such terms and conditions as the board may determine, upon request made to the
10 board by an appropriate official, or for the purpose of carrying out a program or project
11 that is authorized to be financed by issuing bonds, notes, or other evidence of
12 indebtedness], for the purpose of carrying out this chapter. The amount of the request
13 shall not exceed the amount of the unsold bonds that the committee, by resolution, has
14 authorized to be sold for the purpose of carrying out this chapter. The board shall
15 execute any documents required by the Pooled Money Investment Board to obtain and
16 repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by
17 the board in accordance with this chapter.”

18 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
19 Section 100838 to provide that, “notwithstanding any other provision of this chapter, or
20 of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this
21 chapter that include a bond counsel opinion to the effect that the interest on the bonds

1 is excluded from gross income for federal tax purposes, subject to designated
2 conditions, the Treasurer may maintain separate accounts for the investment of bond
3 proceeds and for the investment earnings on those proceeds. The Treasurer may use
4 or direct the use of those proceeds or earnings to pay any rebate, penalty, or other
5 payment required under federal law or take any other action with respect to the
6 investment and use of those bond proceeds required or desirable under federal law to
7 maintain the tax-exempt status of those bonds and to obtain any other advantage under
8 federal law on behalf of the funds of this state.”

9 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
10 Section 100840 to provide that, “for the purposes of carrying out this chapter, the
11 Director of Finance may authorize the withdrawal from the General Fund of an amount
12 not to exceed the amount of the unsold bonds that have been authorized by the State
13 School Building Finance Committee to be sold for the purpose of carrying out this
14 chapter. Any amounts withdrawn shall be deposited in the 2004 State School Facilities
15 Fund consistent with this chapter. Any money made available under this section shall
16 be returned to the General Fund, plus an amount equal to the interest that the money
17 would have earned in the Pooled Money Investment Account, from proceeds received
18 from the sale of bonds for the purpose of carrying out this chapter.”

19 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
20 Section 100842 to require that, “all money deposited in the 2004 State School Facilities
21 Fund, that is derived from premium and accrued interest on bonds sold shall be

1 reserved in the fund and shall be available for transfer to the General Fund as a credit
2 to expenditures for bond interest.”

3 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
4 Section 100844 to provide that, “the bonds may be refunded in accordance with Article
5 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the
6 Government Code [providing that the committee may provide for the issuance and sale
7 or exchange of refunding bonds for the purpose of redeeming, retiring, or purchasing
8 for retirement, outstanding bonds at or before their maturity, if the committee
9 determines that refunding is necessary or advisable in order (a) to effect a favorable
10 reorganization of the debt structure of the state, or (b) to effect a saving in debt service
11 cost to the state, as measured by the present value of that saving], which is a part of
12 the State General Obligation Bond Law. Approval by the voters of the state for the
13 issuance of the bonds described in this chapter includes the approval of the issuance of
14 any bonds issued to refund any bonds originally issued under this chapter or any
15 previously issued refunding bonds.”

16 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
17 Section 100846 to declare “that, inasmuch as the proceeds from the sale of bonds
18 authorized by this chapter are not “proceeds of taxes” as that term is used in Article XIII
19 B of the California Constitution, the disbursement of these proceeds is not subject to
20 the limitations imposed by that article.”

1 CHAPTER 3. HIGHER EDUCATION FACILITIES

2 ARTICLE 1. GENERAL

3 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
4 Section 100850, to provide that, "(a) the system of public higher education in this state
5 includes the University of California, the Hastings College of the Law, the California
6 State University, the California Community Colleges, and their respective off-campus
7 centers, (b) the 2004 Higher Education Capital Outlay Bond Fund is hereby established
8 in the State Treasury for deposit of funds from the proceeds of bonds issued and sold
9 for the purposes of this chapter, and (c) the Higher Education Facilities Finance
10 Committee established pursuant to Section 67353 is hereby authorized to create a debt
11 or debts, liability or liabilities, of the State of California pursuant to this chapter for the
12 purpose of providing funds to aid the University of California, the Hastings College of
13 the Law, the California State University, and the California Community Colleges."

14 ARTICLE 4. PROGRAM PROVISIONS APPLICABLE TO THE CALIFORNIA
15 COMMUNITY COLLEGES

16 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
17 Section 100854. Subdivision (a) requires that "from the proceeds of bonds issued and
18 sold pursuant to Article 5 (commencing with Section 100900), the sum of nine hundred
19 twenty million dollars (\$920,000,000) shall be deposited in the 2004 Higher Education
20 Capital Outlay Bond Fund for the purposes of this article. When appropriated, these
21 funds shall be available for expenditure for the purposes of this article." Subdivision (b)

1 declares that "the purposes of this article include assisting in meeting the capital outlay
2 financing needs of the California Community Colleges. Subdivision (c) provides that the
3 "proceeds from the sale of bonds issued and sold for the purposes of this article may
4 be used to fund construction on existing campuses, including the construction of
5 buildings and the acquisition of related fixtures, construction of facilities that may be
6 used by more than one segment of public higher education (intersegmental), the
7 renovation and reconstruction of facilities, site acquisition, the equipping of new,
8 renovated, or reconstructed facilities, which equipment shall have an average useful life
9 of 10 years; and to provide funds for the payment of preconstruction costs, including,
10 but not limited to, preliminary plans and working drawings for facilities of the California
11 Community Colleges."

12 ARTICLE 5. HIGHER EDUCATION FISCAL PROVISIONS

13 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
14 Section 100900. Subdivision (a) provides that "of the total amount of bonds authorized
15 to be issued and sold pursuant to Chapter 1 (commencing with Section 100800), bonds
16 in the total amount of two billion three hundred million dollars (\$2,300,000,000), not
17 including the amount of any refunding bonds issued in accordance with Section
18 100955, or so much thereof as is necessary, may be issued and sold to provide a fund
19 to be used for carrying out the purposes expressed in this chapter and to reimburse the
20 General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the
21 Government Code. The bonds, when sold, shall be and constitute a valid and binding

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1 obligation of the State of California, and the full faith and credit of the State of California
2 is hereby pledged for the punctual payment of the principal of, and interest on, the
3 bonds as the principal and interest become due and payable." Subdivision (b) declares
4 that "it is the intent of the Legislature that the University of California, the California
5 State University, and the California Community Colleges annually consider, as part of
6 their annual capital outlay planning process, the inclusion of facilities that may be used
7 by more than one segment of public higher education (intersegmental), and, that on or
8 before May 15th of each year, those entities report their findings to the budget
9 committees of each house of the Legislature." Subdivision (c) requires that, "pursuant
10 to this section, the Treasurer shall sell the bonds authorized by the Higher Education
11 Facilities Finance Committee established pursuant to Section 67353 at any different
12 times necessary to service expenditures required by the apportionments."

13 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
14 Section 100910. Subdivision (a) requires that "the bonds authorized by this chapter
15 shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State
16 General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of
17 Division 4 of Title 2 of the Government Code)[providing a procedure which may be
18 adopted by other acts for use with whatever modifications are necessary in authorizing
19 the issuance and sale of state general obligation bonds and providing for the repayment
20 of such bonds], and all of the provisions of that law, except Section 16727 of the
21 Government Code [providing that proceeds from the sale of any bonds issued pursuant

1 to the State General Obligation Bond Law shall be used only for the following purposes:
2 the costs of construction or acquisition of capital assets, to make grants or loans, if the
3 proceeds of the grants or loans are used for the costs of construction or acquisition of
4 capital assets, to pay the costs of a state agency for administering the grant or loan
5 program, to repay funds borrowed in anticipation of the sale of the bonds, including
6 interest, or to pay interest on the bonds themselves, to pay the costs of a state agency
7 with responsibility for administering the bond program, or the costs of the Treasurer's
8 office directly associated with the sale and payment of the bonds, including, but not
9 limited to, underwriting discounts, costs of printing, bond counsel, registration, and fees
10 of trustees], apply to the bonds and to this chapter and are hereby incorporated into this
11 chapter as though set forth in full within this chapter." Subdivision (b) provides that "for
12 the purposes of the State General Obligation Bond Law, each state agency
13 administering an appropriation of the 2004 Higher Education Capital Outlay Bond Fund
14 is designated as the "board" for projects funded pursuant to this chapter." Subdivision
15 (c) requires that the proceeds of the bonds issued and sold pursuant to this chapter
16 shall be available for the purpose of funding aid to the California Community Colleges,
17 for the construction on existing or new campuses, and their respective off-campus
18 centers and joint use and intersegmental facilities, as set forth in this chapter.

19 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
20 Section 100920, to require that, "the Higher Education Facilities Finance Committee
21 established pursuant to Section 67353 shall authorize the issuance of bonds under this

1 chapter only to the extent necessary to fund the apportionments for the purposes
2 described in this chapter that are expressly authorized by the Legislature in the annual
3 Budget Act. Pursuant to that legislative direction, the committee shall determine
4 whether or not it is necessary or desirable to issue bonds authorized pursuant to this
5 chapter in order to carry out the purposes described in this chapter and, if so, the
6 amount of bonds to be issued and sold. Successive issues of bonds may be authorized
7 and sold to carry out those actions progressively, and it is not necessary that all of the
8 bonds authorized to be issued be sold at any one time.”

9 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
10 Section 100925, to require that, “there shall be collected each year and in the same
11 manner and at the same time as other state revenue is collected, in addition to the
12 ordinary revenues of the state, a sum in an amount required to pay the principal of, and
13 interest on, the bonds each year. It is the duty of all officers charged by law with any
14 duty in regard to the collection of the revenue to do and perform each and every act
15 which is necessary to collect that additional sum.”

16 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
17 Section 100930, to provide that, “notwithstanding Section 13340 of the Government
18 Code [providing that on and after July 1, 1998, no moneys in that fund that, by any
19 statute other than a Budget Act, is continuously appropriated without regard to fiscal
20 years, may be encumbered unless the Legislature, by statute, specifies that the
21 moneys in the fund are appropriated for encumbrance], there is hereby appropriated

1 from the General Fund in the State Treasury, for the purposes of this chapter, an
2 amount that will equal the total of the following: (a) the sum annually necessary to pay
3 the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the
4 principal and interest become due and payable, and (b) the sum necessary to carry out
5 Section 100945, appropriated without regard to fiscal years.”

6 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
7 Section 100935, to provide that, “the board, as defined in subdivision (b) of Section
8 100910, may request the Pooled Money Investment Board to make a loan from the
9 Pooled Money Investment Account or any other approved form of interim financing, in
10 accordance with Section 16312 of the Government Code [providing that the Pooled
11 Money Investment Board may make a loan from the Pooled Money Investment Account
12 directly to any such special fund, on such terms and conditions as the board may
13 determine, upon request made to the board by an appropriate official, or for the
14 purpose of carrying out a program or project that is authorized to be financed by issuing
15 bonds, notes, or other evidence of indebtedness], for the purpose of carrying out this
16 chapter. The amount of the request shall not exceed the amount of the unsold bonds
17 that the committee, by resolution, has authorized to be sold for the purpose of carrying
18 out this chapter. The board, as defined in subdivision (b) of Section 100910, shall
19 execute any documents required by the Pooled Money Investment Board to obtain and
20 repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by
21 the board in accordance with this chapter.”

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1 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
2 Section 100940, to provide that, "notwithstanding any other provision of this chapter, or
3 of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this
4 chapter that include a bond counsel opinion to the effect that the interest on the bonds
5 is excluded from gross income for federal tax purposes, subject to designated
6 conditions, the Treasurer may maintain separate accounts for the investment of bond
7 proceeds and for the investment earnings on those proceeds. The Treasurer may use
8 or direct the use of those proceeds or earnings to pay any rebate, penalty, or other
9 payment required under federal law or take any other action with respect to the
10 investment and use of those bond proceeds required or desirable under federal law to
11 maintain the tax-exempt status of those bonds and to obtain any other advantage under
12 federal law on behalf of the funds of this state."

13 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
14 Section 100945. Subdivision(a) provides that "for the purposes of carrying out this
15 chapter, the Director of Finance may authorize the withdrawal from the General Fund of
16 an amount not to exceed the amount of the unsold bonds that have been authorized by
17 the Higher Education Facilities Finance Committee to be sold for the purpose of
18 carrying out this chapter. Any amounts withdrawn shall be deposited in the 2004 Higher
19 Education Capital Outlay Bond Fund consistent with this chapter. Any money made
20 available under this section shall be returned to the General Fund, plus an amount
21 equal to the interest that the money would have earned in the Pooled Money

1 Investment Account, from proceeds received from the sale of bonds for the purpose of
2 carrying out this chapter.” Subdivision (b) requires that any request forwarded to the
3 Legislature and the Department of Finance for funds from this bond issue for
4 expenditure for the purposes described in this chapter by the California Community
5 Colleges shall be accompanied by the five-year capital outlay plan. Requests forwarded
6 by the California Community Colleges shall be accompanied by a five-year capital
7 outlay plan reflecting the needs and priorities of the community college system,
8 prioritized on a statewide basis.”

9 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
10 Section 100950, to require that, “all money deposited in the 2004 Higher Education
11 Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds
12 sold shall be reserved in the fund and shall be available for transfer to the General
13 Fund as a credit to expenditures for bond interest.”

14 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
15 Section 100955 to provide that, “the bonds may be refunded in accordance with Article
16 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the
17 Government Code [providing that the committee may provide for the issuance and sale
18 or exchange of refunding bonds for the purpose of redeeming, retiring, or purchasing
19 for retirement, outstanding bonds at or before their maturity, if the committee
20 determines that refunding is necessary or advisable in order (a) to effect a favorable
21 reorganization of the debt structure of the state, or (b) to effect a saving in debt service

1 cost to the state, as measured by the present value of that saving], which is a part of
2 the State General Obligation Bond Law. Approval by the voters of the state for the
3 issuance of the bonds described in this chapter includes the approval of the issuance of
4 any bonds issued to refund any bonds originally issued under this chapter or any
5 previously issued refunding bonds.

6 Chapter 33, Statutes of 2002, Sections 31 and 31.5, added Education Code
7 Section 100960 to declare "that, inasmuch as the proceeds from the sale of bonds
8 authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII
9 B of the California Constitution, the disbursement of these proceeds is not subject to
10 the limitations imposed by that article."

11 B. CALIFORNIA CODE OF REGULATIONS

12 SUBGROUP 5.5. REGULATIONS RELATING TO THE LEROY F. GREENE

13 SCHOOL FACILITIES ACT OF 1998: (SCHOOL FACILITY PROGRAM)

14 ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

15 Title 2, California Code of Regulations, Section 1859, (added in 1988 and refiled
16 in 1999), declares that "these regulations implement the Leroy F. Greene School
17 Facilities Act of 1998, which establishes a State program to provide State per pupil
18 funding for new construction and modernization of existing school facilities."

19 Section 1859.1, (added in 1998, refiled in 1999 and last amended in 2000),
20 requires the General Services Director, or his or her legal designee to perform all acts
21 necessary to carry out the provisions of the Leroy F. Greene School Facilities Act of

1 1998 except such functions as are reserved to the Board and to other agencies by law.
2 or other regulations under Subgroup 5.5.

3 Section 1859.2, (added in 1998, refiled in 1999 and last amended in 2002),
4 defines numerous terms as used for the purpose of these regulations.

5 ARTICLE 2. PROGRAM TRANSITION

6 Section 1859.10, (added in 1998 and refiled in 1999), requires that projects
7 approved under the "Lease-Purchase Program" are subject to the regulations contained
8 in Title 2, California Code of Regulations commencing with Section 1865.1, and the
9 "School Facility Program" transition rules contained in this article.

10 Section 1859.11, (added in 1998 and refiled in 1999), provides that joint-use
11 projects approved by the Board prior to November 4, 1998 are eligible for funding
12 pursuant to the "Lease-Purchase Program" for all remaining approved but unfunded
13 project costs.

14 Section 1859.12, (added in 1998 and refiled in 1999), provides that Priority One
15 new construction projects will be funded under the provisions of the "Lease-Purchase
16 Program" if the project received either: (1) Phase C (construction) approval by the
17 board prior to November 4, 1998; or (2) either Phase P (planning) or Phase P and
18 Phase S (planning and site), approvals, and the Division of the State Architect's plan
19 approval prior to November 4, 1998.

20 Section 1859.13, (added in 1998, refiled in 1999 and last amended in 2000),
21 requires districts with Priority Two new construction projects which received either: (1)

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1 Phase C (construction) approval by the board prior to November 4, 1998; or (2) either a
2 Phase P (planning) or a Phase P and Phase S (planning and site) approval with the
3 Division of State Architect's plan approval prior to November 4, 1998, to declare to the
4 board that it intends to convert the entire project to Priority One status by January 31,
5 1999 to receive funding for all remaining costs in accordance with the "Lease-Purchase
6 Program" provisions. If the district has not declared its intention to convert the entire
7 project to Priority One status by January 31, 1999, the project shall be deemed
8 withdrawn under the provisions of the "Lease-Purchase Program" and the district must
9 submit a new application under the provisions of the "School Facility Program,"
10 pursuant to Section 1859.20. If the project is eligible for further funding under the
11 "School Facility Program," the New Construction Adjusted Grant provided under the
12 "School Facility Program" will be reduced by any previous apportionments, with the
13 exception of apportionments made for site acquisition, made under the "Lease-
14 Purchase Plan."

15 Section 1859.14, (added in 1998, refiled in 1999 and last amended in 2000),
16 provides that Priority One modernization projects that have either Phase C
17 (construction) approval by the board prior to November 4, 1998, or have Phase P
18 (planning) approval by the board and the Division of State Architect's plan approval
19 prior to November 4, 1998, shall, as may be necessary, proceed by either: (a) receiving
20 funding under the provisions of the "Lease-Purchase Program," or (b) withdrawing the
21 Priority One modernization "Lease-Purchase Program" project, by January 31, 1999,

1 and submitting a new application for funding under the provisions of the "School Facility
2 Program," pursuant to Section 1859.20. The project approval date under the "Lease-
3 Purchase Program" will be retained for the project approval date under the "School
4 Facility Program." If the project is eligible for further funding under the "School Facility
5 Program," the Modernization Adjusted Grant provided under the "School Facility
6 Program" will be reduced by any previous apportionments made under the "Lease-
7 Purchase Program."

8 Section 1859.15, (added in 1998 and refiled in 1999), requires districts with
9 Priority Two modernization projects that have either Phase C (construction) approval by
10 the board prior to November 4, 1998, or have Phase P (planning) approval by the board
and the Division of State Architect's plan approval prior to November 4, 1998, to declare
12 to the board that it intends to convert the entire project to Priority One status by January
13 31, 1999 to receive funding for all remaining costs in accordance with the "Lease-
14 Purchase Program" provisions. If the district has not declared its intention to convert
15 the entire project to Priority One status by January 31, 1999, the project shall be
16 deemed withdrawn under the provisions of the "Lease-Purchase Program" and the
17 district must submit a new application under the provisions of the SFP pursuant to
18 Section 1859.20. The project approval date under the "Lease-Purchase Program" will
19 be retained for the project approval date under the "School Facility Program." If the
20 project is eligible for further funding under the "School Facility Program," the
21 Modernization Adjusted Grant provided under the "School Facility Program" will be

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1 reduced by any previous apportionments made under the "Lease-Purchase Program."

2 Section 1859.15.1, (added in 1999) requires that districts with "Lease-Purchase
3 Program" or "School Facility Program" conversions from "Lease-Purchase Program"
4 new construction and modernization projects meeting the provisions of Sections
5 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal
6 of a complete eligibility and funding application through July 5, 1999. After this date,
7 "Lease-Purchase Program" or "School Facility Program" conversions from "Lease-
8 Purchase Program" new construction and modernization projects shall be funded in the
9 order of the date of receipt of a complete application which complies with all pertinent
10 "Lease-Purchase Program" and "School Facility Program" statutes and regulations."

11 Section 1859.16, (added in 1998, refiled in 1999 and last amended in 2000),
12 requires a district with projects not meeting the requirements of Sections 1859.11,
13 1859.12, 1859.13, 1859.14 or 1859.15 to submit a new application under the provisions
14 of the "School Facility Program" pursuant to Section 1859.20 in order to receive
15 funding. If the project is eligible for further funding under the "School Facility Program,"
16 then the New Construction Adjusted Grant provided under the "School Facility Program"
17 will be reduced by any previous apportionments, with the exception of apportionments
18 made for site acquisition, made under the "Lease-Purchase Program," and the
19 Modernization Adjusted Grant provided under the "School Facility Program" will be
20 reduced by any previous apportionments made under the "Lease-Purchase Program."
21

1 ARTICLE 3. SCHOOL FACILITY PROGRAM APPLICATION PROCEDURE

2 Section 1859.20, (added in 1998, refiled in 1999 and last amended in 2002),
3 requires a district seeking a determination of eligibility for a "School Facility Program"
4 project to complete and file the following documents with the Office of Public School
5 Construction:

6 (a) For new construction, either district wide or High School Attendance Area, or
7 modernization projects, an application for Eligibility Determination, Form SAB
8 50-03;

9 (b) For new construction projects, either district wide or High School Attendance
10 Area, an Enrollment Certification/Projection, Form SAB 50-01; and

11 (c) For new construction projects, an Existing School Building Capacity, Form
12 SAB 50-02.

13 Section 1859.21, (added in 1998, refiled in 1999 and last amended in 2002),
14 requires a district seeking funding for a modernization or new construction project to
15 complete and file with the Office of Public School Construction, the Application for
16 Funding, Form SAB 50-04.

17 Section 1859.22, (added in 2001), provides that in addition to meeting the
18 requirements of Sections 1859.20 and 1859.21, a district shall, as may be necessary,
19 receive "School Facility Program" New Construction or Modernization Grants for
20 facilities that are or will be located on real property leased by the district provided all the
21 following are met:

1 (a) The real property is leased from a governmental agency; and

2 (b) The term of the lease for the land for which the district is requesting "School
3 Facility Program" funding at the time the Approved Application is accepted is for
4 (1) at least 25 years if the lease is for real property owned by the federal
5 government, (2) at least 40 years if the lease is for real property owned by a
6 governmental agency other than the federal government, (3) at least 30 years if
7 the lease is for real property owned by a governmental agency other than the
8 federal government and the district has certified there are no other educationally
9 adequate sites for new construction available under a 40-year lease, and the
10 cost per year to lease the real property for no less than 30 years is no greater
11 than the cost per year to lease the real property for 40 years, or (4) at least 30
12 years if the lease is for real property owned by a governmental agency other
13 than the federal government and the district has provided other evidence
14 satisfactory to the board that a shorter lease term is necessary.

15 A district seeking modernization funding on land or facilities leased by the district
16 pursuant to this section is subject to the adjustment in the district's baseline eligibility
17 pursuant to Section 1859.51(c). A district seeking new construction funding on land or
18 facilities leased by the district pursuant to this section is subject to the adjustment in the
19 district's baseline eligibility pursuant to Section 1859.51(a) and (i).

20 ARTICLE 4. DETERMINING EXISTING SCHOOL BUILDING CAPACITY

21 Section 1859.30, (added in 1998, refiled in 1999 and last amended in 2002),

1 requires the district to complete, for new construction projects, on a one-time basis, a
2 classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that
3 inventory on the Existing School Building Capacity, Form SAB 50-02. Completion of
4 the calculations made on this Form shall represent the district's new construction
5 Existing School Building Capacity.

6 Section 1859.31, (added in 1998 and refiled in 1999) requires the district to
7 prepare a gross inventory consisting of all classrooms owned or leased in the district or
8 High School Attendance Area as appropriate. For the purpose of this gross classroom
9 inventory, the following shall be considered classrooms:

- 10 (a) A classroom for which a contract was signed for the construction or
11 acquisition of facilities or for which construction work has commenced at the time
12 the "School Facility Program" application for determination of eligibility is
13 submitted to the Office of Public School Construction;
- 14 (b) A classroom constructed with funds from the "Lease-Purchase Program";
- 15 (c) A classroom used for Special Day Class or Resource Specialist Programs;
- 16 (d) Classrooms that are standard classrooms, shops, science laboratories,
17 computer laboratories, or computer classrooms;
- 18 (e) A classroom acquired or created for Class Size Reduction purposes;
- 19 (f) A classroom used for preschool programs;
- 20 (g) A classroom converted to any non-classroom purpose including use by
21 others;

1 (h) A classroom with Housing and Community Development or Department of
2 Housing insignia;

3 (i) A classroom acquired for interim housing for a modernization project;

4 (j) A classroom leased or purchased under the State Relocatable Program
5 pursuant to Chapter 14 "State Relocatable Classroom of 1979" of Part 10 of the
6 Education Code;

7 (k) Classrooms that have a waiver for continued use by the Board for Field Act
8 exemptions;

9 (l) A classroom used for Community School purposes; or

10 (m) A classroom included in a closed school.

11 Section 1859.32, (added in 1998, refiled in 1999 and last amended in 2000),
12 requires that after the gross classroom inventory has been prepared pursuant to
13 Section 1859.31, it will be reduced by the following:

14 (a) Any classrooms abandoned and approved for replacement as a hardship
15 under the provisions of the "Lease-Purchase Program";

16 (b) Any classroom at a school operated on a year-round schedule that has been
17 used continuously for at least 50 percent of the time for preschool programs in
18 the five years preceding the receipt of the application for determination of
19 eligibility;

20 (c) Any classroom included in any new construction "Lease-Purchase Program"
21 project that has not received a Phase C (construction) apportionment;

1 (d) Any classrooms that is portable and owned or leased by the district for 20
2 years or more that was approved for abandonment in a "Lease-Purchase
3 Program" project and the plans for the project had Division of the State
4 Architect's approval prior to November 4, 1998;

5 (e) Any classroom that is a trailer and is transported/towed on its own wheels
6 and axles;

7 (f) Any classroom used exclusively for regional occupational centers, regional
8 occupational programs, child care, preschool and/or Adult Education Programs,
9 and was built or acquired with funds specifically available for those purposes;

10 (g) Any classroom of less than 700 interior square feet;

11 (h) Any classroom originally built for instructional use, but converted to one of the
12 following: (1) used continuously for school administration for at least five years
13 prior to the submittal of the application to the Office of Public School
14 Construction for determination of eligibility, (2) used continuously for central or
15 main district administration for at least five years prior to the submittal of the
16 application to the Office of Public School Construction for determination of
17 eligibility, or (3) used for school library purposes during the previous school year;

18 (i) Any classroom owned but leased to another district;

19 (j) Any portable classroom excluded by Education Code Section 17071.30

20 [providing that for purposes of determining the existing school building capacity,
21 each applicant school district shall include each portable classroom, whether

1 owned or leased, except: (a) where portable classrooms leased pursuant to
2 Chapter 14 "State Relocatable Classroom Law of 1979" (commencing with
3 Section 17085) shall be excluded from the existing school building capacity.
4 Portable classrooms obtained by an applicant district pursuant to subdivision (b)
5 of Section 17088.5 (whereby a school district is eligible to lease a portable
6 classroom, but funds are not at the time available, the board may authorize the
7 school district to purchase a portable classroom if purchased under a procedure
8 determined by the board, and when funds are made available, the board shall
9 purchase the portable classroom from the school district and shall then lease the
10 portable classroom back the school district) shall be excluded from the existing
11 school building capacity, except as to any portable classroom or classrooms for
12 which the district rejected the board's offer to purchase pursuant to that
13 subdivision. Portable classrooms leased for a period of less than five years prior
14 to the date of application shall not be included in existing school building
15 capacity; and (b) the number of portable classrooms, reduced by the number of
16 portable classrooms used as interim housing for modernization projects, that
17 exceed 25 percent of the number of permanent classrooms available to the
18 district shall not be included in the existing building capacity];
19 (k) Any classroom that is permanent space and leased for less than five years;
20 and
21 (l) Any permanent classroom contained in a project for which the construction

1 contract was signed between August 27, 1998 and November 18, 1998 and for
2 which the district did not have full project eligibility under the "Lease-Purchase
3 Program."

4 Section 1859.33, (added in 1998, refiled in 1999 and last amended in 2002)
5 requires the district to identify by grade level, based on its most typical use for grades
6 K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined
7 pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These
8 classrooms shall be reported on the Existing School Building Capacity, Form SAB
9 50-02.

10 Section 1859.35, (added in 1998, refiled in 1999 and last amended in 2000),
11 requires that the district's existing school building capacity be determined by totaling the
12 amounts calculated in subdivision (a) with the amount determined in subdivisions (b) or
13 (c), whichever is the greater. Subdivision (a) requires the multiplication of the number
14 of available classrooms in the district or the High School Attendance Area by the
15 following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available
16 classrooms shall be determined by the reduction of classrooms identified in Section
17 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and
18 the inclusion of portable classrooms as provided pursuant to Education Code Section
19 17071.30 (a) or (b) (providing certain exclusions for portable classrooms in the
20 calculation of existing school building capacity) . Subdivision (b) requires the
21 multiplication of the K-6 pupil capacity of the elementary district, the unified district or

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1 the High School Attendance Area in a unified district as determined by the results of the
2 calculations in subdivision (a) at the time of the initial determination of eligibility by six
3 percent. For a high school district filing on a district-wide basis, multiply the pupil
4 capacity of the district as determined by the results of the calculations in subdivision (a)
5 at the time of initial determination of eligibility by six percent or, as an alternative, by
6 eight percent of the K-12 pupil capacity within the boundaries of the district. A high
7 school district filing on a High School Attendance Area, is required to multiply the K-12
8 pupil capacity within the boundaries of the High School Attendance Area by eight
9 percent. When the district meets the Substantial Enrollment Requirement or qualifies
10 for a waiver of the Substantial Enrollment Requirement authorized by Education Code
11 Sections 17017.6 (defining "substantial enrollment" to include specific "multi-track year-
12 round" enrollment requirements for high school districts) and 17017.7(c) (providing the
13 minimum percentage of district pupils required for "substantial enrollment" purposes),
14 the amount reported in this subdivision shall be zero. Subdivision (c) provides that a
15 number equal to the number of pupils provided operational grants as indicated in the
16 current report of operational grants made by the California Department of Education
17 pursuant to Education Code Section 42268 (providing the requirements for the
18 Superintendent of Public Instruction's annual report to the State Allocation Board), less
19 the number of pupils at a school on the Multi-Track Year-Round Education calendar
20 that has a density of at least 200 or more pupils per acre when the district has at least
21 40 percent of its enrollment on Multi-Track Year-Round Education as of the date of

1 determination of the existing school building capacity of the district.

2 ARTICLE 5. ENROLLMENT PROJECTIONS

3 Section 1859.40, (added in 1998, refiled in 1999 and last amended in 2002),
4 requires the district to provide an enrollment Certification and report enrollment data, on
5 the Enrollment Certification/Projection, Form SAB 50-01. The information provided on
6 this Form shall serve as the basis for determining a district's eligibility for New
7 Construction funding.

8 Section 1859.41, (added in 1998, refiled in 1999 and last amended in 2002),
9 subdivision (a), requires that a district shall request, as may be necessary, that its
10 eligibility determination for New Construction Grants be based on a High School
11 Attendance Area or Super High School Attendance Area basis if it meets all the
12 following criteria. First, the district must demonstrate that the eligibility determination for
13 New Construction Grants in at least one of the district's High School Attendance Area
14 or Super High School Attendance Area results in negative eligibility for maximum
15 funding at any grade level within the High School Attendance Area or Super High
16 School Attendance Area. Second, the New Construction Grants eligibility determination
17 for the High School Attendance Area or Super High School Attendance Area must be
18 based on the capacity and projected enrollment of the High School Attendance Area or
19 Super High School Attendance Area as shown in the Eligibility Determination, Form
20 SAB 50-03. Third, the eligibility determination for the High School Attendance Area or
21 Super High School Attendance Area must include a high school that serves any

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1 combination of grades nine through twelve and the high school is not a continuation
2 high school. Subdivision (b) requires that if a district meets the criteria in subdivision (a)
3 and requests its eligibility determination to be based on an High School Attendance
4 Area or Super High School Attendance Area, eligibility for future grants, with the
5 exception of community school pupil grants for a county superintendent, in that High
6 School Attendance Area or Super High School Attendance Area must be filed on the
7 same basis for a period of five years from the date the district received an
8 apportionment that was justified by eligibility under that High School Attendance Area or
9 Super High School Attendance Area. When only a portion of the enrollment at a feeder
10 school actually contributes to the High School Attendance Area or Super High School
11 Attendance Area, the district shall report, as a percentage, only that portion of the
12 enrollment. A county superintendent reporting on the basis of one or more High School
13 Attendance Area basis shall file, as may be necessary, applications by utilizing High
14 School Attendance Area or Super High School Attendance Area boundaries of any
15 district within the county. A county superintendent shall report, as may be necessary,
16 enrollment and file eligibility for future grants separately for special education pupils or
17 for community school pupils. If a district requests to re-file its eligibility determination
18 from High School Attendance Area or Super High School Attendance Area to
19 district-wide after the five year time period has elapsed, the existing school building
20 capacity in the district will be determined based on classrooms available in the High
21 School Attendance Area or Super High School Attendance Area at the time of initial

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1 request for eligibility determination and the current classrooms in the remaining portion
2 of the district. Once the baseline eligibility has been determined for the district, it will be
3 adjusted for classrooms constructed, funded or acquired in that High School
4 Attendance Area or Super High School Attendance Area as provided by Section
5 1859.51. Existing boundaries of a High School Attendance Area or Super High School
6 Attendance Area may only be changed as a result of Section 1859.51(f).

7 Section 1859.42, (added in 1998, refiled in 1999 and last amended in 2002),
8 requires that the district enrollment, as reported on the Enrollment
9 Certification/Projection, Form SAB 50-01, be used to calculate the district's projected
10 enrollment other than for Special Day Class enrollment. The Office of Public School
11 Construction shall use the following methodology, under subdivisions (a) and (b), to
12 determine the districts projected enrollment. Subdivision (a) provides the formula for
13 calculating all projected enrollment with the exception of Special Day Class enrollment
14 for all grades. Subdivision (b) provides that the enrollment projection will be
15 augmented, through a specific formula, based on the number of pupils as reported by
16 the district on Enrollment Certification/Projection, Form SAB 50-01, that will reside in
17 dwelling units included in an approved subdivision map or valid tentative subdivision
18 map that exceed the number of pupils projected as a result of the cohort survival
19 method for that subdivision map. Subdivision (c) requires that the projected enrollment
20 of a High School Attendance Area be computed in the same manner as set forth in this
21 section, except that the enrollment used in such computation shall be that of the High

1 School Attendance Area rather than the entire district. Augmentation as provided in
2 subdivision (b) may include only dwelling units located in the High School Attendance
3 Area.

4 Section 1859.43, (added in 1998, refiled in 1999 and last amended in 2002),
5 requires that the district enrollment, as reported on the Enrollment
6 Certification/Projection, Form SAB 50-01, be used to calculate the district's projected
7 Special Day Class enrollment. The Office of Public School Construction shall use the
8 methodology provided in subdivisions (a) and (b) to determine the district's projected
9 enrollment. Subdivision (a) requires that the projected enrollment of each classification
10 of Special Day Class students served by a school district shall be computed by
11 multiplying the reported enrollment of Special Day Class students by the five- year
12 projection of the same grade level of students as determined by Section 1859.42. The
13 resulting value shall be divided by the current enrollment of the same students as
14 provided on Enrollment Certification/Projection, Form SAB 50-01. Subdivision (b)
15 requires that the projected enrollment of each classification of Special Day Class
16 students served by a county office of education shall be computed as follows: (1)
17 determine the percentage change in total Special Day Class enrollment from the
18 current year to the previous year; determine the percentage change in total Special Day
19 Class enrollment in the previous year to the second previous year; determine the
20 percentage change in total Special Day Class enrollment in the second previous year to
21 the third previous year. To determine the average annual increase, add the three

1 percentage changes and divide by three; and (2) the current Special Day Class
2 enrollment provided by the county office of education as reported on Enrollment
3 Certification/Projection, Form SAB 50-01, shall be adjusted by the average annual
4 percentage change in (1) for each year until the five-year projected enrollment has been
5 determined.

6 ARTICLE 6. NEW CONSTRUCTION ELIGIBILITY DETERMINATION

7 Section 1859.50, (added in 1998, refiled in 1999 and last amended in 2002),
8 requires a district to calculate its eligibility determination by completion of the Eligibility
9 Determination, Form SAB 50-03. Eligibility determination for New Construction Grants
10 may be requested on either a district-wide basis or on a High School Attendance Area
11 or Super High School Attendance Area basis. If a district requests to have its eligibility
12 determination made on a district-wide basis, eligibility for future grants in the district
13 must be filed on the same basis for a period of five years from the date the district
14 received an apportionment that was justified by eligibility determined on a district-wide
15 basis. If a district requests to re-file its eligibility determination from district-wide to High
16 School Attendance Area to Super High School Attendance Area after the five year time
17 period has elapsed, the existing school building capacity in the High School Attendance
18 Area or Super High School Attendance Area will be determined based on the
19 classrooms available in the High School Attendance Area or Super High School
20 Attendance Area at the time of the initial district-wide request for eligibility
21 determination. Once the baseline eligibility has been determined for the High School

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1 Attendance Area or Super High School Attendance Area, it will be adjusted for
2 classrooms constructed, funded or acquired in that High School Attendance Area or
3 Super High School Attendance Area as provided by Section 1859.51. If the district
4 requests to have its eligibility determination made on a High School Attendance Area or
5 Super High School Attendance Area, it must meet the criteria of Section 1859.41. The
6 calculated eligibility on the Eligibility Determination, Form SAB 50-03, is the initial
7 eligibility of the district, the High School Attendance Area or Super High School
8 Attendance Area and shall be referenced as the baseline eligibility for future "School
9 Facility Program" funding. The baseline eligibility is the basis for filing an Application For
10 Funding, Form SAB 50-04, for a new construction "School Facility Program" grant. A
11 district affected by a reorganization election on or after November 4, 1998 may file an
12 application for a determination of new construction baseline eligibility after a successful
13 reorganization election.

14 Section 1859.51, (added in 1998, refiled in 1999 and last amended in 2002),
15 requires that the baseline eligibility for new construction determined on the Eligibility
16 Determination, Form SAB 50-03, will receive numerous adjustments. Subdivision (a)
17 reduces the baseline eligibility by the number of pupils provided grants in a new
18 construction "School Facility Program" project. Subdivision (b) reduces the baseline
19 eligibility by the number of pupils housed, based on the loading standards pursuant to
20 Education Code Section 17071.25(a)(2)(A) (25 for each K-6 classroom and 27 for each
21 7-12 classroom), in a new construction "Lease-Purchase Program" project funded

1 under the provisions of the "Lease-Purchase Program" pursuant to Sections 1859.12
2 or 1859.13. Subdivision (c) reduces the baseline eligibility by the number of pupils
3 housed in additional classrooms constructed or purchased based on the loading
4 standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization
5 "School Facility Program" project. Subdivision (d) adjusts the baseline eligibility as a
6 result of the audit findings made pursuant to Section 1859.105. Subdivision (e)
7 increases or decreases the baseline eligibility by changes in projected enrollment in
8 subsequent enrollment reporting years for all districts except decreases as provided in
9 subdivision (j) below. Subdivision (f) adjusts the baseline eligibility as a result of errors
10 or omissions by the district or by the Office of Public School Construction. Subdivision
11 (g) adjusts the baseline eligibility as a result of amendments to these Regulations that
12 effect the eligibility. Subdivision (h) increases the baseline eligibility by the number of
13 pupils eligible for grants pursuant to Section 1859.82(a). Subdivision (i) reduces the
14 baseline eligibility by the number of pupils housed, based on loading standards
15 pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after
16 the baseline eligibility was determined by the Board with the exception of those pupils
17 housed or to be housed in a classroom:

- 18 (1) That is a trailer and transportable/towed on its own wheels and axles,
- 19 (2) Of less than 700 interior square feet,
- 20 (3) Excluded pursuant to Education Code Section 17071.30,
- 21 (4) Where the contract for the lease, lease-purchase, purchase, or construction

1 of the classroom was made prior to January 1, 2000,

2 (5) Where the contract for the lease, lease-purchase, purchase, or construction
3 was made no more than 180 days before the Approved Application date for
4 funding of the classrooms included in the contract,

5 (6) That is included in a "School Facility Program" project where the district has
6 funded a portion of the project beyond its required district contribution and the
7 pupil capacity of the classroom does not exceed 150 percent of the number of
8 pupils receiving a new construction grant (rounded up) for the "School facility
9 Program" project.

10 Subdivision (j) provides that, for small school districts, the baseline eligibility will be
11 decreased: (1) by any reduction in projected enrollment beginning in the
12 enrollment-reporting year that follows a three year period beginning when the district's
13 baseline eligibility was determined by the Board. The reduction shall be determined by
14 any decrease between the current projected enrollment and the projected enrollment
15 used when the district's baseline eligibility was determined by the Board pursuant to
16 Section 1859.50 or adjusted by a subsequent operational grant report after that date,
17 and (2) by any increase in the number of pupils included in the latest operational grant
18 report made by the California Department of Education pursuant to Education Code
19 Section 42268 (Superintendent of Public Instruction's annual report to the State
20 Allocation Board) beginning three years after the district's baseline eligibility was
21 determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall

1 be determined by the number of pupils included in the latest operational grant report
2 that exceed the number of pupils included in the operational grant report in effect when
3 the district's baseline eligibility was determined by the board pursuant to Section
4 1859.50 or adjusted by a subsequent operational grant report after that date.

5 Subdivision (k) adjusts the baseline eligibility for any change in classroom inventory as
6 a result of a reorganization election. Subdivision (l) adjusts the baseline eligibility for
7 classroom loading standards adopted by the Board for non-severely disabled
8 individuals with exceptional needs and severely disabled individuals with exceptional
9 needs. Subdivision (m) adjusts the baseline eligibility as directed by the board due to a
10 finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

1 ARTICLE 7. MODERNIZATION ELIGIBILITY DETERMINATION

12 Section 1859.60, (added in 1998, refiled in 1999 and last amended in 2002),
13 requires that the district calculate its eligibility by completion of the Eligibility
14 Determination, Form SAB 50-03. The eligibility determination may be made by either
15 identifying all classrooms on the site pursuant to subdivision (a) or by the identification
16 of all square footage on the site pursuant to subdivision (b). Subdivision (a) requires
17 the district to identify all classrooms at the school site that would have been included in
18 the Gross Classroom Inventory pursuant to Section 1859.31 that are: (1) permanent
19 and at least 25 years old and not previously modernized with State funds; (2) portable
20 and at least 20 years old and not previously modernized with State funds; and (3) the
21 remaining classrooms not reported in (1) or (2) above. Alternatively, subdivision (b)

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1 requires the district to identify all square footage at the school site that is: (1)
2 permanent area and at least 25 years old and not previously modernized with State
3 funds; (2) portable classroom area and at least 20 years old and not previously
4 modernized with State funds; and (3) the remaining square footage on the site not
5 reported in (1) or (2) above. The age of the classroom or square footage shall be
6 based on the date the district submitted the application for an eligibility determination to
7 the Office of Public School Construction. For purposes of identifying square footage at
8 a school site, the district shall include the total enclosed exterior square footage of the
9 school buildings. For multilevel buildings, the square footage at each level shall be
10 included. Enrollment at the school shall be the latest California Basic Education Data
11 System report for K-6, 7-8 and 9-12 pupils (enrollment information provided through the
12 California Basic Education Data System by school districts to the California Department
13 of Education). If the school is closed at the time of application for eligibility
14 determination for modernization, and the district intends to reopen it and use it as a
15 school for at least the next five years, the enrollment may be estimated based on
16 district demographic data. The calculated eligibility determined on the Eligibility
17 Determination, Form SAB 50-03, shall be referred to as the modernization baseline
18 eligibility for the specific school site.

19 Section 1859.61 (added in 1998, refiled in 1999 and last amended in 2002),
20 requires the baseline eligibility for modernization as provided in Section 1859.60 for a
21 specific site to be adjusted as follows:

1 (a) Reduced by the number of pupils provided grants in a modernization "School
2 Facility Program" project at the specific site;

3 (b) Reduced by the number of pupils housed, based on the loading standards
4 pursuant to Education Code Section 17071.25(a)(2) (25 for each K-6 classroom
5 and 27 for each 7-12 classroom), in a modernization "Lease-Purchase Program"
6 project funded under the "Lease-Purchase Program" pursuant to Sections
7 1859.14 and 1859.15;

8 (c) Increased by changes in projected enrollment in subsequent enrollment
9 reporting years;

10 (d) Increased for additional facilities not previously modernized with State funds,
11 that become 25 years old, if permanent, or 20 years old, if portable or as a result
12 of audit findings made pursuant to Section 1859.105;

13 (e) Adjusted as a result of errors or omissions by the district or by the Office of
14 Public School Construction;

15 (f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that
16 affect the eligibility;

17 (g) For classroom loading standards adopted by the board for non-severely
18 disabled individuals with exceptional needs and severely disabled individuals
19 with exceptional needs; and

20 (h) As directed by the board due to a finding of a Material Inaccuracy pursuant to
21 Regulation Section 1859.104.1.

1 ARTICLE 8. NEW CONSTRUCTION AND MODERNIZATION GRANT

2 DETERMINATIONS

3 Section 1859.70, (added in 1998, refiled in 1999 and last amended in 2002),
4 requires that "a district seeking New Construction or Modernization funding shall
5 complete and file an Application for Funding, Form SAB 50-04, after completing the
6 applicable requirements in Section 1859.20. A district affected by a reorganization
7 election on or after November 4, 1998 may not file an application for New Construction
8 funding after the notification of the reorganization election until a new calculation of the
9 district's baseline eligibility has been determined on the Eligibility Determination, Form
10 SAB 50-03, or the district certifies that the reorganization election will not result in a loss
11 of eligibility for the project for which the district is requesting new construction grants. A
12 district that is newly created as a result of a reorganization election may file an
13 application for funding after approval of the election has been made by the State Board
14 of Education."

15 Section 1859.71, (added in 1998 and refiled in 1999) requires the new
16 construction grant amount, as provided by Education Code Section 17072.10(a)
17 (whereby the board shall determine total New Construction grant eligibility by the
18 provided formula), will be adjusted annually based on the change in the Class B
19 Construction Cost Index as approved by the Board each January. The base Class B
20 Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.
21 For any changes or additions to the regulations adopted by the Board in 1999, those

1 changes shall be adjusted in accordance with this section at the time the regulations
2 are adopted.

3 Section 1859.71.1, (added in 2000 and last amended in 2001), requires "the
4 Board to provide the following amounts for each pupil included in an approved project
5 for new construction funding: (a) \$16,573 for each pupil that is a Severely Disabled
6 Individual with Exceptional Needs, and (b) \$11,084 for each pupil that is a
7 Non-Severely Disabled Individual with Exceptional Needs. The amounts shown shall
8 be adjusted annually in the manner prescribed in Section 1859.71. The additional grant
9 is eligible for any new construction grant augmentation for which the project is
10 otherwise eligible under the law and regulations."

1 Section 1859.72 (added in 1998, refiled in 1999 and last amended in 2001),
12 requires that "the New Construction Grant will be increased for the area of therapy
13 rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs.
14 The district may request an increase in the New Construction Grant for therapy area,
15 not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class
16 classroom needed for Severely Disabled Individuals with Exceptional Needs. The grant
17 amount will be increased by \$150 per square foot for toilet facilities and \$75 per square
18 foot for all other facilities. The amounts shown shall be adjusted annually in the manner
19 prescribed in Section 1859.71."

20 Section 1859.73, (added in 1998 and refiled in 1999), requires that "the New
21 Construction Grant will be increased for the additional costs resulting from the need to

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1 build multilevel facilities by 12 percent for each pupil housed in a multilevel building that
2 will house pupils in all levels of the building if the useable site acreage for the project is
3 less than 75 percent of the site size recommended by the California Department of
4 Education for the master planned project capacity.”

5 Section 1859.73.1, (added in 1998, refiled in 1999 and last amended in 2002),
6 requires that “the New Construction Grant will be increased by \$3,750 for small school
7 districts for the cost necessary for project assistance. The amount will be adjusted
8 annually based on the change in the Class B Construction Cost Index as approved by
9 the Board each January. The base Class B Construction Cost index shall be 1.37 and
10 the first adjustment shall be January 2001. This allowance shall only apply to any
11 acceptable Application for Funding, Form SAB 50-04 submitted to the Office of Public
12 School Construction no later than January 1, 2003.”

13 Section 1859.73.2, (added in 2001 and last amended in 2002), requires that the
14 New Construction Grant be increased by the amount(s) in subdivision (b) below for the
15 replacement cost of one-story buildings that are demolished at a school in order to
16 increase pupil capacity of that school if all the following conditions are met:

17 (1) The school must be on Multi-Track Year-Round Education at the time the
18 Approved Application is accepted;

19 (2) The site size as determined by the California Department of Education for the
20 existing capacity of the school is less than 75 percent of the recommended
21 California Department of Education site size;

1 (3) The pupil capacity of the school must be increased by at least the greater of:

2 (A) twenty percent of the existing pupil capacity (before replacement) of
3 the school. Existing pupil capacity shall be determined by multiplying
4 classrooms intended for grades kindergarten through six by 25,
5 classrooms intended for grades seven through 12 by 27, classrooms
6 intended for Non-Severely Disabled Individuals with Exceptional Needs by
7 13 and classrooms intended for Severely Disabled Individuals with
8 Exceptional Needs by nine. Classrooms shall not include any classrooms
9 reduced from the Gross Classroom Inventory pursuant to Section
10 1859.32, or

1 (B) 200 pupils;

12 (4) The sum of (A) and (B) below is less than the amount determined in (E)
13 below:

14 (A) The district must determine the estimated cost of demolition of the
15 one-story buildings to be replaced. The cost estimate shall be subject to
16 review by the Office of Public School Construction for conformance with
17 the Saylor Current Cost Publication,

18 (B) Multiply the square footage of the buildings to be replaced by the
19 Current Replacement Cost,

20 (C) Multiply the New Construction Grants requested in box 2 of the
21 Application for Funding, Form SAB 50-04, by .01775 for K-6, .021 for 7-8

1 and .02472 for 9-12,

2 (D) The district must determine the average appraised value of land per
3 acre, including relocation costs, within the attendance boundaries of the
4 school. The appraisal must be consistent with Section 1859.74.1, and

5 (E) Multiply the sums of the products determined in (C) above by the
6 average appraised value of land per acre determined in (D) above;

7 (5) The California Department of Education has determined that the replacement
8 of the one-story buildings on the existing site with multilevel building(s) would be
9 the best available alternative and will not create a school with an inappropriate
10 number of pupils in relation to the size of the site;

11 (6) The one-story buildings to be replaced on the existing site may not be leased
12 facilities; and

13 (7) With the exception of portables acquired with Class Size Reduction funds,
14 the one-story buildings to be replaced on the site may not have been funded for
15 either new construction or modernization funds from Proposition 1A funds within
16 the past five years from the date the Approved Application is accepted.

17 Subdivision (b) provides that if the criteria in subdivision (a) above are met, the New
18 Construction Grant will be increased by \$150 per square foot for toilet facilities and by
19 \$75 per square foot for all other facilities included in the one-story buildings to be
20 replaced adjusted for the following: (1) the amounts shall be adjusted annually in the
21 manner prescribed in Section 1859.71, (2) the amounts shall be increased by the

1 percentage authorized in Section 1859.73 if the replacement area will be multilevel
2 building(s), and (3) the amounts shall be increased for excessive cost grants as
3 provided pursuant to Section 1859.83(a) and (d). The district is eligible for site
4 development in accordance with Section 1859.76 including the demolition of the
5 replacement structures as part of the New Construction Grant for the "School Facility
6 Program" project.

7 Section 1859.74, (added in 1998, refiled in 1999 and last amended in 2000),
8 requires that, with the exception of projects that received site acquisition funds under
9 the "Lease-Purchase Program," the New Construction Grant will be increased for the
10 lesser of one half of the actual cost of the site or one-half of the appraised value of the
11 site acquired as described in subdivisions (a) and (b). Subdivision (a) requires that the
12 actual cost of the site shall be the purchase price as shown on the escrow documents
13 or other appropriate documents such as court orders in condemnation or as specifically
14 identified in agreements when the site is transferred in lieu of other legally required
15 payments or fees due to the district. The actual cost shall be adjusted for the following:
16 (1) increased by the approved relocation expenses that conform to Title 25 "Housing
17 and Community Development," Chapter 6 "Department of Housing and Community
18 Development Programs," Subchapter 1 "Relocation Assistance and Real Property
19 Acquisition Guidelines," California Code of Regulations, Section 6000, et seq. The
20 reasonable and necessary relocation costs for purchasing fixtures and equipment,
21 personal property, new machinery/equipment and the installation of any improvements

1 at the replacement residence or business location may be included as relocation
2 assistance; (2) increased by four percent of the actual amount determined in
3 subdivision (a) above, but not less than \$50,000. This amount shall provide an
4 allowance for any appraisal, escrow, survey, site testing, California Department of
5 Education review/approvals and the preparation of the Phase One Environmental Site
6 Assessment and the Preliminary Endangerment Assessment; and (3) increased by the
7 Department of Toxic Substance Control costs for review, approval, and oversight of the
8 Phase One Environmental Site Assessment and the Preliminary Endangerment
9 Assessment. Subdivision (b) provides that the value of the site shall be determined by
10 an appraisal made or updated no more than six months prior to application submission
11 to the Office of Public School Construction for funding. A "School Facility Program"
12 project which had the site funded as a "Lease-Purchase Program" project shall use the
13 appraised value determined under the "Lease-Purchase Program". The appraisal may
14 be reviewed by the Office of Public School Construction for conformance with Section
15 1859.74.1. The approved appraised value shall be adjusted for the same reasons as
16 provided in subdivision (a)(1) through (3) above. The actual site cost or the appraised
17 value of the site shall be reduced, on a prorated basis, by the percentage of the excess
18 acreage of the site that exceeds the master plan site acreage approved by the
19 California Department of Education.

20 Section 1859.74.1, (added in 1998, refiled in 1999 and last amended in 2002),
21 requires a district to certify on the Application for Funding, Form SAB 50-04, that the

1 appraisal of the property was made utilizing the criteria found in subdivisions (a) though
2 (e) in order to receive a New Construction Additional Grant for site acquisition costs.
3 Subdivision (a) provides that the land improvements and appurtenances, excluding
4 fixtures, equipment and personal property, shall be appraised in an "as is" condition
5 with the following exceptions:

6 (1) The site shall be appraised as if it were a clean site, safe of all toxic
7 contaminants in accordance with California Department of Education guidelines
8 and pursuant to Title 5 "Education," Chapter 13 "School Facilities and
9 Equipment," Subchapter 1 "School Housing," of the California Code of
10 Regulations commencing with Section 14001, and

11 (2) The site valuation shall include only proposed site improvements associated
12 with grading the site to a mass graded or super pad condition, defined as a site
13 graded to construction readiness without foundation or paving and proposed
14 utilities stubbed to the site. Any proposed site improvements or utilities not
15 covered by a performance bond equal to 100 percent of the estimated cost of the
16 site improvements and utilities must be completed prior to the close of escrow
17 and detailed separately in the report.

18 Subdivision (b) provides that consideration in the appraisal be made for net useable
19 acreage and severance damages. Subdivision (c) requires the district or its legal
20 counsel to contract for appraisal services. Subdivision (d) requires the appraiser to
21 certify to the district that the appraisal complies with the Uniform Standards of

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1 Professional Appraisal Practices as promulgated by the Appraisal Standards Board of
2 the Appraisal Foundation. Subdivision (e) provides that the amount of a court award for
3 a site acquired in condemnation may be used in lieu of the appraised value determined
4 in subdivisions (a) through (d) above, when specifically approved by the board. The
5 district is required to submit one appraisal. If the application includes a request for
6 financial hardship as provided in Section 1859.81, the Office of Public School
7 Construction will review the appraisal for conformance with subdivisions (a) through (d)
8 prior to a recommendation for "School Facility Program" funding to the board.

9 Section 1859.74.2, (added in 2000), provides that "with the exception of projects
10 that received site acquisition funds under the Lease-Purchase Program, the New
11 Construction Grant will be increased for a site acquired for the allowable costs of
12 hazardous materials/waste removal and/or remediation costs. The allowable costs shall
13 be the lesser of one half of (a) or (b):

14 (a) The costs to implement the Remedial Action as determined necessary in the
15 Preliminary Endangerment Assessment that has been approved by the
16 Department of Toxic Substance Control subject to the following:

17 (1) The costs may include the costs for preparation of the Remedial
18 Action,

19 (2) The costs may include the Department of Toxic Substance Control
20 costs for review and oversight of the preparation and implementation of
21 the Remedial Action, and

1 (3) The costs may not include continuous operational and maintenance
2 costs associated with the Remedial Action;

3 (b) The difference in the amounts determined pursuant to Section 1859.74(a)
4 and (b). In no event can the amount provided in this Section and Section
5 1859.74 exceed 50 percent of the appraised value of the site as determined in
6 Section 1859.74(b)."

7 Section 1859.74.3, (added in 2001), requires that when a district has requested
8 funding on a vacant leased site pursuant to Section 1859.22 that was never used for
9 school purposes, the New Construction Grant will be increased for the lesser of one
10 half of the amounts allowed in either subdivision (a) or subdivision (b).. Subdivision (a)
' provides the district to include all of the following:

12 (1) The approved relocation expenses that conform to Title 25 "Housing and
13 Community Development," Chapter 6 "Department of Housing and Community
14 Development Programs," Subchapter 1 "Relocation Assistance and Real
15 Property Acquisition Guidelines," California Code of Regulations, (Section 6000,
16 et seq.) (providing for the reasonable and necessary relocation costs for
17 purchasing fixtures and equipment, personal property, new machinery/equipment
18 and the installation of any improvements at the replacement residence or
19 business location may be included as relocation assistance),

20 (2) \$50,000 (This amount shall provide an allowance for any appraisal, escrow,
21 survey, site testing, California Department of Education review/approvals and the

1 preparation of the Phase One Environmental Site Assessment and the
2 Preliminary Endangerment Assessment),

3 (3) The Department of Toxic Substance Control costs for review, approval, and
4 oversight of the Phase One Environmental Site Assessment and the Preliminary
5 Endangerment Assessment, and

6 (4) The costs to implement the Remedial Action as determined necessary in the
7 Preliminary Endangerment Assessment that has been approved by the
8 Department of Toxic Substance Control subject to:

9 (A) The costs may include the costs for preparation of the Remedial
10 Action,

11 (B) The costs may include the Department of Toxic Substance Control
12 costs for review and oversight of the preparation and implementation of
13 the Remedial Action, and

14 (C) The costs may not include continuous operational and maintenance
15 costs associated with the Remedial Action.

16 Subdivision (b) requires that the appraised value of the site be determined by an
17 appraisal made or updated no more than six months prior to application submittal to the
18 Office of Public School Construction for funding pursuant to Section 1859.74.1. The
19 appraisal may be reviewed by the Office of Public School Construction for conformance
20 with Section 1859.74.1. The appraised value of the site shall be reduced, on a prorated
21 basis, by the percentage of the excess acreage of the site that exceeds the master plan

1 site acreage approved by the California Department of Education.

2 Section 1859.74.4, (added in 2002), provides for additional grants for hazardous
3 waste removal required on an existing school site. Subdivision (a) provides that with
4 the exception of projects that received initial site acquisition funds under the "School
5 Facility Program," the New Construction Grant may be increased for the necessary
6 hazardous waste materials/waste removal and/or remediation costs on an existing
7 school site where the New Construction Grants will be used if all the following are met:

8 (1) The New Construction Grant request is for additional school facilities on an
9 existing school site,

10 (2) The New Construction Grant request does not include a funding request for
11 initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.

12 (3) The existing school site where the New Construction Grant will be expended
13 has a functioning school on the site or the site had a closed school that will again
14 be used as a functioning school, and

15 (4) The hazardous material cleanup costs are required by the Department of
16 Toxic Substance Control.

17 Subdivision (b) provides that if all criteria in subdivision (a) are met, the allowable
18 hazardous waste removal cleanup costs shall be one half of all the following:

19 (1) The costs for preparation of the Phase One Environmental Site Assessment,
20 the Preliminary Endangerment Assessment and the Remedial Action,

21 (2) The costs to implement the Remedial Action as determined necessary in the

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1 Preliminary Endangerment Assessment that has been approved by the
2 Department of Toxic Substance Control subject to: (A) the costs may include the
3 Department of Toxic Substance Control costs for review and oversight of the
4 preparation and implementation of the Remedial Action, and (B) the costs may
5 not include continuous operational and maintenance costs associated with the
6 Remedial Action.

7 Section 1859.75, (added in 1998 and refiled in 1999), requires that "in order to
8 receive a New Construction Additional Grant for site acquisition as provided in Section
9 1859.74, the district must: (a) certify there is no available Alternative District-Owned
10 Site for that project deemed useable for school purposes by the California Department
11 of Education; or (b) certify that it intends to sell an available Alternative District-Owned
12 Site and use the proceeds for the purchase of the new site. In this event, the Board will
13 recognize the lesser of: (1) one-half of the actual cost or the appraised value of the
14 available Alternative District-Owned Site as determined in Section 1859.74, whichever
15 is the lesser, or (2) one-half of the actual cost or the appraised value of the site
16 purchased for the project as determined in Section 1859.74, whichever is the lesser."

17 Section 1859.75.1, (added in 2000 and last amended in 2002), provides that a
18 district is eligible for a separate apportionment for site acquisition even if it does not
19 meet the financial hardship criteria contained in Section 1859.81, when all the following
20 requirements are met:

21 (1) The district has eligibility for grants that equal at least 50 percent of the

1 California Department of Education master plan capacity of the site,

2 (2) The district has received a contingent site approval letter from the California
3 Department of Education indicating that the proposed site is the best available,

4 (3) The district has obtained a preliminary appraisal or an appraisal of the
5 property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1.

6 However, the preliminary appraisal report may be made without access to the
7 site, and

8 (4) The district has provided a letter from the Department of Toxic Substance
9 Control pursuant to Education Code Section 17072.13 (providing the application
10 requirements for a school district to receive funding for the evaluation and
11 removal of hazardous materials at a site) that indicates the time necessary to
12 complete the remediation removal of any hazardous materials/waste on the
13 proposed site as determined necessary by the Preliminary Endangerment
14 Assessment and required in the Remedial Action Plan, will take at least 180
15 calendar days to complete.

16 Subdivision (b) provides that if the conditions in subdivision (a) are met, the district is
17 eligible for a separate apportionment for one half of the following:

18 (1) The lesser of the appraised value of the site as determined in Section
19 1859.74.1 or the amount the district reasonably expects to pay for the site
20 including any hazardous materials/waste removal and/or remediation costs for
21 the site,

1 (2) The estimated relocation expenses that will conform to Title 25, California
2 Code of Regulations, Section 6000, et seq., providing that the reasonable and
3 necessary relocation costs for purchasing fixtures and equipment, personal
4 property, new machinery/equipment, and the installation of any improvements at
5 the replacement residence or business location may be included as relocation
6 assistance,

7 (3) Four percent of the lesser of the appraised value of the site or the amount the
8 district reasonably expects to pay for the site acquisition including any hazardous
9 materials/waste removal and/or remediation costs for the site, but not less than
10 \$50,000,

11 (4) The estimated Department of Toxic Substance Control costs for review,
12 approval and oversight of the Phase One Environmental Site Assessment and
13 the Preliminary Endangerment Assessment.

14 The amount provided in subdivision (b) as a separate site apportionment shall be offset
15 from the New Construction Grant amount the district would otherwise be eligible for
16 pursuant to Section 1859.70. A district seeking a separate apportionment for site
17 acquisition must submit an Application for Funding, Form SAB 50-04.

18 Section 1859.76, (added in 1998, refiled in 1999 and last amended in
19 2002), provides for an additional New Construction Grant for site development costs.

20 This New Construction Grant will be increased by 50 percent of the following approved
21 site development and applicable design costs as provided in subdivisions (a) through

1 (c). Subdivision (a) lists the costs for service site development, within school property
2 lines, to include:

3 (1) Site clearance including the removal of trees, brush, and debris;

4 (2) Demolition and removal of existing buildings and site improvements which lie
5 in the footprint of a proposed building or proposed site development;

6 (3) Removal and rerouting of existing utility service which lie in the footprint of a
7 proposed building or proposed site development;

8 (4) Rough grading including cut and fill, and leveling and terracing operations
9 required in the design of the project;

10 (5) Soil compaction adhering to common engineering practices and engineered
fill that is required by a soils report that is available for review by the Office of
12 Public School Construction;

13 (6) On-site drainage facilities including inlets below grade drainage facilities and
14 retention basins;

15 (7) Erosion control improvements such as plant material, temporary sprinkler
16 systems, jute mesh and straw, due to embankments having a slope of at least
17 two to one and a vertical height greater than six feet;

18 (8) Outside stairways, handicap ramps and retaining walls due to embankments
19 having a slope of at least two to one and a vertical height greater than six feet;

20 (9) Relocation of existing portable buildings which lie in the footprint of a
21 proposed building or proposed site development including the cost for set-up and

1 utilities if the portable will be relocated on the same site. If the portable will be
2 moved to another site, only the costs to move the portable to the new location
3 shall be included;

4 (10) Fire code requirements on site that are not a part of the building;

5 (11) Funding for multilevel parking structures on a new construction project when
6 all the following have been met: (A) the new construction project is to be located
7 on site acreage that is less than 50 percent of the site size recommended by the
8 California Department of Education for the master planned project capacity, (B)
9 the number of parking stalls to be funded does not exceed 2.25 for each
10 classroom constructed in an elementary or middle school project, (C) the number
11 of parking stalls to be funded does not exceed six for each high school
12 classroom constructed in a high school project that will serve 9-12 pupils, and (D)
13 the state grant does not exceed \$7,500 per parking stall. The amount shown
14 shall be adjusted annually in the manner prescribed in Section 1859.71;

15 (12) Removal and relocation of portable classrooms on a site eligible for
16 replacement pursuant to Section 1859.82(a) that are available for housing pupils
17 pursuant to Section 1859.35(a).

18 Subdivision (b) lists the off-site development cost on up to two immediately adjacent
19 sides of the site, for the following:

20 (1) Curbs, gutters and paving of streets not to exceed one-half the mandated
21 local street code requirements. When the existing streets are to be widened

1 inward toward the property line from the existing face of the curb, all new street
2 improvements lying within the one-half of mandated street width adjacent to the
3 project shall be included;

4 (2) Sidewalks mandated by local ordinances;

5 (3) Street lighting, planting areas, street signs, traffic signals, trees or other costs
6 mandated by local ordinances;

7 (4) City and/or county or special district fees pursuant to active ordinances;

8 (5) Reasonable cost for storm drains to point of connection;

9 (6) Funding for safety paths for pedestrian use beyond two immediately adjacent

10 sides of the site necessary for a safe route to the new school site when the

11 following conditions are met: (A) the school district governing board has made a

12 finding at a public hearing that pedestrian safety concerns require improvements

13 in the form of safety paths to provide access to the school site, and the

14 Department of Education concurs with that finding, (B) the improvements are

15 limited to the work necessary to install concrete, asphalt, gravel or other paving

16 necessary to provide the safe paths, (C) the state grant does not exceed

17 \$50,000, (D) the improvements do not include any cost for the acquisition of

18 land, easements or other rights-of-way, and (E) the board has determined that

19 development of additional pedestrian paths is reasonable.

20 Subdivision (c) outlines the utility service costs associated with the California

21 Department of Education approved site size that are necessary to serve the master

1 planned capacity of the site to include:

- 2 (1) Installation of water supply line(s) and connection fees from the utility
3 company connection to the meter, meters not provided by the serving utility, or
4 installation of a domestic water system (i.e. well, pump, tank);
- 5 (2) Installation of main sewage disposal line from the utility company connection
6 to the first building lateral and if applicable, connection fees. Installation of a
7 sewage treatment/disposal system and a main disposal line from the treatment
8 system to the nearest building lateral of the collection system;
- 9 (3) Installation of main supply line and connection fees from utility company to
10 meter and connection fee if applicable. Installation of meters not provided by the
11 utility. Connection of a liquefied petroleum system (and tank) from the main
12 supply line to the first building lateral;
- 13 (4) Installation of service from the utility to the building switchboard. Primary
14 electric service runs from the utility company's point of connection to the
15 transformer. Secondary electric service runs from the transformer to the
16 switchboard. Connection fee, transformer pads and protective devices;
- 17 (5) Installation of communication services from the company to the nearest
18 distribution center.

19 The district must submit a detailed cost estimate for all requests for site development
20 work and any justification documents that will support the work with the Application for
21 Funding, Form SAB 50-04. The Board will then approve reasonable and appropriate

1 site development work which meet common engineering practices and industry
2 standards that are consistent with the specific site conditions if the site development
3 costs are consistent with the Saylor Current Construction Costs. The design
4 professional must certify to the district that the site development work does not exceed
5 the minimum requirements to develop the site to meet educational needs and/or
6 standards. Service site and off-site development costs shall then be reduced, on a
7 prorated basis, by the percentage of the excess acreage of the site that exceeds the
8 master plan site acreage approved by the California Department of Education.

9 Section 1859.77, (added in 1998 and refiled in 1999), requires that "after the
10 determination of the district's New Construction Grant and New Construction Additional
1 Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive
12 Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding
13 pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant
14 and any financial hardship funding provided pursuant to Section 1859.81 will be
15 reduced by the alternative fee collected pursuant to Government Code Section
16 65995.7(a) [providing that if state funds for new school facility construction are not
17 available, the governing board of a school district may increase the alternative fee,
18 charge, dedication, or other requirements], if a reimbursement election or agreement
19 pursuant to Government Code Section 65995.7 is not in effect. Any reduction to the
20 New Construction Adjusted Grant amount and any funding provided by Section 1859.81
21 made pursuant to this Section shall only include those alternative fees collected from

1 residential units to be served by the facilities associated with the New Construction
2 Grant. If the reduction is greater than the New Construction Adjusted Grant and the
3 funding provided by Section 1859.81, the pupils to be housed in the proposed project
4 will be reduced from the district's baseline eligibility and no "School Facility Program"
5 grants will be made to the district for that project. Any remaining off-set of the
6 alternative fees collected shall be off-set on the next request for a New Construction
7 Grant for other facilities to serve those residential units."

8 Section 1859.77.1, (added in 1998, refiled in 1999 and last amended in 2000),
9 requires that "except in the case of financial hardship provided by Section 1859.81, any
10 increase to the New Construction Grant for New Construction Additional Grants, facility
11 hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as
12 provided in Section 1859.83, shall require a district matching share contribution on a
13 dollar-for-dollar basis. The district may include as its district matching share any
14 amounts expended on the project for an energy audit made pursuant to Education
15 Code Section 17077.10 [renumbered as Section 17077.30 to avoid duplicative code
16 sections, providing that as part of the necessary requirements for a district's application
17 to the State Allocation Board for funding for any new construction or modernization
18 project, the applicant school district may, at the time of submission of the final drawings
19 to the Division of the State Architect, certify that an energy analysis and report has been
20 prepared that sets forth the utility savings that would be generated if the facilities were
21 designed, constructed, and equipped, with the energy efficiency and renewable

1 technologies that would make the facilities exceed the minimum building
2 energy-efficiency standards mandated for new public buildings pursuant to the latest
3 edition of the California Building Standards Code through the use of energy efficiency
4 and renewable energy technologies] and any amounts applied to the project for
5 incentive grants or rebates received by the district from a program funded pursuant to
6 Public Utilities Code Section 381 [providing that funds will be allocated to programs
7 which enhance system reliability and provide in-state benefits including: cost-effective
8 energy efficiency and conservation activities, public interest research and development
9 not adequately provided by competitive and regulated markets, and in-state operation
10 and development of existing and new and emerging renewable resource technologies].”

1 Section 1859.77.2 (added in 2000 and last amended in 2001), requires that the
12 New Construction grant funds shall be expended as set forth in Education Code
13 Section 17072.35 (providing that a grant for new construction may be used for any and
14 all costs necessary to adequately house new pupils, in any approved project, or to
15 acquire an existing government or privately owned building, or a privately financed
16 school building, and for the necessary costs of converting the government or privately
17 owned building for public school use) and may also be utilized for the cost incurred by
18 the district for the development and implementation of remedial action plan approved by
19 the Department of Toxic Substance Control pursuant to Education Code Section 17213
20 (providing the due diligence requirements relating to hazardous materials that must be
21 met before a governing board of a school district may approve a project involving the

1 acquisition of a schoolsite). Authorization for use of New Construction Grants may be
2 requested according to subdivisions (a) through (c). Subdivision (a) requires that a
3 district shall, as may be necessary, request new construction grants that do not to
4 exceed 135 percent of the number of pupils that will be housed in the project based on
5 loading standards pursuant to Education Code Section 17071.25(a)(2) (25 for each K-6
6 classroom and 27 for each 7-12 classroom) and any loading standards adopted by the
7 board by these regulations if the district has adopted a school board resolution that
8 includes the following:

9 (1) A plan that identifies how the district has housed or will house the excess
10 pupils receiving grants in the project in school buildings as defined in Education
11 Code Section 17368 (limiting school building to any physical structure capable of
12 being occupied by pupils with several exclusions). The plan may not include
13 housing the excess pupils in portables excluded from existing school building
14 capacity pursuant to Education Code Section 17071.30 (providing that portable
15 classrooms leased or obtained pursuant to the State Relocatable Classroom Law
16 of 1979, and any portable classrooms (reduced by the number of portable
17 classrooms used as interim housing for modernization requirements) exceeding
18 25% of the number of permanent classrooms available to the district shall be
19 excluded from the existing school building capacity) or housing in facilities to be
20 constructed with district funds if the district has received financial hardship
21 approval pursuant to Section 1859.81;

1 (2) An acknowledgment that funds for the purposes of housing the excess pupils
2 are being diverted to another project;

3 (3) An acknowledgment that the State has satisfied its obligation, pursuant to
4 Section 1859.50, to house the pupils receiving grants in the project.

5 Subdivision (b) requires that a district shall, as may be necessary, utilize new
6 construction grant eligibility determined at a different grade level than the proposed
7 project that do not exceed 135 percent of the number of pupils that will be housed in
8 the project based on loading standards pursuant to Education Code Section
9 17071.25(a)(2) and any loading standards adopted by the board by these regulations
10 subject to all of the following:

1 (1) The district has adopted a school board resolution that includes the following:

12 (A) a plan that identifies how the district has housed or will house the excess
13 pupils receiving grants in the project in school buildings as defined in Education
14 Code Section 17368. The plan may not include housing the excess pupils in
15 portables excluded from existing school building capacity pursuant to Education
16 Code Section 17071.30 or housing in facilities to be constructed with district
17 funds if the district has received financial hardship approval pursuant to Section
18 1859.81, (B) an acknowledgment that funds for the purposes of housing the
19 excess pupils are being diverted to another project, and (C) an acknowledgment
20 that the State has satisfied its obligation, pursuant to Section 1859.50, to house
21 the pupils receiving grants in the project;

1 (2) The district must use its New Construction Grant eligibility, pursuant to
2 subdivisions (b) and (d), in the following order: (A) at the grade level of the
3 proposed project, (B) at the lowest grade level other than the proposed project,
4 and (C) at the next highest grade level other than the proposed project.

5 Subdivision (c) provides that when the priority point mechanism described in Section
6 1859.91 has not been implemented, a district may request New Construction Grants
7 that exceed 135 percent of the number of pupils that will be housed in the project based
8 on loading standards pursuant to Education Code Section 17071.25(a)(2) and any
9 loading standards adopted by the board by these regulations provided all the conditions
10 in subdivisions (a)(1), (a)(2) and (a)(3) are met. Subdivision (d) requires that when the
11 priority point mechanism described in Section 1859.91 has not been implemented, a
12 district shall utilize, as may be necessary, new construction grants eligibility determined
13 at a different grade level than the proposed project that exceed 135 percent of the
14 number of pupils that will be housed in the project based on loading standards pursuant
15 to Education Code Section 17071.25(a)(2) and any loading standards adopted by the
16 board by these regulations provided all the conditions in subdivisions (b)(1) and (b)(2)
17 are met. The New Construction Grant amount provided shall be determined based on
18 the grant amount provided in Education Code Section 17072.10 (providing that the
19 board shall determine the applicant's maximum total new construction grant eligibility by
20 multiplying the number of unhoused pupils calculated pursuant to Article 3 "New
21 Construction Eligibility Determination" in each school district with an approved

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1 application for new construction by the per-unhoused-pupil grant for elementary school,
2 middle school, and high school pupils) for the grade level that generated the eligibility
3 and any New Construction Additional Grant or Excessive Cost Hardship Grant the
4 district qualifies for as provided by these regulations.

5 Section 1859.78, (added in 1998 and refiled in 1999), requires that “the
6 Modernization Grant amount, as provided by Education Code Section 17074.10(a)
7 [providing that the board shall determine the total funding eligibility of a school district
8 for modernization funding by multiplying specifically allocated amounts for each
9 elementary school, middle school, and high school pupil by each pupil for that grade
10 level housed in permanent school buildings that are at least 25 years old or portable
11 classrooms that are at least 20 years old, and that have been previously modernized with
12 state funding], will be adjusted annually based on the change in the Class B
13 Construction Cost Index as approved by the Board each January. The base Class B
14 Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.”

15 Section 1859.78.2, (added in 2000 and last amended in 2002), requires that “the
16 Modernization Grant will be increased by \$2,000 for small school districts for the cost
17 necessary for project assistance. The amount will be adjusted annually based on the
18 change in the Class B Construction Cost Index as approved by the Board each
19 January. The base Class B Construction Index shall be 1.37 and the first adjustment
20 shall be January 2001. This allowance shall only apply to any acceptable Application
21 for Funding, Form SAB 50-04 submitted to the Office of Public School Construction no

1 later than January 1, 2003.”

2 Section 1859.78.3, (added in 2000 and last amended in 2001), requires that “the
3 Board shall provide the following amounts for each pupil included in an approved
4 project for modernization funding: (a) \$7,158 for each pupil that is a Severely Disabled
5 Individual with Exceptional Needs, (b) \$4,788 for each pupil that is a Non-Severely
6 Disabled Individual with Exceptional Needs. The amounts shown shall be adjusted
7 annually in the manner prescribed in Section 1859.71. The additional grant is eligible
8 for any modernization grant augmentation for which the project is otherwise eligible
9 under the law and regulations.”

10 Section 1859.79, (added in 1998, refiled in 1999 and last amended in 2000),
11 provides that “except in the case of financial hardship as provided in Section 1859.81,
12 any increase to the Modernization Grant for additional grants for facility hardships as
13 provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section
14 1859.83 shall require a district matching share equal to at least 20 percent of the total
15 project cost which, combined with the State's adjusted grant shall represent 100
16 percent of the total project cost. The district may include as its district matching share
17 any amounts expended on the project for an energy audit made pursuant to Education
18 Code Section 17077.10 and any amounts applied to the project for incentive grants or
19 rebates received by the district from a program funded pursuant to Public Utilities Code
20 Section 381 [providing that funds will be allocated to programs which enhance system
21 reliability and provide in-state benefits including: cost-effective energy efficiency and

1 conservation activities, public interest research and development not adequately
2 provided by competitive and regulated markets, and in-state operation and
3 development of existing and new and emerging renewable resource technologies].”

4 Section 1859.79.1 (added in 1998, refiled in 1999 and last amended in 2000),
5 requires that “the Board will not provide Modernization funding for a project if the district
6 entered into a construction contract for that project before August 27, 1998 unless: (a)
7 the project met the provisions for funding under the “Lease-Purchase Program”
8 pursuant to Sections 1859.14 or 1859.15; or (b) the project was approved on the
9 Year-Round Schools Air Conditioning/Insulation Program unfunded approval list
10 pursuant to Education Code Section 42250.1.”

11 Section 1859.79.2, (added in 1998 and refiled in 1999), requires that
12 Modernization Grant funds shall be expended as set forth in Education Code Sections
13 17074.25 (providing that a modernization apportionment may be used for numerous
14 explicit improvement to extend the useful life of, or to enhance the physical environment
15 of, the school) and 17070.15(f) (defining “modernization” as any modification of a
16 permanent structure that is at least 25 years old, or in the case of a portable classroom,
17 that is at least 20 years old, that will enhance the ability of the structure to achieve
18 educational purposes) and may also be utilized for other purposes as set forth in
19 Education Code Section 100420(c) (providing that districts may use allocated funds for:
20 (1) the purchase and installation of air-conditioning equipment and insulation materials,
21 and related costs; (2) construction projects or the purchase of furniture or equipment

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1 designed to increase school security or playground safety; (3) the identification,
2 assessment, or abatement in school facilities of hazardous asbestos; (4) project funding
3 for high priority roof replacement projects; (5) any other renovation or modernization of
4 facilities pursuant to Chapter 12.5, Leroy F. Green School Facilities Act of 1998).

5 Modernization funding, with the exception of savings, is limited to expenditure on the
6 specific site where the modernization grant eligibility was generated. However, the grant
7 may not be used for the following:

8 (a) Any new building area with the exception of: (1) a replacement building area
9 of like kind (but additional classrooms constructed within the replacement area
10 will reduce the new construction baseline eligibility for the district), or (2) building
11 areas required by the federal American with Disabilities Act (ADA) or by the
12 Division of the State Architect's (DSA) handicapped access requirements;

13 (b) New site development items with the exception of: (1) replacement, repair or
14 additions to existing site development, or (2) site development items required by
15 the federal ADA Act or by the DSA's handicapped access requirements;

16 (c) The evaluation and removal of hazardous or solid waste and/or hazardous
17 substances when the Department of Toxic Substance Control has determined
18 that the site contains dangerous levels of a hazardous substance, hazardous
19 waste, or both that exceed ten percent of the combined adjusted grant and the
20 district matching share for the project; or

21 (d) Leased facilities not owned by another district or a county superintendent.

1 Modernization Grant funds shall be expended as set forth in Education Code
2 Section 17074.25 and may also be utilized for other purposes as set forth in
3 Education Code Section 100420(c). Modernization Grant funds may be used on
4 any school facilities on the site. If the classroom facilities on the site include
5 areas that are currently ineligible for modernization, it will not disqualify those
6 facilities from future modernization funding.

7 Section 1859.79.3, (added in 2000 and last amended in 2002), requires "districts
8 seeking a modernization grant to submit an Application for Funding, Form SAB 50-04
9 for at least 101 grants, or the remaining modernization eligibility at the school site if less
10 than 101 grants. Applications for Funding, Form SAB 50-04 requesting Modernization
11 Grant Funds that do not meet the above criteria will not be accepted by the State
12 Allocation Board."

13 ARTICLE 9. HARDSHIP ASSISTANCE

14 Section 1859.80, (added in 1998 and refiled in 1999), requires that "a district
15 shall qualify for hardship assistance by demonstrating one or more of the following: (a)
16 a financial hardship, as provided in Section 1859.81, which prevents the district from
17 funding all or a portion of the matching share requirement for a "School Facility
18 Program" grant; (b) a facility hardship grant as provided in Section 1859.82; or (c) an
19 Excessive Cost Hardship Grant as a result of added construction costs due to unusual
20 circumstances as provided in Section 1859.83."

21 Section 1859.81, (added in 1998, refiled in 1999 and last amended in 2002),

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1 provides that a district is eligible for financial hardship to fund all or a portion of its
2 matching share requirement after satisfying both subdivision (a) and subdivision (b).
3 Subdivision (a) requires the district to demonstrate that it is financially unable to provide
4 all necessary matching funds for an eligible project. To determine this, an analysis shall
5 be made of the district's financial records by the Office of Public School Construction
6 including data and records maintained by the California Department of Education and
7 the County Office of Education. The analysis shall consist of a review of the district's
8 latest Independent Audit regarding funds available from all capital facility accounts,
9 including, but not limited to, developer fees, funds generated from capital facility
10 certificates of participation, federal grants, redevelopment funds, sale proceeds from
11 surplus property, the appraised value of facilities approved for replacement pursuant to
12 Section 1859.82, bond funds either encumbered, unencumbered or authorized but
13 unsold, and savings from other "School Facility Program" projects. All funds thus
14 identified that have not been expended or encumbered by a contractual agreement for
15 a specific capital outlay purpose prior to the initial request for financial hardship status
16 shall be deemed available as a matching contribution. The analysis is subject to
17 approval by the Board. From the funds deemed available as a matching contribution,
18 the district may retain \$19,776 per classroom in each enrollment reporting period for the
19 cost to provide interim housing for the currently unhoused pupils of the district. The
20 amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.
21 The number of classrooms needed for interim housing for the currently unhoused pupils

1 shall be the sum of the positive numbers determined in (a)(7) as follows:

2 (1) Determine the current enrollment of the district by grade level as shown on
3 the latest Enrollment Certification/Projection, Form SAB 50-01;

4 (2) Determine the New Construction Grants apportioned by grade level for all
5 "School Facility Program" projects and "Lease-Purchase Program" funded under
6 the provisions of Sections 1859.12 or 1859.13 where the district has submitted
7 an Expenditure Report, Form SAB 50-06 indicating that the project is 100
8 percent complete;

9 (3) Subtract (a)(2) from (a)(1);

10 (4) Determine the number of classrooms by grade level reported in Part I, Line 8
11 on the latest Existing School Building Capacity, Form SAB 50-02;

12 (5) Multiply the classrooms determined in (a)(4) by 25 for K-6, 27 for 7-12, 13 for
13 Non-Severe and 9 for Severe;

14 (6) Subtract the product determined in (a)(5) from the difference determined in
15 (a)(3) by grade level; and

16 (7) Divide the difference by grade level determined in (a)(6) by 25 for K-6, 27 for
17 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole
18 number.

19 From the funds deemed available as a matching contribution, the district may also
20 retain \$19,776 per portable toilet unit in each reporting period for the cost to provide
21 necessary interim toilet facilities for the currently unhoused pupils of the district. The

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1 amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

2 The number of toilet facilities needed for interim housing shall be the sum of the
3 positive numbers determined in (a)(7) divided by eight rounded up to the nearest whole
4 number. If the district's available funds, as determined by the Office of Public School
5 Construction analysis less costs for interim housing, is less than its matching share, the
6 district will be deemed to have met the requirements of this Subdivision. Subdivision
7 (b) further provides that the district must have made all reasonable efforts to fund its
8 matching share of the project by demonstrating it is levying the developer fee justified
9 under law or an alternative revenue source equal to or greater than the developer fee
10 otherwise justified under law at the time of request for hardship and the district meets at
11 least one of the following:

12 (1) The current outstanding bonded indebtedness of the district, at the time of
13 request for financial hardship status, is at least 60 percent of the district's total
14 bonding capacity. Outstanding bonded indebtedness includes that part of
15 general obligation bonds, Mello-Roos Bonds, School Facility Improvement
16 District Bonds and certificates of participation which the district is paying a debt
17 service that was issued for capital outlay school facility purposes;

18 (2) The district had a successful registered voter bond election for at least the
19 maximum amount allowed under Proposition 39 within the previous two years
20 from the date of request for financial hardship status. The proceeds from the
21 bond election that represent the maximum amount allowed under the provisions

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1 of Proposition 39 must be used to fund the district's matching share requirement
2 for "School Facility Program" project(s);

3 (3) It is a County Superintendent of Schools;

4 (4) The district's total bonding capacity at the time of the request for financial
5 hardship status is \$3 million or less; and/or

6 (5) Other evidence of reasonable effort as approved by the State Allocation
7 Board.

8 If the district's request for financial hardship status is denied by the Board, the district
9 shall be deemed eligible for rental payments of \$2,000 per year per classroom under
10 the Emergency School Classroom Law of 1979 for a two year period. The number of
11 classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers
12 determined in (b)(5)(B) as follows: (A) determine the number of pupils by grade level
13 that the district requested a New Construction Grant on the Application for Funding,
14 Form SAB 50-04 that were denied financial hardship status, and (B) divide the number
15 by grade level determined in (b)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and
16 9 for Severe and round up to the nearest whole number. If the district meets the
17 financial hardship requirements in this Section, the amount of financial hardship is
18 equal to the district's matching share less funds deemed available in (a).

19 Once a district has been notified by the Office of Public School Construction that it
20 meets the requirements of financial hardship in this Section, the district may file an
21 Application for Funding, Form SAB 50-04 under the provisions of financial hardship

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1 anytime within a period of 180 calendar days from the date of the Office of Public
2 School Construction notification. If the district does not submit an Application for
3 Funding, Form SAB 50-04 under the provisions of financial hardship within 180
4 calendar days of the Office of Public School Construction notification of approval of
5 financial hardship status, the district must re-qualify for financial hardship status under
6 the provisions of this Section by submission of a new request for financial hardship
7 status. If the district submits an Application for Funding, Form SAB 50-04 within 180
8 calendar days of the Office of Public School Construction notification of approval of
9 financial hardship and the project(s) has been included on an unfunded list for more
10 than 180 calendar days, a review of the district's funds pursuant to subdivision (a) will
11 be made to determine if additional district funds are available to fund the district's
12 matching share of the project(s). Financial hardship approval status by the Office of
13 Public School Construction for a separate design and/or site apportionment does not
14 apply to any subsequent funding for the project(s).

15 Section 1859.81.1, (added in 1998, refiled in 1999 and last amended in
16 2002), provides that a district that meets the financial hardship criteria in Section
17 1859.81 is eligible for the following:

- 18 (a) A new construction project, a separate apportionment for site acquisition
19 when: (1) the district has eligibility for grants that equal at least 50 percent of the
20 California Department of Education master plan capacity of the site, (2) the
21 district has received a contingent site approval letter from the California

1 Department of Education indicating that the proposed site is the best available,
2 and (3) the district has obtained a preliminary appraisal of the property by a
3 qualified appraiser utilizing criteria outlined in Section 1859.74.1;

4 (b) Certain Board apportioned funds, less any district funds available for the
5 project pursuant to Section 1859.81(a); and

6 (c) For new construction projects, the Board will apportion an amount not to
7 exceed 40 percent of the new construction grant less any district funds available
8 for the project pursuant to Section 1859.81(a). For modernization projects, the
9 Board will apportion an amount not to exceed 20 percent of the modernization
10 grant less any district funds available for the project pursuant to Section
11 1859.81(a). The amount apportioned is an estimate of the funds needed for
12 design, engineering, and other pre-construction project costs.

13 Qualifying districts may request a separate apportionment for the design and for site
14 acquisition for the same new construction project. The amount provided as a separate
15 apportionment shall be offset from the New Construction Adjusted Grant or the
16 Modernization Adjusted Grant amount the district would otherwise be eligible for
17 pursuant to Sections 1859.70 and 1859.81 when the district submits an Application For
18 Funding, Form SAB 50-04. A district seeking a separate apportionment for site
19 acquisition or design costs shall submit an Application for Funding, Form SAB 50-04. If
20 a new construction project received a previous design apportionment, the district may
21 request an additional design apportionment for that project up to the 40 percent

1 maximum design apportionment allowed pursuant to this Section. The Application for
2 Funding, Form SAB 50-04 must be for at least 50 percent of the New Construction
3 Grant or at least 80 percent of the Modernization Grant the district requested as a
4 separate design apportionment. When the Board is accepting applications pursuant to
5 Section 1859.95, the funding of the new construction or modernization grant may be
6 made from funds set aside by the Board for financial hardship. The amount provided as
7 a separate apportionment shall be adjusted at a future date [see Application for
8 Funding, Form SAB 50-04] to assure that hardship funding for the project does not
9 exceed the amount the district was otherwise eligible to receive.

10 Section 1859.82, (added in 1998, refiled in 1999 and last amended in 2002),
11 provides that a district is eligible for facility hardship grant funding to replace or
12 construct new classrooms and related facilities if the district demonstrates there is an
13 unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is
14 a threat to the health and safety of the pupils. A facility hardship is available for:

15 (a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and
16 other non-classroom space) or replacement facilities if:

17 (1) The facilities are needed to ensure the health and safety of the pupils
18 if the district can demonstrate to the satisfaction of the Board that the
19 health and safety of the pupils is at risk. Factors to be considered by the
20 Board shall include the close proximity to a major freeway, airport,
21 electrical facility, high power transmission lines, dam, pipeline, industrial

1 facility, adverse air quality emission or other health and safety risks,
2 including structural deficiencies required by the Division of the State
3 Architect to be repaired, traffic safety or because the pupils reside in
4 remote areas of the district and transportation to existing facilities is not
5 possible or poses a health and safety risk. If the request is for
6 replacement facilities, a cost/benefit analysis must be prepared by the
7 district and submitted to the Office of Public School Construction that
8 indicates the total costs to remain in the classroom or related facility and
9 mitigate the problem is at least 50 percent of the Current Replacement
10 Cost of the classroom or related facility. The cost/benefit analysis may
11 include applicable site development costs as outlined in Section 1859.76.
12 If the cost to remain in the classroom or related facility is less than 50
13 percent of the Current Replacement Cost, the district may qualify for an
14 excessive cost modernization grant for rehabilitation costs pursuant to
15 Section 1859.83(e). If the request is for replacement facilities that
16 included structural deficiencies, the cost/benefit analysis must also include
17 a report from a licensed design professional identifying the minimum work
18 necessary to obtain Division of the State Architect approval. The report
19 must contain a detailed cost estimate of the repairs. The report and cost
20 estimate shall be subject to review by the Office of Public School
21 Construction for conformance with the Saylor Current Construction Cost

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1 Publication and, at the Office of Public School Construction's discretion,
2 the Division of the State Architect ; or

3 (2) The classroom or related facility was lost or destroyed as a result of a
4 disaster such as fire, flood or earthquake and the district has
5 demonstrated satisfactorily to the Board that the classroom or related
6 facility was uninsurable or the cost for insurance was prohibitive.

7 If the district qualifies for a new or replacement school pursuant to either (1) or (2)
8 above, the district is eligible for a New Construction Grant as a new construction project
9 for the lesser of the pupils housed in the facility based on loading standards pursuant to
10 Education Code Section 17071.25(a)(2) or the latest California Basic Education Data
11 System enrollment at the site. If the district qualifies for replacement facilities on the
12 same site pursuant to either (1) or (2) above, the district is eligible for funding as a new
13 construction project. Replacement facilities shall be allowed in accordance with the
14 square footage amounts provided in the chart in Section 1859.82. If the facility eligible
15 for replacement is not shown in the chart in Section 1859.82(b), the replacement facility
16 shall be limited to the square footage replaced. The grant amount provided shall be
17 \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities.
18 Additional grants may be provided for applicable site development costs pursuant to
19 Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts
20 shown will be adjusted annually in the manner prescribed in Section 1859.71. Any
21 grants provided pursuant to either (1) or (2) above will be reduced for any space

1 deemed available by the Board in the district or the High School Attendance Area that
2 could be used to house some or all of the displaced pupils, fifty percent of any
3 insurance proceeds collectable by the district for the displaced facilities and fifty percent
4 of the net proceeds available from the disposition of any displaced facilities;

5 (b) A multi-purpose room, toilet, gymnasium, school administration or
6 library/media center, facility that meets all the following:

7 (1) The facility was lost or destroyed as a result of a disaster, including but
8 not limited to fire, flood or earthquake.

9 (2) The facility is no longer useable for school purposes as recommended
10 by the California Department of Education and approved by the Board.

11 (3) The district has demonstrated satisfactorily to the Board that the facility
12 was uninsurable or the cost of insurance was prohibitive.

13 If the district qualifies, the district is eligible for funding as a new construction project.

14 The funding amount provided shall be \$75 per square foot for library/media center,
15 school administration, gymnasium and multi-purpose facilities, and/or \$150 per square
16 foot for toilet facilities. Additional grants may be provided for applicable site

17 development costs pursuant to Section 1859.76 and excessive cost grants pursuant to

18 Section 1859.83. The amounts shown will be adjusted annually in the manner

19 prescribed in Section 1859.71. Any grants provided pursuant to (b) above, shall be

20 reduced by fifty percent of any insurance proceeds collectable by the district for the

21 displaced facilities and fifty percent of the net proceeds available from the disposition of

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1 any displaced facilities. The square footage provided, after accounting for all useable
2 facilities on the site, shall not exceed the chart provided in Section 1859.82(b).

3 A district may request a determination of eligibility for facility hardship funding in
4 advance of project funding;

5 (c) A district seeking replaced facilities as a result of either (a) or (b) above must
6 submit an Application For Funding, Form SAB 50-04 for the replaced facilities:

7 (1) Within 18 months if the replacement facilities will be located on the
8 same site.

9 (2) Within 24 months if the replacement facilities will be located on a
10 replacement site.

11 If an Approved Application for the replaced facility is not accepted within the time
12 periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria
13 submitted by the district for replacement of the facility prior to apportionment of the
14 replaced facility.

15 Section 1859.83, (added in 1998, refiled in 1999 and last amended in 2001),
16 provides that in addition to the "School Facility Program" New Construction and
17 Modernization Grant, a district is eligible for an additional funding as a result of unusual
18 circumstances that created excessive project costs beyond the control of the district.

19 The excessive cost grant shall be based on any of the following:

20 (a) Excessive Cost due to Geographic Location (a district with a project that is
21 located in a geographic area designated in the Geographic Percentage Chart is

1 eligible for and may request, as part of its application for a "School Facility
2 Program" New Construction or Modernization Grant, to have the grant amount
3 increased by the indicated percentage factor and funded as an excessive cost
4 hardship);

5 (b) Excessive Cost for Projects that House No More than 200 Pupils (Small Size
6 Projects). A New Construction or Modernization Grant will be increased by 12
7 percent for a project that will house less than 101 pupils, or by four percent if the
8 project will house no more 200 pupils;

9 (c) Excessive Cost to Construct a New School Project. A New Construction
10 Grant for a new elementary, middle or high school on a site with no existing
11 school facilities shall be increased by the difference in the amount provided for
12 the New Construction Grant and the amount shown in the chart in Section 1853,
13 based on the number of classrooms in the project. The amounts will be adjusted
14 annually in the manner prescribed in Section 1859.71. Any Excessive Cost
15 Grant funds provided under this subdivision for a new school project shall be
16 offset against future New Construction Grant funds provided for that same
17 school. The amount of the offset shall be determined by dividing the additional
18 New Construction Grant pupil request by the difference in the New Construction
19 Grant pupil request when the initial Excessive Cost Grant was made and 325 for
20 an elementary school, 324 for a middle school, and 621 for a high school project
21 and multiplying the quotient by the Excessive Cost Grant funds provided for that

1 project;

2 (d) Excessive Cost Due to Urban Location, Security Requirements and Impacted
3 Site. A New Construction or Modernization Grant will be increased if site
4 acreage for the project is:

5 (1) At least 50 percent but less than 75 percent of the site size
6 recommended by the California Department of Education for the master
7 planned project capacity. The New Construction or Modernization Grant
8 will be increased by eight percent,

9 (2) At least 30 percent but less than 50 percent of the site size
10 recommended by the California Department of Education for the master
11 planned project capacity. The New Construction or Modernization Grant
12 will be increased by 15 percent,

13 (3) Less than 30 percent of the site size recommended by the California
14 Department of Education for the master planned project capacity. The
15 New Construction Grant will be increased by 50 percent,

16 (4) Less than 30 percent of the site size recommended by the California
17 Department of Education for the master planned project capacity. The
18 modernization Grant will be increased by 25 percent;

19 (e) Excessive Cost for rehabilitation of facilities the Board has determined are a
20 health and safety risk to the pupils pursuant to Section 1859.82(a)(1) and the
21 cost/benefit analysis to mitigate the problem and remain in the facility is less than

1 50 percent of the Current Replacement Cost of the facility. If the district qualifies,
2 the district is eligible for funding of rehabilitation costs as a modernization
3 project. The grant amount provided is 80 percent of the amount of the cost
4 estimate required in Section 1859.82(a)(1) that has been reviewed by the Office
5 of Public School Construction and approved by the Board; and/or

6 (f) Excessive cost due to handicapped access and fire code requirements:

7 (1) A modernization grant will be increased by three percent for
8 handicapped access and fire code requirements,

9 (2) A modernization grant will be increased by \$80,000 for each new
10 two-stop elevator required to be included in the project by the Division of
11 the State Architect. The amount shown shall be adjusted annually in the
12 manner prescribed in Section 1859.71, and

13 (3) A modernization grant will be increased by \$14,400 for each additional
14 stop of the new elevator required in (2) above. The amount shown shall
15 be adjusted annually in the manner prescribed in Section 1859.71.

16 ARTICLE 10. FUND RELEASE AND PRIORITY POINTS

17 Section 1859.90, (added in 1998, refiled in 1999 and last amended in 2001),
18 requires that "with the exception of an apportionment made pursuant to Section
19 1859.81.1(c), the Office of Public School Construction will release State funds that have
20 been apportioned by the Board to the district after submittal, by the district, of the Fund
21 Release Authorization, Form SAB 50-05, which is incorporated by reference. A district

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1 must submit the Fund Release Authorization, Form SAB 50-05, within 18 months of the
2 Apportionment of the "School Facility Program" grant for the project or the entire New
3 Construction or Modernization Adjusted Grant shall be rescinded without further Board
4 action, and the pupils housed in the project will be added back to the district's baseline
5 eligibility. The district may refile a new application for the project subject to district
6 eligibility and priority funding at the time of resubmittal. The Office of Public School
7 Construction will release State funds that have been apportioned by the Board pursuant
8 to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment."

9 Section 1859.91 (added in 1998, refiled in 1999 and last amended in 2002),
10 subdivision (a) requires the Office of Public School Construction to report to the Board
11 on a monthly basis the amount of funds available for New Construction Grants and
12 Modernization Grants and the estimated amount of Approved Applications for New
13 Construction Grants and Modernization Grants not yet apportioned. The Board shall
14 implement a priority point mechanism described in subdivision (b) for New Construction
15 Grants requests when either of the following occur:

16 (1) The amount of Approved Applications for New Construction Grants and
17 Modernization Grants not yet apportioned exceed the funds available for New
18 Construction Grants and Modernization Grants, or

19 (2) The funds available for New Construction Grants are \$300 million or less.

20 Subdivision (b) provides that once either (1) or (2) in subdivision (a) occurs, the Board
21 shall approve and apportion the funds available for New Construction Grants requests

1 based on the following priority point mechanism:

2 (1) From the funds available for New Construction Grants, the Board shall
3 establish a final allotment equal to the lesser of \$450 million or the balance of the
4 funds available for New Construction Grants, to be apportioned in accordance
5 with (2) below. After deducting the final allotment, the Board shall divide the
6 remaining funds into seven equal allotments, to be apportioned on a quarterly
7 basis, commencing with the last quarter of calendar year 2000 and ending the
8 second quarter of calendar year 2002. Quarterly apportionments are subject to
9 special requirements, and

10 (2) The final allotment shall be apportioned subject to special requirements.

11 Subdivision (c) provides that the Board shall declare that State funds are not available
12 for new facility construction when the New Construction Grants requests Ready for
13 Apportionment exceed the funds available for that purpose. This declaration shall serve
14 as the mechanism for the Board to make the appropriate notifications as required,
15 pursuant to Government Code Section 65995.7(a) (providing that if funds are not
16 available for new school facility construction, the governing board may increase the
17 alternative fee, dedication or other requirements). Subdivision (d) provides that
18 approved applications for New Construction Grants requests received during a quarter
19 may, at the discretion of the Board, be considered for funding available for that quarter
20 or a future quarter if all the following criteria are met:

21 (1) Either the Executive Officer of the Board, the State Architect, the Director of

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1 School Facilities Planning Division within the California Department of Education,
2 or the Chief of the School Property Evaluation and Cleanup Division within the
3 Department of Toxic Substances Control certify to the Office of Public School
4 Construction that the district's application was delayed for a specified number of
5 calendar days in relation to other similar applications submitted to that agency at
6 the same time, and

7 (2) The Approved Application date adjusted back in time for the number of
8 calendar days the application was delayed is prior to the beginning of the quarter
9 in which the application was received.

10 Subdivision (e) provides that the approved applications for New Construction Grants
11 requests received after June 26, 2002 may, at the discretion of the Board, be
12 considered for funding available for the final allotment if all the following criteria are met:

13 (1) Either the Executive Officer of the Board, the State Architect, the Director of
14 School Facilities Planning Division within the California Department of Education,
15 or the Chief of the School Property Evaluation and Cleanup Division within the
16 Department of Toxic Substances Control certify to the Office of Public School
17 Construction that the district's application was delayed for a specified number of
18 calendar days in relation to other similar applications submitted to that agency at
19 the same time, and

20 (2) The Approved Application date adjusted back in time for the number of
21 calendar days the application was delayed is prior to June 27, 2002.

1 Section 1859.92, (added in 1998, refiled in 1999 and last amended in 2002),
2 requires that the priority points allowed for a New Construction Grants request be based
3 on the specific computations rounded up to the nearest whole number. The
4 computations shall be made on a districtwide basis if the district utilized district wide
5 California Basic Education Data System enrollment data reported on the Enrollment
6 Certification/Projection, Form SAB 50-01, in effect at the time the district's application
7 for funding was submitted to the Office of Public School Construction for the project.
8 The computation shall be made on a High School Attendance Area basis if the district
9 utilized High School Attendance Area California Basic Education Data System
10 enrollment data reported on the Enrollment Certification/Projection, Form SAB 50-01, in
11 effect at the time the district's application for funding was submitted to the Office of
12 Public School Construction for the project. Notwithstanding the provisions of Section
13 1859.41, a district that has previously reported its enrollment on a High School
14 Attendance Area basis may calculate both its eligibility and its priority points on a
15 districtwide basis. A project shall receive priority points based on the total of
16 subdivisions (a), (b) and (c). Subdivision (a) provides priority points for the percent of
17 unhoused pupils for both of the following: (1) six points for each percent of current
18 unhoused pupils, and (2) four points for each percent of projected unhoused pupils.
19 Subdivision (b) provides priority points for the number of unhoused pupils for both of the
20 following: (1) one point for each 100 currently unhoused pupils, and (2) one point for
21 each 200 projected unhoused pupils. Subdivision (c) provides a maximum of 100

1 priority points for the following:

2 (1) Twenty points if the district's California Basic Education Data System
3 enrollment at the time of application submittal to the Office of Public School
4 Construction for funding is less than 2,501,

5 (2) Twenty points for a County Superintendent of Schools' project that only
6 includes classroom space solely for Non-Severely Disabled Individuals with
7 Exceptional Needs,

8 (3) Twenty points if the site acreage for the project is less than 50 percent of the
9 site size recommended by the California Department of Education for the master
10 planned pupil capacity,

11 (4) Twenty points for a project that either used "stock plans" pursuant to
12 Education Code Section 17070.33(b)(6) (providing for recommendations
13 regarding the use of cost-effective, efficient reusable facility plans) or re-used
14 plans that were previously used to construct at least two other schools,

15 (5) Twenty points if the district's California Basic Education Data System
16 enrollment at the time of application submittal to the Office of Public School
17 Construction for funding is less than 301,

18 (6) Twenty points for a project that uses 20 percent less energy than the Energy
19 Budget as defined and calculated in a manner consistent with the California
20 Energy Code, Part 6, Subchapter 5, Section 141 -- Performance Approach:
21 Energy Budgets,

1 (7) Twenty points for a project that is a new high school serving any grades nine
2 through twelve,

3 (8) Twenty points for a project that received financial hardship assistance
4 pursuant to Section 1859.81,

5 (9) Twenty points for a project where the site acquisition qualified and received
6 an apportionment authorized under Section 1859.75.1, Separate Site
7 Apportionment for Environmental Hardship,

8 (10) One hundred points if the Approved Application was accepted prior to the
9 date the priority point mechanism is implemented by the Board pursuant to
10 Section 1859.91(a)(1) or (a)(2).

11 Subdivision (d) provides that the calculation of priority points in subdivisions (a), (b) and
12 (c) above shall be determined at the time the Approved Application is accepted.

13 Subdivision (e) exempts the following projects from priority points:

14 (1) A project that received Facility Hardship approval pursuant to Section
15 1859.82,

16 (2) A county superintendent of schools' project that includes classroom space for
17 Severely Disabled Individuals with Exceptional Needs,

18 (3) A county superintendent of schools' project that only includes classroom
19 space solely for community school pupils, and

20 (4) A school district's project that only includes classroom space solely for
21 Severely Disabled Individuals with Exceptional Needs.

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1 Subdivision (f) provides that if the project received a separate site and/or design
2 apportionment under the provisions of the "Lease-Purchase Program" or pursuant to
3 Sections 1859.75.1 or 1859.81.1, the district's funding priority of the project shall be
4 determined by the Approved Application date for the New Construction Grant request.

5 Section 1859.93, (added in 1998, refiled in 1999 and last amended in 2001),
6 requires that "all modernization applications shall be funded in the order of receipt of an
7 Approved Application for funding until all modernization funds available to the Board
8 have been apportioned."

9 Section 1859.94, (added in 1998, refiled in 1999 and last amended in 2001),
10 subdivision (a) requires that "hardship assistance provided as a part of a New
11 Construction Grant shall be subject to the same priority point determination as the New
12 Construction Grant." Subdivision (b) provides that "to the extent that hardship funds are
13 available, the Board may elect to specifically set aside funding for financial hardship
14 grants as provided in Section 1859.81, facility hardship grants as provided in Section
15 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83."

16 Subdivision (c) provides that "should a district request hardship funding for either a
17 financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant
18 to Section 1859.82 or an Excessive Cost Hardship Grant pursuant to Section 1859.83
19 and the Board has no funds to allocate for that specific hardship, the district may elect
20 to either: (1) accept funding for the project less any hardship funding grants that are not
21 available. When this option is selected, the hardship funding grants not allocated for the

1 project shall be placed on the Unfunded List. If the project was previously placed on the
2 Unfunded List, the project shall retain the original date it was placed on that Unfunded
3 List, or (2) decline to accept funding for the project. When this option is selected, the
4 project shall be placed on the Unfunded List. If the project was previously placed on the
5 Unfunded List, the project shall retain the original date it was placed on that Unfunded
6 List. A project or portion of a new construction project not funded as a result of
7 subdivision (c) shall be subject to the Board's priority point mechanism pursuant to
8 Sections 1859.91 and 1859.92.”

9 Section 1859.95, (added in 1998, refiled in 1999 and last amended in 2002),
10 requires that “when the Board has no funds to apportion or the application does not
11 qualify for funding because of the Board's priority point mechanism pursuant to
12 Sections 1859.91 and 1859.92, the Board will continue to accept and process
13 applications for eligibility determination. The Board will also accept and process
14 applications for apportionment for purposes of developing an Unfunded List based on
15 the date the application is Ready for Apportionment. If either the Executive Officer of
16 the Board, the State Architect, the Director of School Facilities Planning Division within
17 the California Department of Education or the Chief of the School Property Evaluation
18 and Cleanup Division within the Department of Toxic Substances Control certify to the
19 Office of Public School Construction that the district's application was delayed for a
20 specified number of calendar days in relation to other similar applications submitted to
21 that agency at the same time, the application may, at the discretion of the Board,

1 receive a date on the Unfunded List or receive funding pursuant to Section 1859.91
2 based on the date the application is Ready for Apportionment, adjusted back in time for
3 the number of calendar days the application was delayed. Applications for New
4 Construction Adjusted Grants for a project where the site was apportioned pursuant to
5 Section 1859.75.1 shall receive a date on the Unfunded List based on the date the
6 environmental hardship site apportionment was made for the project. With the
7 exception of financial hardship eligibility, a district with an application included on an
8 Unfunded List shall not be required to re-establish eligibility for that application prior to
9 apportionment. An application for funding included on an Unfunded List is eligible for
10 reimbursement subject to adjustments in the New Construction Grants amount
11 pursuant to Section 1859.77."

12 ARTICLE 11. MISCELLANEOUS SCHOOL FACILITY PROGRAM
13 REQUIREMENTS

14 Section 1859.100, (added in 1998, refiled in 1999 and last amended in 2002),
15 requires "a district, regardless of size, to certify on the Application for Funding, Form
16 SAB 50-04, that a restricted account within the district's general fund has been
17 established for the exclusive purpose of providing on-going and major repair of its
18 facilities, pursuant to Education Code Section 17070.75."

19 Section 1859.101, (added in 1998, refiled in 1999 and last amended in 2002),
20 provides that "a district, including a county superintendent of schools, that is not
21 required to make a specified annual deposit into the restricted maintenance account as

1 provided in Education Code Section 17070.75 must certify on the Application for
2 Funding, Form SAB 50-04, that the district can maintain its facilities with a lesser annual
3 deposit.”

4 Section 1859.102, (added in 1998, refiled in 1999 and last amended in 2002),
5 requires a district to certify on the Application for Funding, Form SAB 50-04, that it has
6 developed and implemented an on-going and major maintenance plan in accordance
7 with Education Code Section 17070.75 and 17070.77. In each fiscal year following the
8 fiscal year in which the district received funds as a result of an application funded on or
9 after January 1, 2002, the district shall certify that the plan has been reviewed and
10 updated as required in Education Code Section 17070.77. The certification shall be
11 made on the Deferred Maintenance Five Year Plan, which shall be required annually
12 from those districts receiving such funding. Any maintenance plan developed in
13 accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the
14 requirements for an additional basic apportionment as provided under Education Code
15 Section 17585.

16 Section 1859.103, (added in 1998, refiled in 1999 and last amended in 2000),
17 provides that “a district may expend the savings not needed for a project on other high
18 priority capital facility needs of the district. Savings may be declared by the district in
19 writing to the Office of Public School Construction any time after the release of all funds
20 for the project. The State's portion of any savings declared by the district or determined
21 by the Office of Public School Construction by audit must be used to to reduce the

1 "School Facility Program" financial hardship grant of that project or other financial
2 hardship projects within the district for a period of three years from the date the savings
3 were declared by the district or determined by the Office of Public School Construction
4 audit. The State's portion of any savings from a new construction project may be used
5 as a district matching share requirement, only on another new construction project, and
6 the State's share of any savings from a modernization project may be used as a district
7 matching share requirement, only on another modernization project. Any interest
8 earned on a financial hardship project will be treated as savings and will be used to
9 reduce the "School Facility Program" financial hardship grant for that project."

10 Section 1859.104, (added in 1998, refiled in 1999 and last amended in 2000),
11 requires "a district receiving funds in accordance with the Act to submit the following:

12 (a) An expenditure report from the district on the Expenditure Report, Form SAB
13 50-06, which is incorporated by reference. The program reporting requirements
14 are as follows:

15 (1) The first expenditure report shall be due one year from the date that
16 any funds were released to the district for the project pursuant to Section
17 1859.90, or upon completion of the project, whichever occurs first. A
18 project shall be deemed complete when either of the following occur:

19 (A) When the notice of completion for the project has been filed, all
20 outstanding invoices, claims, change orders have been satisfied
21 and the facility is currently in use by the district.

1 (B) Three years from the date of the final fund release for an
2 elementary school project or four years from the date of the final
3 fund release for a middle or high school project.

4 (2) The second and subsequent expenditure reports, if necessary, shall
5 be due annually beginning one year from the first report, or upon
6 completion of the project, whichever occurs first. The final expenditure
7 report must be made no later than three years from the date of the final
8 fund release for an elementary school project or four years from the date
9 of the final fund release for a middle or high school project.

10 (b) With the exception of projects that qualify for an apportionment pursuant to
11 Section 1859.75.1, a progress report, in the form of a narrative from the district,
12 shall be due 18 months from the date any funds were released to the district for
13 the project pursuant to Section 1859.90. The progress report shall include
14 information regarding the progress the district has made towards substantial
15 completion of the project. If the funds were received in accordance with Section
16 1859.81.1(c) or the notice of completion has been filed within 18 months of the
17 release of funds pursuant to Section 1859.90, or the expenditure reports
18 required in (a)(1) or (2) indicate that substantial progress (as defined in Section
19 1859.105) on the project has occurred, no progress report is required.

20 (c) A progress report, in the form of a narrative from the district, shall be due 12
21 months from the date the site acquisition funds were apportioned to the district

1 for the project pursuant to Section 1859.75.1. The progress report shall include
2 information regarding the progress the district has made towards acquiring the
3 site as outlined in Section 1859.105.1 and may contain other evidence of
4 reasonable effort to substantiate progress towards acquiring the site for
5 purposes of an extension of the site apportionment as authorized by Education
6 Code Section 17072.13(c)(2)."

7 Section 1859.104.1 (added in 2002), requires that the district will be subject to
8 several penalties if the Board makes a finding that a Material Inaccuracy occurred for a
9 New Construction or Modernization Project. Subdivision (a) provides that if the Material
10 Inaccuracy finding occurred prior to the apportionment, the district shall be: (1)
11 prohibited from self-certifying New Construction or Modernization Project information for
12 a period of up to five years from the date the Board made the finding of Material
13 Inaccuracy for the project. However, a prohibition from self-certification of project
14 information may be less than five years as determined on a case-by-case basis by the
15 Board; (2) required to file all New Construction and Modernization projects pursuant to
16 Section 1859.104.2 for the time period required in subdivision (a)(1); and (3) subject to
17 the fee prescribed by Section 1859.104.3. Subdivision (b) requires that if the Material
18 Inaccuracy finding occurred after the apportionment but no funds have yet been
19 released for the project the Board shall reduce the project apportionment by the
20 additional funding received beyond the amount the district was entitled to for the
21 project, and the district shall be subject to the penalties described in subdivisions (a)(1)

1 through (3). Subdivision (c) provides that if the Material Inaccuracy finding occurred
2 after the apportionment and funds were released for the project, the district must repay
3 the additional funding received beyond the amount the district was entitled to for the
4 project with interest within five years from the date the Board made the finding of
5 Material Inaccuracy. Interest shall be assessed as prescribed in Education Code
6 Section 17070.51(b)(1) (providing that pursuant to a repayment schedule approved by
7 the board of no more that five years, the school district shall repay to the board, for
8 deposit into the 1988 State School facilities Fund, an amount proportionate to the
9 additional funding received as a result of the material inaccuracy including interest at
10 the rate paid on moneys in the Pooled Money Investment Account or at the highest
11 interest rate of interest for the most recent issue of state general obligation bonds), and
12 is further subject to the penalties described in subdivisions (a)(1) through (3).

13 Subdivision (d) provides that the Board may direct that adjustments to the school
14 district's New Construction or Modernization baseline eligibility be made pursuant to
15 Sections 1859.51 and 1859.61 based on the determination of Material Inaccuracy.

16 Section 1859.104.2, (added in 2002), provides that "if the Board has made a
17 finding of Material Inaccuracy pursuant to Section 1859.104.1, the Office of Public
18 School Construction may request supporting documentation as it deems appropriate for
19 any application filed after a finding of material inaccuracy for the time prescribed in
20 1859.104.1(a)(1), (b)(2) or (c)(2)."

21 Section 1859.104.3, (added in 2002), provides that "if the Board has made a

1 finding of Material Inaccuracy pursuant to Section 1859.104.1, the Board shall charge
2 the district an amount of \$100 per hour for the additional hours necessary to process
3 and review the district's applications submitted during the timelines prescribed in
4 1859.104.2(a)(1), (b)(2) or (c)(2). The maximum hours subject to the fee per application
5 is the greater of 50 hours or one percent of the enrollment of the district as reported in
6 Part A, the continuation high pupils reported in Part B, and the special day class pupils
7 reported in Part C of the latest Enrollment Certification/Projection, Form SAB 50-01.
8 The Board will not make a release of funds for any project subject to the fee in this
9 section until the fee has been remitted to the Office of Public School Construction. All
10 fees collected shall be deposited in the School Facility Fund and available for
11 apportionment as directed by the Board.”

12 Section 1859.105, (added in 1998, refiled in 1999 and last amended in
13 2001), subdivision (a) requires that when the district has received funds pursuant to
14 Section 1859.70, the Board shall conduct a review to assure the district has made
15 substantial progress in the completion of the project pursuant to Education Code
16 Section 17076.10(b). The review shall consist of an analysis of the district's progress
17 report in accordance with Section 1859.104(b). Sufficient evidence of substantial
18 progress shall be any of the following:

- 19 (1) At least 75 percent of all site development work that is necessary prior to
20 building construction activity is complete,
21 (2) At least 90 percent of the building construction activities are under contract,

1 unless the building construction activities are delayed as a result of necessary
2 site development work,

3 (3) All construction activities are at least 50 percent complete, or

4 (4) Other evidence satisfactory to the Board of circumstances beyond the control
5 of the district that precludes substantial progress being made.

6 Subdivision (b) provides that when the district has received funds pursuant to Section

7 1859.81.1(a), the Board shall conduct a review to assure the district has made

8 substantial progress in the completion of the project. The audit shall consist of a review

9 and analysis of the district's progress report in accordance with Section 1859.104(b).

10 Acceptable evidence of substantial progress shall be when the district has completed all

1 of the following:

12 (1) Obtained the final appraisal of the site,

13 (2) Completed all California Environmental Quality Act requirements,

14 (3) Obtained final approval of the site by the California Department of Education,

15 and

16 (4) Provided final escrow instructions or evidence the district has filed

17 condemnation proceedings and intends to request an order of possession of the

18 site.

19 Subdivision (c) requires that when the district has received funds pursuant to Section

20 1859.81.1(c), the Board shall conduct a review to assure the district has made

21 substantial progress in the completion of the project. Sufficient evidence of substantial

1 progress shall be the submission of an Approved Application. After the Board has
2 received the progress report required in Section 1859.104(b) for items (a) and (b)
3 above, a review and analysis of the report by the Office of Public School Construction
4 will be made for compliance with this Section within 60 days of the submission of the
5 report by the district. The Office of Public School Construction must notify the district
6 within 60 days of the submission of the report if it intends to recommend to the Board
7 that no substantial progress has been made on the project. If the Office of Public
8 School Construction does not respond to the district within 60 days of submission of the
9 report, the Office of Public School Construction concurs with the district that substantial
10 progress has been made. Should the Office of Public School Construction respond
11 within 60 days of submission of the progress report by the district that no substantial
12 progress has been made or the district fails to submit the progress report within the
13 timelines in Section 1859.104 (b) for items (a) or (b) above or the district has not filed
14 an Approved Application for funds received pursuant to Section 1859.81.1(b), the
15 district must report the final expenditures on the project on the Expenditure Report
16 Form, SAB 50-06, to the Office of Public School Construction within 60 days of the
17 Office of Public School Construction notification. After receipt of the expenditure report,
18 the Office of Public School Construction will recommend to the Board that a finding be
19 made that no substantial progress on the project has been made and that the
20 apportionment be reduced, after accounting for the district's matching share, by any
21 funds not yet committed by a contract for the project and any interest earned on State

1 funds for the project. The recommendation will be made at the next regularly scheduled
2 Board meeting. If the expenditure report is not received within the 60 day period, the
3 Office of Public School Construction will recommend that the apportionment be
4 rescinded and any interest earned on State funds be returned to the State. If the
5 apportionment is reduced or rescinded as a result of a finding by the Board that no
6 substantial progress has been made on the project, the pupils assigned to the project
7 will be added to the district's baseline eligibility. If the apportionment was reduced, the
8 adjustment to the baseline eligibility shall reflect any funding retained by the district
9 based on the New Construction or Modernization Adjusted Grant funding provided for
10 the project. The district may refile a new application for the project subject to district
11 eligibility and priority funding at the time of resubmittal.

12 Section 1859.105.1, (added in 2000), subdivision (a) requires that "when the
13 district has received funds pursuant to Section 1859.75.1, the Board shall conduct a
14 review to assure the district has made progress towards acquisition of the site pursuant
15 to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of
16 the district's progress report in accordance with Section 1859.104(c). Acceptable
17 evidence of substantial progress shall be when the district has completed all of the
18 following:

- 19 (1) Obtained the final appraisal of the site,
- 20 (2) Completed all California Environmental Quality Act requirements,
- 21 (3) Obtained final approval of the site by the California Department of Education,

1 and

2 (4) Provided final escrow instructions or evidence the district has filed
3 condemnation proceedings and intends to request an order of possession of the
4 site.

5 After the Board has received the progress report required in Section 1859.104(c) a
6 review and analysis of the report by the Office of Public School Construction will be
7 made for compliance with this Section within 60 days of the submission of the report by
8 the district. The Office of Public School Construction must notify the district within 60
9 days of the submission of the report if it intends to recommend to the Board that the
10 district has not made progress towards acquiring the site. If the Office of Public School
11 Construction does not respond to the district within 60 days of submission of the report,
12 the Office of Public School Construction concurs with the district that it has made
13 progress to the site acquisition. Should the Office of Public School Construction
14 respond within 60 days of submission of the progress report by the district that no
15 progress has been made towards site acquisition or the district fails to submit the
16 progress report within the timelines in Section 1859.104(c), the Office of Public School
17 Construction will recommend at the next available Board meeting that the site
18 apportionment for the project be rescinded and that any interest earned on State funds
19 be returned to the State. If the apportionment is rescinded as a result of a finding by the
20 Board that no progress has been made towards acquiring the site, the pupils assigned
21 to the project will be added to the district's baseline eligibility. Subdivision (b) provides

1 that the district shall, as may be necessary, request one-year extensions of the site
2 apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable
3 criteria for approval of an extension are any of the following:

4 (1) The district has received letters from the Department of Toxic Substances
5 Control and the California Department of Education that indicate the agency
6 concurs that the district is making reasonable progress towards acquisition of the
7 site, or

8 (2) Other reasonable evidence of effort the district has made towards acquiring
9 the site as approved by the Board."

10 Section 1859.106, (added in 1998, refiled in 1999 and last amended in 2002),
11 provides that the projects will be audited to assure that the expenditures incurred by the
12 district were made in accordance with the provisions of Education Code Section
13 17072.35 for new construction projects and Education Code Section 17074.25 and
14 Section 1859.79.2 for modernization projects. The audit will also assure that the district
15 complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1,
16 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1. An adjustment in the "School Facility
17 Program" grant will be made for subdivisions (a) through (c). Subdivision (a) provides
18 for an adjustment in the "School Facility Program" grant for the difference in the value of
19 site and the hazardous waste removal costs that were used to determine the New
20 Construction Additional Grant and the actual amount paid by the district for the site, the
21 relocation cost, the Department of Toxic Substances Control fee, and the costs for

1 hazardous waste materials removal. Subdivision (b) provides an adjustment for 50
2 percent of any insurance proceeds collectable by the district for displaced facilities and
3 50 percent of the net proceeds available from the disposition of displaced facilities
4 pursuant to Section 1859.82(a) or (b). Subdivision (c) provides an adjustment for the
5 difference in the hazardous waste removal costs that was used to determine the New
6 Construction Additional Grant for Hazardous Waste Removal on an Existing Site and
7 the actual amount paid by the district for the allowable cost for hazardous waste
8 removal. When the Office of Public School Construction receives the final expenditure
9 report from the district on Expenditure Report, Form SAB 50-06, an audit of the
10 expenditures by the Office of Public School Construction shall commence within two
11 years of the report. If the district is not notified by the Office of Public School
12 Construction within the two-year period that an audit will be made, there will be no audit
13 of the project by the Office of Public School Construction and the expenditures reported
14 by the district shall be deemed appropriate. If the district has been notified that an audit
15 of the expenditures will be made by the Office of Public School Construction, the Office
16 of Public School Construction shall complete the audit within six months of the
17 notification, unless additional information requested from the district has not been
18 received. Districts are required to maintain all appropriate records that support all
19 district certifications and expenditures for all costs associated with "School Facility
20 Program" projects for a period of not less than four years from the date the notice of
21 completion is filed for the project in order to allow other agencies, including, without

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1 limitation, the Bureau of State Audits and the State Controller to perform their audit
2 responsibilities. Should the Office of Public School Construction conduct an audit of
3 the district certifications or the expenditures for the project and make a finding that
4 some or all of the expenditures were not made in accordance with the provisions of
5 Education Code Section 17072.35 for new construction projects and Education Code
6 Section 17074.25 and Section 1859.79.2 for modernization projects, the Office of
7 Public School Construction shall recommend to the Board that the apportionment be
8 adjusted based on the audit findings. Upon adoption of the audit findings by the Board,
9 the district must submit a warrant for any amount identified as being owed within 60
10 days of the Board action. If this does not occur, the Office of Public School Construction
11 shall initiate collection procedures from the School Fund Apportionment as outlined in
12 Education Code Section 17076.10(c). Should the California Department of Education
13 make a finding that a project did not meet the standards that were adopted by the
14 California Department of Education pursuant to Education Code Section 17251(b) and
15 (c) when the district had self-certified that the project met those standards pursuant to
16 Education Code Section 17070.50(b), the Board may request that the California
17 Department of Education make a recommendation that the apportionment for the
18 project be adjusted based on the California Department of Education finding. Any
19 adjustment in the apportionment shall be based on the percentage of space in the
20 project that the California Department of Education determined did not meet those
21 standards. Upon adoption of the finding by the Board, the district must submit a warrant

1 for any amount identified as being owed within 60 days of the Board action. If this does
2 not occur, the Office of Public School Construction shall initiate collection procedures
3 from the School Fund Apportionment as outlined in Education Code Section
4 17076.10(c)."

5 Section 1859.107, (added in 2000 and last amended in 2002), provides that a
6 funding application that receives an apportionment under Chapter 12 or Chapter 12.5
7 may not be rescinded and re-approved under the provisions of any amended law or
8 administrative regulation unless specifically authorized by other applicable law. A
9 funding application that has received an approval pursuant to Section 1859.95, but has
10 not received an apportionment, may receive an adjustment as allowed under
11 Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other
12 adjustments may be made, including those resulting from changes to the regulations
13 prior to final funding by the State Allocation Board. As an alternative, the application
14 may be withdrawn and resubmitted for State Allocation Board approval under the
15 provisions of any amended or new regulation that becomes effective prior to the
16 apportionment for the project. The district must first request from the Office of Public
17 School Construction that the application be withdrawn and removed from the Unfunded
18 List. The district may then resubmit the application to the Office of Public School
19 Construction under the provisions of the amended or new regulation once it is effective.
20 The resubmitted application will receive a new processing date by the Office of Public
21 School Construction. Any application for eligibility determination that has received an

1 approval may be amended to comply with provisions of an amended or new regulation
2 once it is effective. The amended application will receive a new processing date by the
3 Office of Public School Construction. A funding application submitted to the Office of
4 Public School Construction that has not received an approval will receive funding under
5 the provisions of the regulations that were in effect when the application was submitted
6 to the Office of Public School Construction. At the option of the district, a funding
7 application submitted to the Office of Public School Construction that has not received
8 an approval may be withdrawn and resubmitted for State Allocation Board approval
9 under the provisions of any amended or new regulation once it is effective. The district
10 must request that the application be withdrawn and removed from the Office of Public
11 School Construction workload list. The resubmitted application will receive a new
12 processing date by the Office of Public School Construction. Any application for
13 eligibility determination that has not received an approval may be amended at any time
14 to conform to an amended or new regulation. The application shall retain its Office of
15 Public School Construction processing date. Any application for new construction
16 eligibility determination that has received an approval must be amended to conform to
17 Regulation Section 1859.51(l) prior to submittal of an Application For Funding, Form
18 SAB 50-04. Any application for new construction eligibility determination that has not
19 received an approval must be amended to conform to the Existing Building Capacity,
20 Form SAB 50-02 and the Eligibility Determination, Form SAB 50-03 prior to submittal of
21 an Application For Funding, Form SAB 50-04. Any application for modernization

1 eligibility determination that has received an approval must be amended to conform to
2 Regulation Section 1859.61(g) prior to submittal of an Application For Funding, Form
3 SAB 50-04. Any application for modernization eligibility determination that has not
4 received an approval must be amended to conform to the Eligibility Determination,
5 Form SAB 50-03 prior to submittal of an Application For Funding, Form SAB 50-04.
6 Districts that have received an approval of eligibility on a High School Attendance Area
7 or Super High School Attendance Area are not required to re-establish eligibility under
8 the provisions of Section 1859.41(a). Districts that have requested eligibility
9 determination on a High School Attendance Area or Super High School Attendance
10 Area that have not received an approval must comply with the provisions of Section
11 1859.41(a) prior to submittal of an Application for Funding, Form SAB 50-04. The
12 amended eligibility application shall retain its original Office of Public School
13 Construction processing date. A district that has received an approval of its eligibility
14 determination on a district-wide, High School Attendance Area or Super High School
15 Attendance Area basis, but received no New Construction Grants, may re-file on
16 another eligibility determination basis provided it withdraws all previously submitted
17 Application for Funding, Form SAB 50-04 requests for New Construction Grants,
18 including those on the Unfunded List.

1 SUBGROUP 8.5 EMERGENCY CLASSROOM LAW OF 1979

2 ARTICLE 1. DEFINITIONS

3 Title 2, California Code of Regulations, Section 1862.50, (added in 1979),
4 defines specific terms for the purposes of these regulations.

5 ARTICLE 2. ACQUISITION OF PORTABLE CLASSROOMS

6 Title 2, California Code of Regulations, Section 1862.51, (added in 1979 and last
7 amended in 1986), provides that the State Allocation Board shall, as may be necessary
8 and in accordance with priorities adopted herein, authorize the Office of Procurement of
9 the Department of General Services to acquire portable classrooms the as will be
10 required by eligible school districts for up to the next twelve months. For each portable
11 classroom so acquired a minimum of furniture and equipment necessary to make the
12 classroom functional may be acquired by the State Allocation Board. The buildings shall
13 be placed on the school site and connected to the nearest electrical energy source at
14 State expense.

15 ARTICLE 3. APPLICATIONS FOR LEASE

16 Title 2, California Code of Regulations, Section 1862.52, (added in 1979 and last
17 amended in 1986), requires that applications for lease of portable classrooms pursuant
18 to the State Relocatable Classroom Law of 1979, shall contain the following:

- 19 (1) A resolution on forms provided by the State Allocation Board, by the
20 governing board of the eligible district authorizing the filing of an application and
21 the signing of a lease agreement or agreements for such numbers of portable

1 classrooms as the Board may approve. The leases shall contain such terms and
2 conditions as are required by existing law and by these regulations;

3 (2) A completed application on forms provided by the Board;

4 (3) Layout plans clearly showing the location on the site of the proposed portable
5 classroom buildings as well as the location of existing buildings;

6 (4) A certification by the authorized agent that the district has hired or will hire a
7 teacher for each portable classroom leased to the district for the term of the
8 lease; and

9 (5) A certification or other evidence, satisfactory to the Board, that the district has
10 no available bond proceeds which could be used for the purchase of classroom
11 facilities.

12 ARTICLE 4. LEASE AGREEMENTS

13 Title 2, California Code of Regulations, Section 1862.53, (added in 1979 and last
14 amended in 1986), requires that lease agreements executed by the authorized agent of
15 the school district shall be subject to such conditions as may be required by the State
16 Allocation Board in addition to the following:

17 (1) A year to year renewable term beginning September 1 and ending August 31
18 of each year;

19 (2) Lease payments of \$2,000 per year for each portable classroom. The first
20 year rental shall be prorated on a 12 month basis from the date of installation to
21 the following August 31. Payments are to be made upon execution or renewal of

1 each lease;

2 (3) The district shall be required at its own expense to provide a near flat surface,
3 not exceeding 9 inches in grade from the highest to the lowest point, for
4 placement of each portable classroom. Access to the site shall also be provided
5 by the district at its own expense;

6 (4) The district shall be responsible to the State for any damages occurring to the
7 portable classrooms and shall keep them insured, at its own expense, to the
8 benefit of the State, at all times against fire and lightning, with extended
9 coverage, and vandalism and malicious mischief, for the full insurable value of
10 the property less any deductible amount for which the district is willing to accept
11 such responsibility. The district shall at its own expense undertake all necessary
12 maintenance repairs, renewal and replacement to ensure that the portable
13 classrooms, furniture and equipment are at all times kept in good repair, working
14 order and condition;

15 (5) The district shall hold the State of California harmless from any claims
16 asserted against the State by virtue of alleged negligence of the district or third
17 parties in the operation or maintenance of portable classrooms;

18 (6) Facilities leased by the Board for location on a particular site may not be
19 altered, relocated or removed from the site without approval of the Board, nor
20 shall any interest held by the district under this lease be assignable; and

21 (7) Upon expiration of a lease, the district shall allow buildings covered by such

1 lease to remain in place on the site free of cost to the State for a period not to
2 exceed 120 days, pending removal by the State.

3 ARTICLE 5. PRIORITIES

4 Title 2, California Code of Regulations, Section 1862.54, (added in 1979 and last
5 amended in 1986), outlines the order in which school districts will receive approval for
6 portable classrooms.

7 ARTICLE 6. MISCELLANEOUS PROVISIONS

8 Title 2, California Code of Regulations, Section 1862.55, (added in 1979),
9 provides that "where a district is not obligated to provide for the maintenance and repair
10 of portable buildings, or if obligated and fails to do so, the Executive Officer is
11 authorized to expend such sums as he deems appropriate for that purpose from funds
12 appropriated pursuant to this chapter, provided that nothing herein shall be construed to
13 relieve any district from any obligation arising out of any contract entered into pursuant
14 to this chapter."

15 Title 2, California Code of Regulations, Section 1862.56, (added in 1979),
16 provides that "exceptions may be made to these regulations where the Board finds that
17 the application thereof would be inequitable in practice or would result in an undue
18 hardship on the pupils of the district affected."

1 SUBGROUP 11. REGULATIONS RELATING TO THE LEROY F. GREENE

2 STATE SCHOOL BUILDING LEASE-PURCHASE LAW OF 1976

3 ARTICLE 1. DEFINITIONS

4 Title 2, California Code of Regulations, Section 1865.1, (added in 1978 and last
5 amended in 1981), defines specific terms for the purpose of these regulations.

6 Specifically, the term "Act" refers to the Leroy F. Greene State School Building Lease-
7 Purchase Law of 1976.

8 ARTICLE 2. GENERAL PROVISIONS

9 Title 2, California Code of Regulations, Section 1865.2, (added in 1978),
10 provides that "the purpose of these regulations is to prescribe the procedures

11 necessary for the implementation and administration of the Leroy F. Greene State
12 School Building Lease-Purchase Law of 1976 (hereinafter referred to as "the act")."

13 Title 2, California Code of Regulations, Section 1865.3, (added in 1978 and last
14 amended in 1980), clarifies that "the act provides for the construction, reconstruction, or
15 replacement of school facilities by the State Allocation Board under an agreement
16 between a school district and the State."

17 Title 2, California Code of Regulations, Section 1865.4, (added in 1978 and last
18 amended in 1980), provides that "any school district may qualify to file an application for
19 a lease-purchase project and enter into a lease agreement with option to purchase with
20 the board, providing such applicant school district has sufficient building area
21 entitlement as determined pursuant to the provisions of Article 4 of these regulations to

1 justify the application being filed for new building construction or reconstruction.”

2 Title 2, California Code of Regulations, Section 1865.5, (added in 1978 and last
3 amended in 1980), requires that “the executive officer shall perform all acts necessary
4 to carry out the provisions of the act except such functions as are reserved to the board
5 and to other agencies by law or by these regulations.”

6 Title 2, California Code of Regulations, Section 1865.6, (added in 1978),
7 provides that “in approving an application for a lease-purchase project and making
8 funds available therefor, neither the State nor any department or agency thereof shall
9 assume any responsibility not otherwise imposed on it by statute or these regulations.”

10 Title 2, California Code of Regulations, Section 1865.8, (added in 1978),
11 provides that “the insurance required by Section 17738 [referring to renumbered
12 Education Code Section 17038] of the act shall be in an amount that will guarantee full
13 replacement or repair of the facilities for which claims are made.”

14 Title 2, California Code of Regulations, Section 1865.9, (added in 1986),
15 subdivision (a), requires that priority points be computed and assigned to applications
16 whenever the board determines that there will be insufficient funds to meet the
17 estimated needs for all districts in any given fiscal year. Whenever the assignment of
18 priority points is required, applications that are in order for approval shall be considered
19 by the board in sequence according to the number of priority points credited to each
20 application. The board shall from time to time establish the minimum number of priority
21 points necessary to qualify an application for approval consideration by the board. Such

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1 minimum shall be based upon the funds available and the estimated needs for the
2 fiscal year. Subdivision (b) requires that priority points shall be computed on a
3 districtwide basis, except for those districts having four or more high school attendance
4 areas (excluding continuation high schools). In such case, points shall be considered on
5 the basis of the attendance area of the project and all attendance areas adjacent
6 thereto. Subdivision (c) requires that for the purposes of computing priority points
7 pursuant to the provisions of Section 17716 of the act (referring to current Education
8 Code Section 17016 providing for school district priorities in the acquisition,
9 construction and leasing of projects and portable classrooms), all existing building
10 areas except central administration and maintenance facilities, shall be considered.
11 Subdivision (d) provides the formula for calculating priority points for new construction.
12 Subdivision (e) provides the formula for calculating priority points for reconstruction.
13 Subdivision (f) provides that if any computation of priority points results in a fraction it
14 shall be disregarded and shall be rounded up or down depending on whether fractions
15 of a point are less than or more than one-half. Subdivision (g) requires that approvals
16 and lease agreements made in priority order pursuant to this section shall be limited to
17 that portion of a project pertaining to the acquisition of a site and the preparation of
18 construction plans and specifications. Such approvals shall be limited to not more than
19 25% of the funds made available for the program.

20 Title 2, California Code of Regulations, Section 1865.10, (added in 1980),
21 provides that "priority points may be computed and applied in the consideration of

1 approvals for construction funds. Such priority points shall be maintained as a separate
2 series from priority points computed pursuant to Section 1865.9 of these regulations,
3 and shall be identified as 'priority points for construction.' Any such computation of
4 priority points for construction shall be determined as prescribed by said Section
5 1865.9, except the term 'maximum allowable building area' in Section 1865.9(d)(1) shall
6 mean the most recent computation of such area rather than that which applied at the
7 time the application was first approved."

8 Title 2, California Code of Regulations, Section 1865.11, (added in 1980 and last
9 amended in 1982), subdivision (a), provides that "upon a finding by the board that an
10 extreme hardship exists as a result of an attendance center of a school district being
11 located in a remote area, in excess of 30 miles from any other attendance center of the
12 district, the board may base the computation of priority points for the remote attendance
13 center in the same manner as if it was a separate school district." Subdivision (b)
14 provides that "in addition to the provisions of subsection (a), a finding by the board that
15 an extreme hardship exists for an attendance center of a school district due to unique
16 circumstances of topography and emerging population trends, the board may base the
17 computation of priority points for the attendance center in the same manner as if it was
18 a separate school district."

19 Title 2, California Code of Regulations, Section 1865.22, (added in 1978 and last
20 amended in 1984) requires that "a complete application shall be filed with the executive
21 officer of the board."

1 Title 2, California Code of Regulations, Section 1865.23, (added in 1978),
2 provides that "an applicant may, after approval of an application but prior to entering
3 into a lease-purchase agreement, request approval of changes within the application."

4 ARTICLE 3.

5 There is no Article 3 in Subgroup 11 "Regulations Relating to the Leroy F. Green
6 State School Building Lease-Purchase Law of 1976."

7 ARTICLE 4. ELIGIBLE FACILITIES

8 Title 2, California Code of Regulations, Section 1865.30, (added in 1978),
9 subdivision (a) requires that the estimated average daily attendance (ADA) of a school
10 district or attendance area as required by Section 17740 (referring to current Education
11 Code Section 17040) of the act for determining the allowable building area shall be
12 computed by this section. No estimate will be used unless approved by the executive
13 officer of the board. Subdivision (b) requires that for the purpose of estimating ADA,
14 the following definitions shall apply:

15 (1) "Enrollment" means the graded enrollment of minors of the district as
16 reported to the Department of Education on Form R-30 (or any successor form).
17 Comparable enrollment data for the end of the first or sixth school month may be
18 acceptable if verified by the appropriate county superintendent of schools.

19 Enrollment shall include only those students who actually reside in the school
20 district and any students who reside in the district but attend school in other than
21 the district of residence. Enrollment shall exclude high school pupils who attend

1 continuation classes.

2 (2) "Projected enrollment" means graded enrollment as determined by the cohort
3 survival method for a period of two years for the elementary grades and for a
4 period of three years for the high school grades.

5 (3) "Pupil units attending continuation classes" is computed as follows: a
6 determination of the average number of pupil hours of attendance in high school
7 continuation classes per school day in the highest three months of the latest 12
8 months, is divided by six. Pupil hours during the regular school day in excess of
9 15 per week shall be included. Pupil hours for evening or Saturday classes shall
10 be excluded. Multiply the final figure obtained in the preceding calculation by a
11 factor which is computed by dividing the "projected enrollment" by the "current
12 enrollment." The result is the "pupil units attending continuation classes." In the
13 event the district is applying for a continuation high school facility and has
14 students who have not yet been screened and assigned to continuation classes
15 because of lack of suitable space, the district may submit an identified list of
16 such pupils. The average number of pupil hours of high school attendance in
17 continuation classes per school day as computed above may be augmented by
18 the pupil hours obtained by multiplying the number of names on the list by three,
19 or in the event the district can prove that continuation high school pupils attend
20 classes for an average of more than three hours per day, such larger multiplier
21 may be used. When an identified list of prospective continuation high school

1 pupils is used, the number of pupils on such list shall be excluded from the
2 graded enrollment.

3 (4) "Exceptional children" means those pupils assigned to special education
4 classes as of the latest enrollment, plus a verified count of such pupils who are
5 not attending classes of the district but will become a part of the attendance of
6 the district when approved facilities for such pupils have been completed.

7 (5) "Estimated average daily attendance" means the projected enrollment
8 multiplied by .97 plus the exceptional children assigned to special education
9 classes, plus the pupil units attending high school continuation classes.

10 (6) "Housecount" means an enumeration of new housing units that are under
11 construction, i.e. units that have at least reached the stage of foundations in
12 place, and have not yet been completed and occupied, classified by type of
13 housing unit as the board may prescribe. Such housing units shall not include
14 hotel or motel accommodations or other living quarters generally used as
15 transient or short-term accommodations, but may include spaces under
16 construction for mobile homes which the board determines to be essentially for
17 long-term occupancy. The definition of housecount prescribed herein may be
18 modified from time to time as may be necessary to classify new housing units in
19 the most appropriate manner for the purpose of measuring the pupil yield of such
20 units.

21 Subdivision (c) requires that the projected enrollment shall be determined by the cohort

1 survival method in accordance with the following and by the use of such forms and
2 instructions as the board may prescribe.

3 (1) List either the latest enrollment for the end of the first school month or the
4 subsequent sixth school month and the enrollment for the same period for the
5 three preceding years. All applications approved by the board after April 30 of
6 any given year shall be based on the enrollment as of the end of the sixth school
7 month of the most recent year. Such enrollment shall be listed by level for each
8 grade included in the application. High school applications shall also list the four
9 highest grades of component elementary enrollment.

10 (2) Determine the numerical change in enrollment between each given grade in
11 one year and the next higher grade in the succeeding year for each period and
12 grade listed in (1) above. With respect to kindergarten enrollment (or first grade
13 enrollment if no kindergarten is maintained), determine the numerical change in
14 kindergarten (or first grade) enrollment between each period listed in (1) above,
15 or alternatively, annual changes in enrollment based on a local census or survey
16 of preschool children conducted according to such procedures as the board may
17 prescribe.

18 (3) Compute the average annual change in enrollment for each grade
19 maintained at the grade level of the application. The average shall be a weighted
20 average computed by multiplying the most recent annual change in enrollment
21 by three, the next most recent change by two, and the earliest change by one,

1 and dividing the sum of the weighted changes by six.

2 (4) Progress the latest reported enrollment through the applicable two or three
3 year projection period, modifying the grade progression each year by the
4 average annual change for each grade as computed in (3) above.

5 Subdivision (d) requires that the estimated average daily attendance as defined in
6 Subsection (b)(5) above must be computed from the projected enrollment,. Subdivision
7 (e) provides that in the event that there is good reason to believe the number of pupils
8 being added from construction of new housing units exceeds the number implicit in the
9 cohort survival computation and when the land area of the district is less than 75%
10 developed, the board may, at its discretion, modify the estimated average daily
11 attendance as follows:

12 (1) Determine the graded enrollment one year from the latest reported
13 enrollment by a one-year grade progression, adjusted for dropouts at the high
14 school level.

15 (2) Determine the enrollment derived from new homes implicit in the cohort
16 survival computation as follows: (i) Subtract the enrollment computed in (1)
17 above from the one-year projection of enrollment as determined by the cohort
18 survival method; (ii) To the remainder, add two percent of the latest enrollment
19 for the end of the first or sixth school month, whichever is applicable. If the
20 foregoing computations result in a negative number, the number shall be
21 deemed to be zero.

1 (3) Determine the pupil yield per housing unit of housecount, as established by a
2 survey of occupied housing units in the district, for the current year and the two
3 preceding years. The survey shall take into consideration the different pupil
4 yields of multiple and single family housing units or other significant yield
5 characteristics. The current year yield factor for each type of housing unit shall
6 be modified by the average annual difference of the factor for each type for the
7 two preceding years.

8 (4) I [sic] the event that prior year data referred to in (3) is unavailable, the
9 current yield factor shall be modified as the board shall prescribe.

10 (5) Establish the pupil yield of the housecount by multiplying the number of
11 housing units in the housecount by the applicable yield per housing unit as
12 determined above. Subtract the enrollment from new homes determined in (2)
13 above from the yield of the housecount; the result of this computation is the
14 amount by which the graded enrollment computed under the cohort survival
15 method shall be changed.

16 (6) The housecount and surveys described in (3) and (4) shall be conducted by
17 the district in accordance with methods, procedures, and standards which are
18 approved by the Office of Local Assistance with respect to each specific case.

19 Subdivision (f) provides that other provisions of this section notwithstanding, high
20 school enrollment of a district or attendance area for the end of the first school month
21 may be used for estimating ADA.

1 Title 2, California Code of Regulations, Section 1865.31, (added in 1978),
2 subdivision (a) provides that “as permitted by Section 17741 [referring to current
3 Education Code Section 17041], a district may file an application based upon a high
4 school attendance area rather than a districtwide basis. A high school district or a
5 unified school district filing on a high school level would base its application on
6 enrollment estimated to attend such high school and upon facilities already existing in
7 such high school attendance area. An elementary school district or unified district filing
8 on an elementary level would base its application on the enrollment and existing
9 facilities of the elementary schools serving the high school attendance area under
10 consideration.” Subdivision (b) requires that “the estimated average daily attendance of
11 a high school attendance area as permitted by Section 17741 of the act for determining
12 the allowable building area, when the district is applying only on a high school
13 attendance area basis as opposed to a districtwide basis, shall be computed in the
14 same manner as that set forth in regulation 1865.30, except that the enrollment used in
15 such computation shall be that of the high school attendance area rather than the entire
16 district and shall be certified by the district.” Subdivision (c) requires that “In those
17 instances where the high school attendance area results in a split in individual
18 attendance areas of the contributing elementary or junior high schools, an assignment
19 of enrolled pupils in such split attendance areas shall be made by the district in a
20 manner satisfactory to the executive officer.”

21 Title 2, California Code of Regulations, Section 1865.32, (added in 1978),

1 provides that "in order to expedite a total school facility, a school district may first apply
2 for a project which includes only the advance purchase of the land and preparation of
3 plans and specifications. The acquisition of the site and the plans preparation shall be
4 based on justification documents for the total school facility."

5 Title 2, California Code of Regulations, Section 1865.32.5, (added in 1978 and
6 last amended in 1984), subdivision (a), provides that "if the board determines that it will
7 not be economical or practical to utilize all existing facilities of the district, project
8 approval then will be contingent upon the agreement by the district to dispose of any
9 salable interest in any building or site that the board determines cannot be utilized and
10 contribute the net proceeds of the sales to the State School Building Lease-Purchase
11 Fund as rents pursuant to Section 17732 [referring to current Education Code Section
12 17032] of the act." Subdivision (b) requires that "approval of a project applied for
13 pursuant to Section 17741 [referring to current Education Code Section 17041] of the
14 act will be contingent upon the conditions specified in subdivisions (a) and (b) of this
15 section."

16 Title 2, California Code of Regulations, Section 1865.33, (added in 1978 and last
17 amended in 1981), subdivision (a), requires that "no project shall be approved, the
18 building area of which, when added to the area of adequate school construction existing
19 in the applicant school district or the applicable high school attendance area if the
20 application is filed on such basis, will provide a total area of school building construction
21 in excess of that computed pursuant to Education Code Sections 17740 through

1 17749." Subdivision (b) requires that "all of the existing building area owned or
2 operated by the district regardless of conditions or purpose for which used, shall be
3 reported to the board by the district as prescribed in this regulation. Where an allowable
4 building area is computed on the basis of an attendance area as provided by Section
5 17741 of the act, the existing building area shall be considered the building area within
6 such attendance area." Subdivision (c) requires that "existing adequate building area
7 shall include all existing building area not otherwise excluded by the act or these
8 regulations, building area for which applications have been approved under any state or
9 federal building program, any building area being acquired by any lease-purchase
10 agreement, proposed building area which has been otherwise financed or any building
11 area which has been used to justify any site and/or plans lease-purchased project
12 under this act. Existing building area shall be excluded as follows:

13 (1) The area of any building to which Article 3 of Chapter 2, Part 23 of the
14 Education Code would not apply.

15 (2) The area of any relocatable structure for temporary use building under lease
16 pursuant to Education Code Sections 39243 or 39246.

17 (3) The area of any district administration or district maintenance facilities except
18 those constructed pursuant to the Leroy F. Greene State School Building
19 Lease-Purchase Law of 1976."

20 Subdivision (d) requires that "existing and proposed building area shall be computed in
21 accordance with the following:

- 1 (1) All measurements shall be made from exterior rough wall lines.
- 2 (2) Totally enclosed space shall be counted as full area. Among the various
3 types of space to be included shall be areas such as:
- 4 (A) Basement rooms and basement boiler rooms.
- 5 (B) Heater rooms, including those above the normal floor level.
- 6 (C) Each floor of multi-story buildings.
- 7 (D) The area of completely enclosed stairs for each floor level served.
- 8 (3) Certain partially enclosed areas shall be counted as full area and shall
9 include:
- 10 (A) Open, covered areas which provide shelter between buildings that are
11 less than 20 feet apart.
- 12 (B) Mezzanines open on one or more sides which may easily and readily
13 be used or converted to use as instructional space or passageways.
- 14 (C) Each floor of library stacks.
- 15 (4) Covered unenclosed space shall be counted as one-half of the actual area.
16 Included in such space are:
- 17 (A) Open, covered passages, arcades, shelters, porches, and planting
18 areas.
- 19 (B) Open, covered areas which provide shelter between buildings that are
20 20 feet apart or more.
- 21 (C) Overhangs and sun control devices which are so designed and

1 located that they function as, and in lieu of, covered walks or other shelter
2 areas.

3 (D) Mezzanines for storage purposes.

4 (5) Areas which shall not be counted include:

5 (A) Eaves and sun control devices except as specified above.

6 (B) Unsheltered platforms and steps.

7 (C) When isolated from building structures, the area of incinerators,
8 pumphouses, transformer vaults, and service yards.

9 (D) Elevator shafts where constructed in order to comply with Chapter 7 of
10 Division 5 of the Government Code (commencing with Section 4450),
11 relating to facilities for handicapped persons.

12 (E) That portion of the area below the first floor of a multistory building
13 used exclusively for employee parking, provided the board finds that
14 other means of parking are not economically feasible.”

15 Title 2, California Code of Regulations, Section 1865.34, (added in 1978 and last
16 amended in 1981), subdivision (a) provides that “in conformity with the requirements of
17 Section 17747 of the Education Code [referring to current Education Code Section
18 17047], the board establishes allowable building areas for the education of physically
19 handicapped, educationally handicapped, and mentally retarded minors, to be
20 computed as follows:

21 (1) Divide the number of eligible pupils by the maximum class size established by

1 law for special day classes for the type of pupils to be enrolled and increase the
2 quotient to the next highest integer where a fractional amount is produced.

3 (2) Multiply the number computed in (1) by the maximum building area allowance
4 when the facility is planned for the following types of exceptional children:

5 (3) When the chronological age span of educable mentally retarded minors is
6 greater than four years, the maximum class size shall be 15 pupils.

7 (4) When facilities to be constructed will include occupational therapy, physical
8 therapy, and related auxiliary spaces for orthopedically handicapped minors,
9 additional building area allowances for such spaces of up to 5,200 square feet
10 shall be made if the facility is designed for one to three classes and up to 7,000
11 square feet for four to eight classes.

12 (5) When facilities are to be constructed for deaf-blind multihandicapped, a
13 one-time additional building area allowance of 500 square feet per school will be
14 made for the initial construction of facilities.

15 (6) When facilities are to be constructed for blind or partially seeing minors
16 served in an integrated instructional program which is housed in two or more
17 schools, the building area allowance may be allocated among the schools when
18 approved by the Department of Education. No area of instruction shall be
19 allowed which is less than 200 square feet.

20 (7) When facilities are to be provided for minors having speech defects or
21 disorders, additional building area per school is permitted. This additional area

1 allowance is limited to:

2 (A) 200 square feet of new building area per school in schools
3 constructed after July 1, 1968, where such schools are designed to
4 permit utilization for remedial and other special services.

5 (B) 200 square feet of new building area per school in schools
6 constructed between July 1, 1933 and July 1, 1968, where such
7 additional area allowance is used for the construction of a new speech
8 facility.

9 (C) Conversion of existing facilities or a combination of new construction
10 and conversion of such existing facilities to provide housing for such
11 minors having speech defects or disorders, provided the cost does not
12 exceed the computed cost for 200 square feet of new classroom
13 construction based upon cost standards adopted by the board.

14 (D) The acquisition of mobile speech therapy facilities, provided the cost
15 does not exceed the combined computed cost for 200 square feet of new
16 classroom construction, based upon cost standards adopted by the
17 board, at all such schools which will be served by the mobile facility.”

18 Title 2, California Code of Regulations, Section 1865.35, (added in 1978),
19 subdivision (a), requires that “for the purpose of computing the building area allowance
20 for small elementary school districts in accordance with Section 17743 of the Education
21 Code, the following shall apply:

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(1) In an applicant district maintaining any combination of grades kindergarten through 6 with an estimated average daily attendance of less than 300 in such grades:

Estimated ADA in Kindergarten and Grades 1-6	Maximum Total Building Area (Sq. Ft.)
6-25	1,600
26-50	3,800
51-75	5,700
76-100	7,200
101-133	8,415
134-166	10,200
167-199	12,000
200-232	13,360
233-285	15,675
286-299	16,500

(2) In an applicant district maintaining any combination of grades kindergarten through 8 with an estimated average daily attendance of less than 300 in grades kindergarten through 6, there shall be allowed, in addition to the maximum total building area shown above, a maximum area of 75 sq. ft. for each attendance unit in grades 7 and 8."

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1 Title 2, California Code of Regulations, Section 1865.36, (added in 1978 and last
2 amended in 1990), subdivision (a), requires that “the estimated average daily
3 attendance for continuation high schools shall be based on those pupil units attending
4 continuation classes (as defined in Section 1865.30(b)(3) of these regulations) which
5 are assigned to the continuation high school.” Subdivision (b) requires that building
6 area shall be allowed for the continuation high school in accordance with the following
7 schedule:

8 Pupil Units	9 of Continuation	10 Square Feet of
11 High School	12 Building Area	13
14 5 to 20	15	16 2,300
17 21 to 40	18	19 2,300 + 125 for each pupil unit over 20
20 41 to 60	21	22 4,800 + 120 for each pupil unit over 40
23 61 to 90	24	25 7,200 + 115 for each pupil unit over 60
26 91 to 120	27	28 10,650 + 105 for each pupil unit over 90
29 121 to 150	30	31 13,800 + 90 for each pupil unit over 120
32 Over 150	33	34 16,500 + 60 for each pupil unit over 150

35 Subdivision (c) requires that “for purposes of this section, a continuation high school
36 must be physically and operationally distinguishable from other schools. If the
37 continuation high school shares space with another type of school, it can be considered
38 to be a continuation high school within the meaning of this section only if the district can

1 show conclusively that the continuation facility is in fact a separate institution with its
2 own administration, teaching staff, and course of study, located in a clearly identifiable
3 building area.”

4 Title 2, California Code of Regulations, Section 1865.37, (added in 1978),
5 provides that “in the event the existing area of the district as determined pursuant to
6 Section 17742 [referring to current Education Code Section 17042] of the act results in
7 a district being unable to apply for the minimum amount of essential instructional
8 facilities required, the existing area may be reduced, with the approval of the board, by
9 an amount sufficient to permit such essential instructional facilities to be constructed
10 under the act. Such reduction shall be construed as being for the purpose of alleviating
11 any substantial hardship which might otherwise occur.”

12 Title 2, California Code of Regulations, Section 1865.38, (added in 1978),
13 subdivision (a), requires that “pursuant to Section 17717 [referring to current Education
14 Code Section 17017] of the act, the board shall establish allowable school building cost
15 standards which shall be effective until next revised.” Subdivision (b) requires that “no
16 application or bid shall be approved and no funds shall be provided for any construction
17 which exceeds the allowable costs established as provided herein. In the event,
18 however, that it is shown from any studies by the board that actual building costs in an
19 area or portion of an area differ substantially from the allowable costs established for
20 the area, the board may at any time revise the allowable building cost standards for the
21 area or create additional areas and establish appropriate allowable cost standards for

1 such additional areas.”

2 Title 2, California Code of Regulations, Section 1865.39, (added in 1978),
3 requires that “where a school district requests an increased cost allowance for the
4 design and construction of facilities which will conserve unreplenishable energy
5 resources pursuant to Section 17718 [referring to current Education Code Section
6 17018] of the act, a life cycle cost comparison must be submitted to the board. Such
7 cost comparison shall be prepared by a competent authority and provide for the
8 amortization of the increased cost allowance over a period not to exceed the lesser of
9 30 years or the term of the lease.”

10 Title 2, California Code of Regulations, Section 1865.40, (added in 1978 and last
11 amended in 1984), subdivision (a), requires that “no project shall be approved for
12 reconstruction, the cost of which will exceed cost standards established by the board for
13 replacement of the amount of area equivalent to the actual reconstruction area.
14 Subdivision (b) requires that “no building shall be replaced until the board has made a
15 finding that it would not be economical or good practice to reconstruct the school
16 facilities to meet present-day educational and structural standards.”

17 Title 2, California Code of Regulations, Section 1865.41, (added in 1978 and last
18 amended in 1984), subdivision (a), provides that “site development for new building
19 area may be included as a part of the project and classified as follows:

- 20 (1) Utility Services may include but are not limited to facilities required to bring
21 water, sewer, electricity, telephone, and fuel supply services to such suitable

1 point on the site as may be necessary for the functioning of a project.

2 (2) Off-site Development may include but is not limited to such street
3 improvements as are in line with the approved standards of the board and as are
4 determined by the executive officer to be necessary. However, whenever a
5 school building to be constructed pursuant to an apportionment under the act is
6 situated in a city, city and county, or county which requires the construction of
7 any street or road connected with the school premises on which the building is
8 situated, the board shall review the requirement and recommend to the entity in
9 question a plan of construction adequate to meet the needs of the school district
10 and safety of the public. Thereafter, if any different plan of improvement or
11 improvement to higher standards than so recommended is required by such
12 entity, the additional cost shall be borne by the entity as provided in Section 2117
13 of the Streets and Highways Code.

14 (3) Service Site Development may include but is not limited to site clearance,
15 rough grading, and drainage which may be required to make a site usable in
16 accordance with standards established by the board.

17 (4) General Site Development may include but is not limited to any other
18 development of a site, including such items as grading (except rough grading),
19 walks, curbs, roadways, parking areas, fencing, flagpoles, incinerators,
20 hand-surfaced and turfed play areas, landscaping, and playground equipment.

21 In the event the proposed construction consists of an addition to an existing school

1 plant (whether financed by State Funds or by other means) the countable existing
2 construction area and the existing site development shall be evaluated by the Director
3 of General Services in determining any allowance for general site development.”

4 Subdivision (b) provides that “site development for reconstruction is limited to
5 replacement of walks or paving which are destroyed as a result of the reconstruction
6 work, and may be required for handicapped requirements. Off-site work and utilities will
7 not be considered unless justification has been submitted that the reconstructed facility
8 cannot be adequately functional without such improvements.”

9 Title 2, California Code of Regulations, Section 1865.42, (added in 1978),
10 subdivision (a), provides that “furniture and equipment may be included as part of the
11 project.” Subdivision (b) requires that “cost standards for furniture and equipment shall
12 be established on a quarterly basis by the board based upon the kinds, quality,
13 quantities, and costs of furniture and equipment most commonly acquired by school
14 districts for comparable facilities.” Subdivision (c) requires that “before requesting funds
15 for furniture and equipment for a project, the district shall give full consideration to all
16 usable furniture and equipment existing in the district. The district may apply for funds
17 to provide such furniture and equipment as needed to complete the project within the
18 standards established by the board. The furniture and equipment allowance for
19 replacement or reconstruction projects cannot exceed 50% of the allowance for
20 comparable new facilities unless specifically approved by the board.” Subdivision (d)
21 requires that “an allowance will be calculated for each construction project in

Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1 accordance with 1865.42(b) and (c) above. The amount so calculated will be authorized
2 as the cash allowance for the project to be expended by the district in furnishing and
3 equipping the project." Subdivision (e) requires that "furniture and equipment shall be
4 purchased by the district by competitive bidding where required to do so by the
5 Education Code or other provisions of law. However, even where the district is not
6 otherwise required to purchase the same through competitive bidding, the board may
7 require the district to do so where it believes that it is likely that such bidding would
8 result in a lower cost than other methods."

9 Title 2, California Code of Regulations, Section 1865.43, (added in 1980),
10 subdivision (a), requires that "the district shall make all repairs, renewals and
11 replacements necessary to keep the project in good repair, working order and condition
12 at all times. All costs for this purpose will be borne by the district." Subdivision (b)
13 requires that "in the event the project requires repairs, renewals or replacements as a
14 result of damages from any cause, casualty, or otherwise, the district shall make the
15 same. In such event the board shall contribute any insurance funds available to it for
16 this purpose."

17 ARTICLE 5. PROJECT APPROVAL AND LEASE-PURCHASE AGREEMENTS

18 Title 2, California Code of Regulations, Section 1865.50, (added in 1978 and last
19 amended in 1980), provides that "the board may approve in whole or in part any
20 application submitted pursuant to the Act. Upon receipt of the application, the executive
21 officer shall review it for proper form and compliance with statutes and regulations of

1 the board. After such review and any necessary corrections, the executive officer shall
2 present the application to the board with recommendations, in whole or in such part as
3 will satisfy the board's policy of approving funds for feasibility studies, site acquisition
4 and/or preparing plans and specifications, and project construction in separate
5 increments, whereupon the board shall consider the application provided it (the
6 application) has sufficient priority to warrant such consideration. If the application meets
7 with the board's approval, it shall grant its approval and shall make an apportionment
8 for the financing of the project from any sources available for such purposes. The
9 apportionment shall be conditioned upon the district subsequently entering into a
10 lease-purchase agreement with the state. After such approval and apportionment of
11 funds, the executive officer of the board shall authorize the district, as the agent of the
12 board, to perform all acts necessary to effectively complete the particular phase of the
13 approved project. Such authorization shall be specifically set forth in writing to the
14 district and shall be conditioned upon the district having entered into or subsequently
15 entering into a lease-purchase agreement with the board either in the form of (1) a
16 lease-purchase for feasibility studies, (2) the lease-purchase of a site and/or plans, or
17 (3) the lease-purchase of an entire project. Failure on the part of the district to enter into
18 such agreement shall invalidate such authorization, and any obligations incurred as a
19 result thereof shall become the sole responsibility of the district. Upon receipt of
20 successive phases of the project, the executive officer shall have the authority to
21 amend the project budget within the apportionment so made or to reduce the total

1 appportionment to conform to the project as bid. The executive officer is authorized to
2 enter into a lease-purchase agreement or agreements with the district on behalf of the
3 board.”

4 Title 2, California Code of Regulations, Section 1865.51, (added in 1978 and last
5 amended in 1980), subdivision (a), requires that “in addition to complying with any other
6 requirements of these regulations or the act, the board, at the time of making an
7 appportionment, shall:

8 (1) Approve a total estimated cost and a budget for the project.

9 (2) Prescribe the purposes for which an appportionment may be expended.

10 (3) Prescribe the manner, terms, and conditions for releasing the appportionment
11 to the district.”

12 Subdivision (b) requires that “notwithstanding anything to the contrary in these
13 regulations, the board shall have power to modify any appportionment or resolution of
14 appportionment where it determines good cause exists therefor.”

15 Title 2, California Code of Regulations, Section 1865.52, (added in 1980),
16 requires that “the rental payments required by Section 17732 [referring to current
17 Education Code Section 17032] of the act will become due and payable on September
18 15 following the date the lease-purchase agreement is executed and on each
19 successive September 15th thereafter during the life of this agreement. The payment
20 may be in the form of a contribution toward the cost of an ongoing project or as a direct
21 remittance. An Annual Certification of Funds Available for Rents shall be submitted by

1 each district prior to August 15 each year. The payment required for a district desiring to
2 exercise an option to purchase shall be the total cost of the project less any rental
3 payments made or to be made from sources identified in Section 17732(c) and (d) of
4 the act.”

5 ARTICLE 6. PROJECT BUDGET

6 Title 2, California Code of Regulations, Section 1865.60, (added in 1978 and last
7 amended in 1981), requires that “the project budget prescribed by the board shall be
8 set up in such a manner as to contain all costs attributable to the project, categorized
9 as follows: Sites; Plans; Construction; Tests; Inspection; Furniture and Equipment; and
10 Contingencies. Within these major categories the following limitations shall apply:

11 (1) Sites:

12 (A) The board shall not authorize the expenditure of any funds for real
13 property in excess of the fair market value of such property.

14 (B) Relocation assistance costs to landowners or persons displaced
15 pursuant to Sections 7260 et seq. of Chapter 16, Division 7, Title I of the
16 Government Code, referred to as the “Relocation Assistance Law,” in
17 conjunction with an acquisition of a site for which an application for a
18 lease-purchase project is made, shall be administered by the district
19 affected in accordance with the requirements of said sections.

20 (2) Plans:

21 (A) Fees for architectural and engineering services, including architectural

1 supervision, shall not exceed the standards established by the board.

2 (B) The board shall require that each architectural contract contain a
3 clause to the effect that the architect shall be responsible for making,
4 without additional cost to the district, any changes or redesigning made
5 necessary as a result of the bids exceeding the cost standards
6 established by the board.

7 (C) Any other plan fees or changes required by law.

8 (3) Construction: Costs shown for construction shall not exceed the cost
9 standards established by the board.

10 (4) Tests: The amount for tests shall be limited to the actual costs of tests which
11 are required by Title 21 of the California Administrative Code or other applicable
12 provisions of law, or which are in accordance with good or accepted practice.

13 (5) Inspection: The amount for inspection shall be limited to such amounts as is
14 required to insure that the project is completed in accordance with plans and
15 specifications and any other legal requirements.

16 (6) Furniture and Equipment: The amount for furniture and equipment shall be
17 limited to that determined pursuant to Section 1865.42 hereof.

18 (7) Contingencies:

19 (A) An amount may be included for contingencies which shall not exceed
20 such maximums as the board may prescribe for any class of application
21 or value of facilities in a project budget.

1 (B) Contingency funds may be used only after specific approval by the
2 executive officer for items of construction or other approved project costs
3 where the cost increase or the item required is necessary for the
4 completion of a facility which has been approved by the board.”

5 Title 2, California Code of Regulations, Section 1865.61, (added in 1978),
6 subdivision (a), provides that “the executive officer may revise any item within a project
7 budget, upward or downward, provided that no such revision results in an increase in
8 the total amount of the project budget approved by the board.” Subdivision (b) provides
9 that “the executive officer may reduce any apportionment as may be necessary to
10 reflect any revision made pursuant to (a) above.”

11 ARTICLE 7. DISPOSITION OF PROPERTY

12 Title 2, California Code of Regulations, Section 1865.70, (added in 1980),
13 provides that “whenever a district disposes by sale or lease of any land or buildings no
14 longer needed for school purposes, the net proceeds therefrom shall be remitted to the
15 state, as rental payments pursuant to Education Code Section 17732 [referring to
16 current Education Code Section 17032 providing that the board shall fix rents for all
17 projects acquired and may change the rents from time to time as may be needed]. Such
18 payment(s) shall be applied to the outstanding balance of any approved projects in the
19 order(s) of approval.”

20 Title 2, California Code of Regulations, Section 1865.70.5, (added in 1982),
21 provides that “whenever disposition of a surplus school site is required as a condition of

1 approval of a project and an apportionment of funds pursuant to Education Code
2 Section 17760 et. seq. ["Joint Venture School Facilities Construction Projects"], the
3 existence of the surplus school site shall be deemed to be justified in accordance with
4 the provisions of Education Code Section 17762 [providing that joint venture
5 agreements shall include, but not be limited to (1) the cost of the approved project, (2) a
6 detailed description of the project, (3) the timeframe for completion of the project, and
7 (4) a requirement that there shall be no state liability if funds are not available within a
8 four-year period] while the disposition process is occurring."

9 Title 2, California Code of Regulations, Section 1865.71, (added in 1978 and last
10 amended in 1980), subdivision (a), requires that "excess improvements acquired with a
11 site purchase shall be offered for sale prior to the advertising of a project for
12 construction bids, in accordance with the method and manner prescribed for the sale of
13 personal property under Section 39520 et seq. of the Education Code. The net
14 proceeds received from any such disposition shall be deposited in the County School
15 Lease-Purchase Fund as a credit against the cost of the project." Subdivision (b)
16 requires that "when facilities acquired with a site purchase have been offered for sale
17 pursuant to Section 39520 et seq. [referring to current Section 17545 providing that the
18 governing board of any school district may sell for cash any personal property belonging
19 to the district if the property is not required for school purposes, or if it should be
20 disposed of for the purpose of replacement, or if it is unsatisfactory or not suitable for
21 school use] of the Education Code and no acceptable bids are received prior to the time

1 the construction project is ready to be advertised for construction bids, the district shall
2 adopt a resolution making a finding that the property is of insufficient value to defray the
3 costs of arranging a subsequent sale as provided by Section 39521(b) [referring to
4 current Section 17545(b) providing that the governing board may choose to conduct
5 any sale of personal property by means of a public auction conducted by employees of
6 the district or other public agencies, or by contract with a private auction firm] of the
7 Education Code and proceed to demolish such property using funds approved in the
8 project for this purpose.”

9 ARTICLE 8. LEASE-PURCHASE OF SITES AND PLANS

10 Title 2, California Code of Regulations, Section 1865.75, (added in 1978),
11 subdivision (a), requires that “except as otherwise provided by the act or these
12 regulations, the provisions of these regulations shall apply to applications for sites
13 and/or plans and specifications made pursuant to Section 17720 [referring to current
14 Education Code Section 17020] of the act.” Subdivision (b) provides that “nothing
15 contained in the regulations shall be construed to prohibit the executive officer from
16 entering into a lease agreement with option to purchase for a site and/or plans pursuant
17 to Regulation 1865.32 without construction, even though such items may constitute only
18 a part of the project as approved by the board. A lease-purchase agreement or
19 agreements may be subsequently entered into by the executive officer for the balance
20 of the project.”

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The Lease-Purchase Applicant Handbook of April 1998, School Facility Program Guidebook of January 2003, State Relocatable Classroom Program Handbook of January 2003, and Substantial Progress and Expenditure Audit Guide of May 2003, and their preceding editions, are "Executive Orders" as defined in the Government Code Section 17516⁴²², together with the code sections and the regulations referenced in this test claim result in school districts, county offices of education and community college districts incurring costs mandated by the state, as defined in Government Code Section 17514⁴²³, by creating new state-mandated duties related to the uniquely

⁴²² Government Code Section 17516, added by Chapter 1459, Statutes of 1984, Section 1:

"'Executive Order' means any order, plan, requirement, rule, or regulation issued by any of the following:

- (a) The Governor.
- (b) Any officer or official serving at the pleasure of the Governor.
- (c) Any agency, department, board, or commission of state government.

'Executive Order' does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. It is the intent of the Legislature that the State Water Resources Control Board and regional water quality control boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. 'Major' means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."

⁴²³ Government Code Section 17514, as added by Chapter 1459/84:

"'Costs mandated by the state' means any increases costs which a local agency

1 governmental function of providing public education and services to students. These
2 statutes apply to school districts, county offices of education and community college
3 districts and do not apply generally to all residents and entities in the state⁴²⁴.

4 The new duties mandated by the state upon school districts, county offices of
5 education and community college districts require state reimbursement of all the direct
6 and indirect costs including labor, material and supplies, data processing services and
7 software, contracted services and consultants, equipment and capital assets, staff and
8 student training and travel to implement the duties required by law. The activities and
9 duties described in the legislative history and the declarations attached are incorporated
10 in their entirety as the statement of duties of this test claim. In addition, the attached
11 declarations incorporate in the statement of duties by reference the "Executive Orders"
12 of the Lease-Purchase Applicant Handbook of April 1998, School Facility Program
13 Guidebook of January 2003, State Relocatable Classroom Program Handbook of

or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

⁴²⁴ Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

1 January 2003, and Substantial Progress and Expenditure Audit Guide of May 2003,
2 and their predecessor editions.

3 SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

4 None of the Government Code Section 17556⁴²⁵ statutory exceptions to a finding
5 of costs mandated by the state apply to this test claim. Note, that to the extent the
6 school districts, county offices of education or community college districts may have

⁴²⁵ Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

1 previously performed functions similar to those mandated by the referenced laws,
2 regulations and executive orders, such efforts did not establish a preexisting duty that
3 would relieve the state of its constitutional requirement to later reimburse the school
4 districts, county offices of education or community college districts when these activities
5 became mandated.⁴²⁶

6 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

7 To the extent that funds are appropriated by the state for reimbursement of
8 these costs mandated by the state and continue to be appropriated and received by the
9 school districts, county offices of education and community college districts, these
10 amounts shall offset the costs incurred to implement the mandate source.

11 Also, to the extent that bonds proceeds can be utilized to fund the administration
12 costs of implementing the mandate, those amounts would offset the cost of those
13 administration.

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18
⁴²⁶ Government Code section 17565, added by Chapter 879, Statutes of 1986:

“If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1	Chapter 159, Statutes of 2001
2	Chapter 132, Statutes of 2001
3	Chapter 753, Statutes of 2000
4	Chapter 590, Statutes of 2000
5	Chapter 580, Statutes of 2000
6	Chapter 530, Statutes of 2000
7	Chapter 193, Statutes of 2000
8	Chapter 44, Statutes of 2000
9	Chapter 992, Statutes of 1999
10	Chapter 858, Statutes of 1999
11	Chapter 709, Statutes of 1999
12	Chapter 133, Statutes of 1999
13	Chapter 1076, Statutes of 1998
14	Chapter 957, Statutes of 1998
5	Chapter 941, Statutes of 1998
16	Chapter 848, Statutes of 1998
17	Chapter 741, Statutes of 1998
18	Chapter 691, Statutes of 1998
19	Chapter 485, Statutes of 1998
20	Chapter 407, Statutes of 1998
21	Chapter 940, Statutes of 1997

Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1 Chapter 893, Statutes of 1997

2 Chapter 513, Statutes of 1997

3 Chapter 277, Statutes of 1996

4 Chapter 1, Statutes of 1996

5 Chapter 13, Statutes of 1992

6 Chapter 6, Statutes of 1990

7 Chapter 44, Statutes of 1988

8 Chapter 424, Statutes of 1986

9 Exhibit 3: Copies of Code Sections Cited

10 Education Code Sections 15264 through 15362

11 Education Code Sections 15380 through 15405

12 Education Code Section 15425

13 Education Code Sections 17000 through 17066

14 Education Code Sections 17070.10 through 17078.30

15 Education Code Sections 17080 through 17150

16 Education Code Sections 17170 through 17199.5

17 Education Code Sections 67330 through 67342

18 Education Code Sections 67345 through 67359.2

19 Education Code Sections 67359.20

20 Education Code Sections 100000 through 100185

21 Education Code Sections 100400 through 100560

Test Claim of Clovis Unified School District
School Facilities Funding Requirements

1 Education Code Sections 100600 through 100760

2 Education Code Sections 100800 through 100970

3 Exhibit 4: Copies of Regulations Cited

4 Title 2, California Code of Regulations, Sections 1859 through

5 1859.107

6 Title 2, California Code of Regulations, Sections 1862.50 through

7 1862.56

8 Title 2, California Code of Regulations, Sections 1865.1 through

9 1865.80

10 Exhibit 5: Implementing Guidelines

11 Substantial Progress and Expenditure Audit Guide of May 2003

12 School Facility Program Guidebook of January 2003

13 State Relocatable Classroom Program Handbook of January 2003

14 The Lease-Purchase Applicant Handbook of April 1988

5 Exhibit 6: Legislative Index

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18 /

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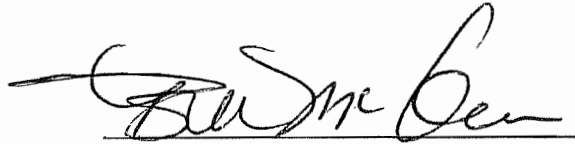
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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 4th, 2003, at Clovis, California by:

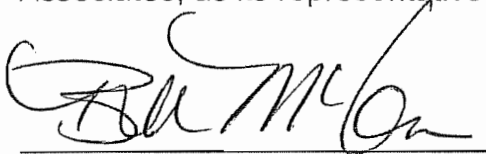


William C. McGuire
Associate Superintendent
Clovis Unified School District

Voice: (559) 327-9110
Fax: (559) 327-9129

PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis Unified School District appoints Keith B. Petersen, SixTen and Associates and Associates, as its representative for this test claim.



6/4/2003

William C. McGuire
Associate Superintendent
Clovis Unified School District

Date

EXHIBIT 1
DECLARATIONS

DECLARATION OF WILLIAM C. MCGUIRE

Clovis Unified School District

Test Claim of Clovis Unified School District

COSM No. _____

- Chapter 1168, Statutes of 2002
- Chapter 1075, Statutes of 2002
- Chapter 935, Statutes of 2002
- Chapter 199, Statutes of 2002
- Chapter 33, Statutes of 2002
- Chapter 734, Statutes of 2001
- Chapter 725, Statutes of 2001
- Chapter 647, Statutes of 2001
- Chapter 194, Statutes of 2001
- Chapter 159, Statutes of 2001
- Chapter 132, Statutes of 2001
- Chapter 753, Statutes of 2000
- Chapter 590, Statutes of 2000
- Chapter 530, Statutes of 2000
- Chapter 193, Statutes of 2000
- Chapter 44, Statutes of 2000
- Chapter 992, Statutes of 1999
- Chapter 858, Statutes of 1999
- Chapter 709, Statutes of 1999
- Chapter 133, Statutes of 1999
- Chapter 1076, Statutes of 1998
- Chapter 957, Statutes of 1998
- Chapter 941, Statutes of 1998
- Chapter 848, Statutes of 1998
- Chapter 741, Statutes of 1998
- Chapter 691, Statutes of 1998
- Chapter 407, Statutes of 1998
- Chapter 940, Statutes of 1997
- Chapter 893, Statutes of 1997
- Chapter 513, Statutes of 1997
- Chapter 277, Statutes of 1996

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Declaration of William C. McGuire
 Test Claim of Clovis Unified School District
 School Facilities Funding Requirements

Education Code Sections:

15271	15272	15274	15278	15280	15282	15284
15301	15302	15303	15320	15321	15322	15323
15324	15325	15326	15327	15336	15340	15341
15342	15343	15346	15347	15349	15349.1	15350
15351	15352	15354	15355	15359.2	15359.3	15380
15381	15384	15390	15391	17006	17008.3	
17009.5	17014	17015	17017	17017.5	17017.6	
17017.7	17017.9	17018	17018.5	17018.7	17019.3	
17019.5	17020	17021.3	17022	17022.7	17024	17025
17029	17029.5	17030	17030.5	17031	17032	
17032.3	17032.5	17036	17038	17040	17040.1	
17040.2	17040.3	17040.6	17040.7	17040.8	17041.1	
17041.2	17041.8	17042.7	17042.9	17047	17047.5	17049
17056	17059	17059.1	17061	17062	17063	
17064	17065	17066	17070.33	17070.50	17070.51	
17070.60	17070.63	17070.70	17070.71	17070.75	17070.77	
17070.80	17070.90	17070.95	17070.97	17070.98	17071.10	
17071.25	17071.30	17071.33	17071.35	17071.40	17071.46	
17071.75	17072.10	17072.12	17072.13	17072.20	17072.33	
17072.35	17073.10	17074.10	17074.15	17074.16	17074.20	
17074.25	17074.26	17074.30	17074.50	17074.52	17074.54	
17074.56	17075.10	17075.15	17076.10	17076.11	17077.10	
17077.30	17077.35	17077.40	17077.42	17077.45	17078.18	
17078.20	17078.22	17078.24	17078.25	17088.3	17088.5	
17088.7	17089	17089.2	17090	17092	17096	17110
17111	17150	17180	17183.5	17193.5	17194	
17199.1	17199.4	100620				

Title 2, California Code of Regulations, Sections:

1859.20	1859.21	1859.22	1859.30	1859.31	1859.32
1859.33	1859.35	1859.40	1859.41	1859.50	1859.60
1859.70	1859.72	1859.74.1	1859.75	1859.75.1	1859.76
1859.77.1	1859.77.2	1859.79	1859.79.2	1859.79.3	1859.81
1859.81.1	1859.82	1859.90	1859.100	1859.102	1859.104
1859.104.1	1859.104.2	1859.104.3	1859.105	1859.105.1	1859.106
1859.107	1862.52	1862.53	1865.3	1865.8	1865.32.5
1865.33	1865.39	1865.42	1865.43	1865.50	1865.70

(Continued of Next Page)

Implementing Guidelines:

Substantial Progress and Expenditure Audit Guide of May 2003

School Facility Program Guidebook of January 2003

State Relocatable Classroom Program Handbook of January 2003

The Lease-Purchase Applicant Handbook of April 1988

School Facilities Funding Requirements

I, William C. McGuire, Associate Superintendent, Clovis Unified School District, make the following declaration and statement.

In my capacity as Associate Superintendent, I am responsible for the acquisition of funding for school facility construction. I am familiar with the provisions and requirements of the statutes, code sections, regulations, and the implementing guidelines enumerated above, which require the district to:

PART 10 "SCHOOL BONDS"

CHAPTER 1.5 "STRICT ACCOUNTABILITY IN LOCAL SCHOOL CONSTRUCTION

BONDS ACT OF 2000," as added by Chapter 44, Statutes of 2000, Section 3:

Article 1. General Provisions

- a. When the governing board decides, with a two-thirds vote, to pursue the issuance of bonds under Paragraph (3), Subdivision (b), Section 1, of Article XIII A of the California Constitution and Subdivision (b), Section 18, of Article XVI of the California Constitution, an election shall be ordered, as may be necessary, on the question of whether bonds shall be issued under Subdivision (b), Section 18, of Article XVI of the California Constitution at a primary election, a regularly scheduled local election, or

- a statewide special election, pursuant to Education Code Section 15266, subdivision (a).
- b. Upon resolution to incur bonded indebtedness and after the question has been submitted to the voters, if approved at the election, the governing board cannot, regardless of the number of votes cast in favor of the bond, subsequently proceed under Chapter 2, "Bonds of School Facilities Improvement Districts," pursuant to Education Code Section 15266, subdivision (b).
- c. Issue bonds that do not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located, pursuant to Education Code Section 15270, subdivision (a).
- d. Issue, as may be necessary, bonds if the tax rate levied to meet the requirements of Section 18, of Article XVI of the California Constitution in the case of indebtedness incurred under the "Strict Accountability in Local School Construction Bonds Act of 2000" at a single election of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution, pursuant to Education Code Section 15270, subdivision (a).
- e. Include in the computation of its outstanding bonded indebtedness, any outstanding bonds issued for elementary school purposes and high school

purposes, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board, pursuant to Education Code Section 15270, subdivision (c).

- f. Proceed under the "Strict Accountability in Local School Construction Bonds Act of 2000" on behalf of a school facilities improvement district and act on behalf of the school facilities district as provided under Chapter 2, "Bonds of School Facilities Improvement Districts," pursuant to Education Code Section 15271.
- g. Provide a written statement on all bond ballots stating that the board will appoint a citizens' oversight committee and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes, pursuant to Education Code Section 15272.
- h. Make an entry upon its minutes if it appears from the certificate of election results that 55 percent of the votes cast on the proposition of issuing bonds pursuant to Subdivision (b) of Section 18 of Article XVI of the California Constitution are in favor of issuing bonds, pursuant to Education Code Section 15274.
- i. Certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the district, all proceedings "had in the

premises,” pursuant to Education Code Section 15274.

Article 2. Citizens’ Oversight Committee

- a. If a bond measure is authorized, establish and appoint members to an independent citizens’ oversight committee, within 60 days of the date the governing board enters the election results on its minutes, pursuant to Education Code Sections 15274, 15278, subdivisions (a) and (b), and 15282.
- b. Without expending bond funds, provide the citizens’ oversight committee with any technical assistance and must provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens’ oversight committee, pursuant to Education Code Section 15280, subdivision (a).
- c. Maintain an Internet website to make available the minutes of the proceedings of the citizens’ oversight committee, all documents received and all reports issued, pursuant to Education Code Section 15280, subdivision (b).

Article 3. Bond Accountability – “School Bond Waste Prevention Action”

Respond to any restraining orders filed by a citizen residing in the district who is assessed and is liable to pay, or who has paid within one year before the commencement of any action, an ad valorem tax on real property, pursuant to Education Code Section 15284, subdivision (a).

CHAPTER 2 "BONDS OF SCHOOL FACILITIES IMPROVEMENT DISTRICTS," as added by Chapter 277, Statutes of 1996, Section 2:

Article 1. General Provisions

- a. If the district that has a community facilities district formed under the "Mello-Roos Community Facilities Act of 1982," that has as one of its purposes the construction of school facilities within a portion of the territory of the school district, shall, as may be necessary, proceed under the "Bonds of School Facilities Improvement Districts," pursuant to Education Code Section 15301, subdivision (a).
- b. Proceed without meeting the requirements of previous Duty (a), if the governing board determines it is necessary and in the best interest of the school district to form a school facilities improvement district to finance any or all of the improvements set forth in Section 15302, Duty (g), pursuant to Education Code Section 15301, subdivision (c).
- c. Make a finding that the overall cost of other school facilities financing options available to the school district, including, but not limited to the "Mello-Roos Communities Facilities Act of 1982," pursuant to Education Code Section 15301, subdivision (c).
- d. Define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the school district, except that the boundaries may not include all or a portion of the territory

of the community facilities district described in Duty (a), pursuant to Education Code Section 15301, subdivision (c).

- e. Comply with the filing requirements established by Section 54902 of the Government Code (providing that on or before December 1 of the year immediately preceding the year in which the assessments or taxes are to be levied, the statement shall be filed with the auditor of each levying county, and the statement and the map or plat shall be filed with each assessor whose roll is used for the levy and with the State Board of Equalization in Sacramento), pursuant to Education Code Section 15301, subdivision (d).
- f. Specifically identify any property, located within the school district, that is not located within the improvement district established by the school district or community college district under this chapter, pursuant to Education Code Section 15301, subdivision (d).
- g. Issue general obligation bonds for the following purposes, if the purpose of the bonds is to benefit the land within the school facilities improvement district consistent with any of the following:
 - (1) To purchase real property upon which to construct school facilities, pursuant to Education Code Section 15302, subdivision (a);
 - (2) To build or purchase school facilities, pursuant to Education Code Section 15302, subdivision (b);

- (3) To make alterations or additions to the school facilities other than those necessary for ordinary maintenance, operation, or repairs, pursuant to Education Code Section 15302, subdivision (c);
- (4) To repair, restore, or rebuild any school facilities damaged, injured, or destroyed by fire or other public calamity, pursuant to Education Code Section 15302, subdivision (d);
- (5) To supply playgrounds with furniture, equipment, or necessary apparatus of a permanent nature, pursuant to Education Code Section 15302, subdivision (e);
- (6) To permanently improve school grounds, pursuant to Education Code Section 15302, subdivision (f);
- (7) To refund any valid outstanding indebtedness of the school facilities improvement district that is evidenced by bonds, pursuant to Education Code Section 15302, subdivision (g);
- (8) To carry out the projects or purposes authorized in Section 17577 (granting the governing board of each school district the power to provide sewers and drains adequate to treat and/or dispose of sewage and drainage on or away from each school property), the constructing of which may be paid from the building fund, including any bond moneys therein), pursuant to Education Code Section 15302, subdivision (h); and/or

- (9) To demolish or raze any school building with the intent to replace it with another school building, whether in the same location or in any other location, pursuant to Education Code Section 15302, subdivision (i).
- h. Provide the information to allow the board of supervisors of the county in which the superintendent of schools having jurisdiction over the school district or community college district in which the school facilities improvement district is located or, if a school facilities improvement district lies in two or more counties, the board of supervisors for those counties, to adopt by a majority vote this chapter before it becomes operative and applicable to any county or counties, pursuant to Education Code Section 15303.

Article 2. Formation of a District

- a. Adopt a resolution of intention that states all of the following:
 - (1) The intention of the governing board to form the proposed school facilities improvement district, pursuant to Education Code Section 15320, subdivision (a);
 - (2) The purpose for which the proposed school facilities improvement district is to be formed, consistent with the requirements set forth in Section 15302, Article 1, Duty (g), pursuant to Education Code Section 15320, subdivision (b);

- (3) The estimated cost of the school facilities improvement project, pursuant to Education Code Section 15320, subdivision (c);
 - (4) That any taxes levied for the purpose of financing the general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities improvement district, pursuant to Education Code Section 15320, subdivision (d);
 - (5) That a map showing the exterior boundaries of the proposed school facilities improvement district is on file with the governing board of the school district and is available for inspection by the public, pursuant to Education Code Sections 15301, subdivision (b), and 15320, subdivision (e);
 - (6) The time and place for a hearing by the governing board on the formation of the proposed school facilities improvement district, pursuant to Education Code Section 15320, subdivision (f); and
 - (7) That any interested persons, including all persons owning lands in the school district, or in the proposed school facilities improvement district, may appear and be heard, pursuant to Education Code Section 15320, subdivision (h).
- b. Provide notice of the hearing by publishing a copy of the resolution of intention in a newspaper of general circulation, at least 14 days prior to

the time fixed for the hearing, and must post a copy of the resolution in three public places within the proposed school facilities improvement district for at least 14 days prior to the time fixed for the hearing, pursuant to Education Code Section 15321.

- c. Hold the hearing provided for by resolution of intention at the time and place fixed by that resolution, pursuant to Education Code Section 15322.
- d. At the hearing, adopt a resolution proposing modification, consistent with Section 15302, Article 1, Duty (g), of the purpose stated in the resolution of intention, pursuant to Education Code Section 15323.
- e. Describe, in the district's resolution proposing modification, the proposed modifications, stating the change, if any, in the estimated cost of carrying out the purpose, and fix a time and place for hearing, pursuant to Education Code Section 15323.
- f. Publish the resolution proposing the modifications to the resolution of intention once in the same newspaper in which the resolution of intention was published at least 14 days prior to the date of hearing on the proposed modifications, pursuant to Education Code Section 15324.
- g. Hold the hearing on any proposed modifications at the same time and place as any continued hearing on the resolution of intention and both hearings shall be held and conducted concurrently, pursuant to Education Code Section 15325.

- h. At the conclusion of the hearing on the resolution of intention and of the hearing, if any, upon proposed modifications, order the school facilities district formed for the purpose and with the boundaries described in the resolution of intention, and if relevant, the resolution proposing modifications, pursuant to Education Code Section 15326.
- i. State, in the district's resolution ordering the school facilities improvement district formed, the estimated cost of carrying out the purpose described in the resolution, and number and designate the school facilities improvement district substantially as "School Facilities Improvement District of the ____ School District," pursuant to Education Code Section 15326.
- j. Provide the governing board the same rights, powers, duties and responsibilities with respect to the formation and government of school facilities improvement district as the governing board has with respect to the school district, pursuant to Education Code Section 15327.

Article 3. Financing the Bonds

Must submit, within 30 days after the end of each fiscal year, a report containing the information pertaining to an election under Article 4, "General Provisions for Bond Elections," to the county superintendent of schools who has jurisdiction over the school district along with:

- (1) The total amount of the bond issue, bonded indebtedness, or other indebtedness involved, pursuant to Education Code Section 15336, subdivision (a);
- (2) The percentage of qualified electors who are residents of the school facilities improvement district who voted at the election, pursuant to Education Code Section 15336, subdivision (b);
- (3) The results of the election, with the percentage of votes cast for and against the proposition involved, pursuant to Education Code Section 15336, subdivision (c).

Article 4. General Provisions for Bond Elections

- a. After adopting the resolution ordering the formation of the school facilities improvement district, provide for and call a special bond election within the school facilities improvement district to submit to the voters of the school facilities improvement district a proposition of whether or not an indebtedness of the district shall be incurred and bonds issued therefore in an amount not exceeding the estimate stated in the resolution ordering the school facilities improvement district formed, pursuant to Education Code Section 15340, subdivision (a).
- b. Not call a bond election within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as the statewide election, pursuant to Education Code Section

- 15341.
- c. Unite and vote upon any purposes enumerated in Section 15302, Article 1, Duty (g), in a single proposition, pursuant to Education Code Section 15342.
 - d. Conduct the bond election in accordance with the Elections Code except as provided by the following:
 - (1) As otherwise provided under Chapter 2 "Bonds of School Facilities Improvement Districts," pursuant to Education Code Section 15343, subdivision (a);
 - (2) That the formal notice of the election shall contain the items specified in Section 5361, pursuant to Education Code Section 15343, subdivision (b).
 - (3) No election shall be held under the provisions of this section in any school facilities improvement district for a period of 90 days after an election in the same school facilities improvement district, pursuant to Education Code Section 15343, subdivision (c).
 - e. Have the ballots prepared to state, "Bonds--Yes" and "Bonds--No," or words of similar import, a brief statement of the proposition, setting forth the amount of the bonds to be voted upon, the maximum rate of interest, the purposes for which the proceeds of the sale of the bonds are to be used, and any other forms and details as required by the ballot provisions

of Part 4 of the Government Code, pursuant to Education Code Sections 15346 and 15347.

- f. If it appears from the certificate of election results that two-thirds of the votes cast by the voters voting on the proposition of issuing bonds of the school facilities improvement district are in favor of issuing the bonds, enter the fact upon the governing board's minutes, pursuant to Education Code Section 15349.
- g. Certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the school district, all proceedings had in the premises, and the county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county, pursuant to Education Code Section 15349.
- h. Certify the proceedings relating to the authorization of bonds of a school facilities improvement district that is located within a joint school district of any type to the board of supervisors of the county whose superintendent of schools has jurisdiction over the school district in which the school facilities improvement district exists, pursuant to Education Code Section 15349.1.

Article 5. Issuance and Sale of Bonds

- a. Adopt a resolution prescribing the total amount of bonds to be sold, and, as may be necessary, prescribe the maximum interest rate, not to exceed

8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, but not more than 25 years from the date of the bonds before the board of supervisors offers bonds of a school facilities improvement district for sale, pursuant to Education Code Sections 15350, 15351, 15354 and 15355.

- b. If the governing board receives satisfactory bids, award the bonds offered for sale to the bidder whose bid will result in the lowest net interest cost for the group or for the bonds of any district within the group, pursuant to Education Code Section 15351.
- c. Issue the bonds in the name of the school facilities improvement district and designate them as "Bonds of the School Facilities Improvement District of the _____ School District" and each bond shall state that the tax for the payment thereof shall be limited to annual taxes levied upon and collected from the lands within the school facilities improvement district, pursuant to Education Code Section 15352.
- d. By action of the governing board, prepare, or have prepared, bond brochures to serve as a prospectus for bond buyers to assist in the satisfactory sale of the bonds, the expense of the brochures shall be payable out of the funds of the district, but only after the issuance of the bonds to be sold has been approved by the electors of the school facilities

- improvement district pursuant to Article 4, "General Provisions for Bond Elections," pursuant to Education Code Section 15359.2, subdivision (a).
- e. By action of the governing board, expend funds of the school facilities improvement district for the purposes of advertising the availability of the bonds for purchase in any publication or newspaper that in the opinion of that governing board will give notice to prospective bond buyers that the bonds are available for purchase by bond buyers, pursuant to Education Code Section 15359.2, subdivision (b).
- f. Proceed pursuant to Chapter 1.5 "Strict Accountability in Local School Construction Bonds Act of 2000," and subject to the requirements therein on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district under this chapter, pursuant to Education Code section 15359.3.

Article 8. Cancellation of Unsold Bonds

- a. Petition the board of supervisors that has jurisdiction of the issuance and sale of the bonds to cause the unsold bonds to be canceled if any bonds authorized under this chapter have not been offered for sale for one year from the date of the election at which they were authorized or remain unsold for a period of six months after having been offered for sale in the manner prescribed by the board of supervisors, pursuant to Education Code Section 15380.

- b. Have the petition signed by a majority of the governing board's members before the board of supervisors will fix a time for a hearing, not more than 30 days after receiving the petition, pursuant to Education Code Section 15381.
- c. Petition the board of supervisors to cancel the remaining authorization of that district to issue and sell bonds resulting from any particular school bond election after the sale of at least 90 percent of the bonds authorized at the election if the amount of the remaining authorization is not more than twenty-five thousand dollars (\$25,000) and in the opinion of the governing board the sale of the remaining bonds would not be economically justified, pursuant to Education Code Section 15384.

Article 9. Purchase of Bonds by Issuing School Districts

- a. Purchase in the open market bonds issued by the school facilities improvement district with available funds from the school facilities improvement fund, pursuant to Education Code Section 15390.
- b. After purchasing the bonds, notify the board of supervisors of its action, describing the bonds purchased, pursuant to Education Code Section 15391.

CHAPTER 12 "THE LEROY F. GREENE STATE SCHOOL BUILDING LEASE-

PURCHASE LAW OF 1976," as added by Chapter 277, Statutes of 1996, Section 2:

Article 1. Application Process

- a. Enter into an agreement with the State to receive funds for the construction, reconstruction, or replacement of school facilities from the State Allocation Board, pursuant to Title 2, California Code of Regulations Section 1865.3.
- b. Prepare an application package to include the following four forms:
 - (1) Projected Average Daily Attendance, Form SAB 411, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-1;
 - (2) Classroom Loading Summary, Form SAB 600S, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-1;
 - (3) Justification Document - New Construction and Modernization/Reconstruction, Form SAB 600, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-1;
 - (4) Application for Apportionment, Form SAB 506, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-1.
- c. Provide historical and current enrollment data that allows for an estimate of the district's future pupil population, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-2.

- d. Estimate the number of students to be generated by a new housing development and those students are factored into the enrollment projection of the district, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-2.
 - (1) Submit the following documentation:
 - i. A development map, identifying each housing unit in the development and the portion of the development that will be under construction within the next year and the number of housing units involved, on an 8 ½ by 11 sheet of paper, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-3; and
 - ii. A cover letter summarizing the information from all maps, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-3.

- e. Provide information about the number of existing classrooms in the district, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-3.
 - (1) Include any teaching station that is at least 800 square feet and was originally designed as a teaching station in determining the number of classrooms in a school district, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-3;

- (2) Not include any teaching station that is less than 600 square feet in determining the number of classrooms in a school district, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-3;
- (3) Count portable classrooms owned by the school district as part of the district's inventory of classrooms, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-3;
- (4) Not include Resource Specialist Program classrooms which were not constructed under the Lease Purchase Program as a result of an allowance as part of the district's inventory of classrooms, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-4;
- (5) Exclude teaching stations acquired or constructed for Class Size Reduction purposes when justified by the Class Size Reduction Classroom Exclusion, Form SAB 526 CSR, from the district's inventory of classrooms, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-4;
- (6) Exclude lease, lease-purchase and lease-with-option-to-buy portable classrooms from the school district's inventory of teaching stations for the initial five (5) years of the agreement, and may be extended for either an additional five (5) years or a two (2) year exclusion period depending on the following criteria:

- i. An additional five-year exclusion may be obtained for leased-only portable classrooms if the use of the leased portable is supported by additional growth of Average Daily Attendance, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-5; or
 - ii. An additional two-year exclusion may be obtained for lease-purchase or lease-with-option-to-buy portable classrooms provided the exclusion is necessary to maintain eligibility for a project previously approved, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-4.
- (7) Include a portable classroom that received an approval for continued use by the State Allocation Board, or portable classroom leased or leased-purchased at less than fair market value in the school district's inventory of teaching stations, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-5;
- (8) Exclude portable classrooms leased under the State Relocatable Classroom Program, Chapter 14, from the school district's inventory of teaching stations, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-5;
- (9) Exclude classrooms that have been continually used for the preceding five years at least 50 percent of the time for operation of

- pre-school programs, or buildings purchased for use as adult education, child care or Regional Occupation Programs with special override taxes, federal funds, local or State funds from the district's classroom inventory, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-5; and
- (10) Exclude, for facilities constructed under the Mello-Roos Community Facilities Act of 1982, those teaching stations but only for purposes of determining eligibility for reimbursement pursuant to Education Code Section 17018.5, and the "Lease-Purchase Applicant Handbook, April 1998," page 1-5.
- f. Determine that the facilities are fully utilized before consideration will be given to fund construction of teaching stations for that grade group, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-4.
- g. Abandon portable classrooms by either submitting a structural report or by the use of the 20 year rule, whereby if the district has owned and/or leased a portable classroom for at least 20 years and the structure was not previously modernized or used to generate modernization eligibility, or elect to abandon the building without a structural review, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," pages 1-4, 9-5. If the district elects to modernize the portable classroom, the district may not

seek abandonment of the facility until the expiration of 20 years from the notice of completion go the modernization work, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-11.

- (1) Make the school district's request for abandonment or rehabilitation to the Office of Public School Construction on the School District Appeal Request, Form SAB 189, and include all normal application documents required for either a new construction or modernization application, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 9-1;
- (2) Request funding either as a Priority 1 or 2 for the replacement or rehabilitation of facilities, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 9-1;
- (3) Qualify for an interim housing allowance for any facility approved for replacement or rehabilitation in accordance with the State Allocation Board's Interim Housing policy for modernization projects, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 9-1;
- (4) Not use any facilities approved for abandonment as a "school building," and portable classrooms abandoned under the 20 year rule must be removed from service within 180 days after filing a notice of completion for the project that replaced the classrooms,

- pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 9-1;
- (5) Replace the abandoned portable classroom with a portable classroom, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 9-5;
- (6) Request to replace an abandoned portable classroom with a permanent classroom, but the district must agree to finance the added building cost allowance of the replacement classroom that exceeds \$35 per square foot, adjusted for the appropriate indices, with either general obligation bonds or Mello-Roos Community Facilities Act bonds, pursuant to Education Code Section 17042.9, and the "Lease-Purchase Applicant Handbook, April 1998," page 9-5. The resulting area of new building construction must be no greater than the area that would be authorized for the lease or purchase of a new portable classroom, pursuant to Education Code Section 17042.9, subdivision (a).
- h. Have historical documentation adopted by the district's board on or before July 1, 1992 that includes a student/teacher ratio lower than the loading standards to reduce the Student Loading Standards by up to three (3) Average Daily Attendance, pursuant to Education Code Section 17047, and the "Lease-Purchase Applicant Handbook, April 1998," page 1-6.

- i. If the school district operates multi-track year-round education schools, request Operational Grant funding from the California Department of Education, but must then reduce the number of students reported by the California Department of Education from the district's eligibility to construct new facilities, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-8. Request a waiver from the preceding duty through the Waiver and Review Committee because of educational or financial hardship, pursuant to Education Code Section 17017.5, subdivision (e), and the "Lease-Purchase Applicant Handbook, April 1998," page 1-8.
- j. Meet the Substantial Enrollment Requirement or agree to an eligibility reduction, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-8.
 - (1) Have enrollment of at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, or 40 percent of pupils in kindergarten and grades 1 to 12, inclusive, in the high school attendance area in which the school district is applying for new facilities, pursuant to Education Code Sections 17017.6 and 17017.7, subdivision (c).
 - (2) Perform the enrollment calculations, certify them to the State Allocation Board, maintain documentation of the calculations, and

be subject to audit, pursuant to Education Code Section 17017.7, subdivision (c).

- k. Assign projected Average Daily Attendance to under 30 year old classrooms before assigning projected Average Daily Attendance to qualifying 30 year or older classrooms, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-10. Projected Average Daily Attendance for classrooms that are at least 30 years old generates a modernization bank of building area that the district may allocate to any school building in the district qualifies to be modernized, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-11. However, the school district must modernize all building areas of the first qualifying building before selecting the next qualifying building, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-11. If the modernization bank is insufficient to modernize the entire building, the school district must fund the excess building area or choose not to modernize the building, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-11.
- l. Identify one or more persons to serve in the capacity of District Representative, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-11.

- m. Have enough classrooms in the district's project to adequately house the Average Daily Attendance assigned, or certify that the district has reviewed its education plan with the California Department of Education and they jointly agree that the facilities have adequate teaching station equivalents to serve the Average Daily Attendance assigned to the project, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-11.
- n. Agree to fund at least 50 percent of the eligible project cost, generally known as Priority for Funding Level 1, or request 100 percent State funding of the eligible project cost, generally known as Priority for Funding Level 2, pursuant to Education Code Section 17017.7, and the "Lease-Purchase Applicant Handbook, April 1998," page 1-12. To be eligible for new construction types of applications under Funding Level 1 or Funding Level 2, the school district must meet the multi-track year-round requirements, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-12.
- o. Reconstruct a building if all the following conditions are met:
 - (1) The building is eligible for modernization funding, pursuant to Education Code Section 17022.7, subdivision (b), and the "Lease-Purchase Applicant Handbook, April 1998," page 1-13;

- (2) The building's existing Average Attendance Area will be increased by at least 10 percent of by five teaching stations which ever is less - the district must have unhoused Average Daily Attendance to comply with this requirement, pursuant to Education Code Section 17022.7, subdivision (b), and the "Lease-Purchase Applicant Handbook, April 1998," page 1-13;
 - (3) The resulting Average Daily Attendance capacity of the school site must not generate more building area than currently exists at the site, pursuant to Education Code Section 17022.7, subdivision (b), and the "Lease-Purchase Applicant Handbook, April 1998," page 1-13; and
 - (4) The cost to reconstruct the building is equal to or less than 75 percent of the replacement cost of the building, pursuant to Education Code Section 17022.7, subdivision (b), and the "Lease-Purchase Applicant Handbook, April 1998," page 1-13.
- p. Request the rehabilitation of a building if all the following conditions are met:
- (1) The building is eligible for modernization funding, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-13;

- (2) The cost to rehabilitate the building does not exceed 75 percent of the replacement cost of the building, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-13; and
 - (3) The building does not meet the structural safety requirements of the Field Act for the year in which the building was constructed, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-13.
- q. Request seismic retrofit funding if it has a school that meet all of the following:
- (1) The facility is structurally adequate and eligible for modernization funds under the Lease-Purchase Program, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-13, and Appendix 5-1;
 - (2) All classrooms in the district or high school attendance area which do not require seismic structural improvements have been fully loaded before any unhoused pupils were assigned to a project requesting seismic funding, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-13, and Appendix 5-1;
 - (3) The district has submitted a report from a licensed structural engineer which identifies minimum work necessary to address the seismic structural improvements necessary to avert probable

earthquake damage including a statement that the facility meets the structural requirements in existence when the facility was originally constructed, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-13, and Appendix 5-1;

- (4) The district has submitted a letter from the Division of the State Architect which concurs with the findings in the structural report, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-13, and Appendix 5-1; and
- (5) An accounting of all capital facilities funding potentially available to the district, including and Federal or local funding and State funds other than those provided through the State Allocation Board, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-13, and Appendix 5-1.

r. Once the school district has received approval and apportionment of funds for an application, the funds will be released to the district after it submits the following:

- (1) Executed 40 year Lease-Purchase Agreement with the State of California, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-14;

- (2) Certification of an executed Architect Agreement on the Architect Agreement Certification, Form SAB 533A, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-14; and
 - (3) Certification of California Environmental Quality Act compliance, Form SAB 490, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-14.
- s. Ensure that general practice architectural errors and omissions insurance coverage of at least \$500,000 is provided and paid for by the architect, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-14.
 - t. Fund the additional architect fees beyond the maximum fee schedule allowed, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-14.
 - u. Ensure that allowable termination scenarios are specified in the agreement, and if the terms are challenged the district must defend the provisions of the agreement at no cost to the State, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," page 1-14.

Article 2. Project Approval

- a. In the case of a lease with respect to an application for replacing inadequate school facilities, certify to the State Allocation Board that it has

investigated and found one or both of the following conditions in existence:

- (1) It would not be economical or good practice to rehabilitate those facilities, pursuant to Education Code Section 17006, subdivision (a); and/or
 - (2) The school facilities are inadequate due to their susceptibility to repeated flooding, pursuant to Education Code Section 17006, subdivision (a).
- b. Maintain documentation of each investigation which may be subject to audit, pursuant to Education Code Section 17006, subdivision (b).
 - c. Receive a loan, not exceeding 3 percent of the estimated project cost, for the purpose of advance planning and related administrative costs pursuant to the preparation of that application, pursuant to Education Code Section 17008.3, subdivision (b).
 - d. Receive funding for all unfunded approved project costs with any increased capacity included in calculating the district's capacity under "The Leroy F. Greene School Facilities Act of 1998," Chapter 12.5, if the school district with a first priority project has received construction approval by the Department of General Services, Division of the State Architect, or joint-use project approval by the State Allocation Board, prior

to November 4, 1998, for growth or modernization, pursuant to Education Code Section 17009.5, subdivision (b).

- e. In the case of a second priority project that has received a construction approval by the Department of General Services, Division of the State Architect prior to November 4, 1998, for growth or modernization, elect either of the following:
- (1) Withdraw the application and submit an initial report and application pursuant to "The Leroy F. Greene School Facilities Act of 1998," Chapter 12.5, and receive per pupil allocations as set forth therein, pursuant to Education Code Section 17009.5, subdivision (c)(1). Any funds previously allocated must be offset from the first grant to the district under "The Leroy F. Greene School Facilities Act of 1998," pursuant to Education Code Section 17009.5, subdivision (c)(1); or
 - (2) Convert the approved second priority project to a first priority status and receive funds in accordance with this chapter, pursuant to Education Code Section 17009.5, subdivision (c)(2).

Article 3. Project Requirements

- a. Make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition; all costs incurred for this purpose shall be borne by the school district,

pursuant to Education Code Section 17014, subdivision (a), and Title 2, California Code of Regulations Section 1865.43, subdivision (a).

- b. In the event the project requires repairs, renewals or replacements as a result of damages from any cause, casualty, or otherwise, make the same, pursuant to Title 2, California Code of Regulations Section 1865.43, subdivision (b).
- c. Prior to project approval:
 - (1) Establish a restricted account within the district's general fund for the exclusive purpose of providing moneys for ongoing maintenance and routine repair of school buildings to ensure that State School Building Lease-Purchase projects are at all times kept in good repair and working order, prior to the initial approval of a State School Building Lease-Purchase project, pursuant to Education Code Section 17014, subdivision (b)(1), and the "Lease-Purchase Applicant Handbook, April 1998," Appendix, 3-1.; and
 - (2) Deposit into the account, in each fiscal year for the term of the lease agreements of all projects constructed under this chapter, a minimum amount equal to or greater than 2 percent of the applicant's general fund budget for that fiscal year, pursuant to Education Code Section 17014, subdivision (b)(2), and the "Lease-Purchase Applicant Handbook, April 1998," Appendix, 3-1, 3-2.

Annual verification of this action must be made no later than September 30, beginning with the fiscal year following the fiscal year that the project is initially approved, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," Appendix, 3-2.

- d. For each project funded after July 1, 1998, certify, as part of the school district's annual budget process and beginning in the fiscal year in which the project is funded by the state, propose a plan for completing major maintenance, repair, and replacement requirements for the project (including roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and other items designated by the governing board of the school district), pursuant to Education Code Section 17014, subdivision (c).
- e. Certify that the plan includes:
 - (1) Identification of the major maintenance, repair, and replacement needs for the project, pursuant to Education Code Section 17014, subdivision (c)(1);
 - (2) Specification of a schedule for completing the major maintenance, repair, and replacement needs, pursuant to Education Code Section 17014, subdivision (c)(2);

- (3) Specification of a current cost estimate for the scheduled major maintenance, repair, and replacement needs, pursuant to Education Code Section 17014, subdivision (c)(3);
- (4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance, repair, and replacement needs, pursuant to Education Code Section 17014, subdivision (c)(4);
- (5) An annual review, as a part of the school district's annual budget process, and update, as needed, the major maintenance, repair, and replacement needs, the estimates of expected costs, and any adjustments in funding the reserve, pursuant to Education Code Section 17014, subdivision (c)(5);
- (6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district, pursuant to Education Code Section 17014, subdivision (c)(6);
- (7) A provision in the school district's annual budget stating the total funding available in reserve (maintained in the restricted account) for scheduled major maintenance, repair and replacement needs as specified in the updated plan, and an explanation if this amount

is less than that specified in the updated plan, pursuant to
Education Code Section 17014, subdivision (c)(7).

- f. Obtain and maintain public liability or property damage insurance in connection with any project, pursuant to Education Code Section 17015.
- g. Submit an application to lease a project for a grade level maintained by it, to the State Allocation Board in the form and number of copies that the board may prescribe, pursuant to Education Code Section 17017, subdivision (a).
- h. Contain in the application a statement of the estimated cost of the project certified by an architect or structural engineer, and layout plans showing the entire construction project, pursuant to Education Code Section 17017, subdivision (a).
- i. Meet any requirement imposed by the State Allocation Board for project compliance with building cost or area standards and related guidelines adopted by the board, as a condition of the apportionment of funds under this chapter, unless the project is self-certified, pursuant to Education Code Section 17017.5, subdivision (b).
- j. Maintain documentation of the certified compliance as may be required by the State Allocation Board, and that compliance shall be subject to subsequent audits as the board may direct, pursuant to Education Code Section 17017.5, subdivision (b).

- k. Submit to the board and the State Department of Education a five-year plan for construction and rehabilitation of school facilities, and to obtain the written approval of the department that the plan complies with standards that are established by the department for this purpose to ensure that the applicant district has adequately anticipated its school facilities needs and identified funding sources as necessary to meet those needs, pursuant to Education Code Section 17017.5, subdivision (c).
- l. Receive priority status for which state funding is requested for only 50 percent of the cost:
 - (1) Document to the satisfaction of the State Allocation Board that it has incurred bonded indebtedness in an amount not less than 95 percent of the bonding capacity of the district, pursuant to Education Code Section 17017.9, subdivision (a)(1);
 - (2) Agree that up to 95 percent of the unexpended bonding capacity of the district, existing on or after the date of the district's first application for project funding, shall apply toward the cost of projects, pursuant to Education Code Section 17017.9, subdivision (a)(2); and
 - (3) Agree that Developer Fees shall apply toward the cost of projects for which the district requests state funding pursuant to this chapter, not to exceed 50 percent of the cost of any project (fees

needed for interim housing for capital outlay purposes for modernization and new construction projects, school district administration capital outlay projects, and capital outlay projects for transportation needs, are exempt from this requirement), pursuant to Education Code Section 17017.9, subdivision (a)(3).

- m. Submit a life cycle cost comparison, prepared by a competent authority providing for the amortization of the increased cost allowance over a period not to exceed the lesser of 30 years or the term of the lease, to the State Allocation Board when a school district requests an increased cost allowance for the design and construction of facilities which will conserve unreplenishable energy sources, pursuant to Education Code Section 17018, and Title 2, California Code of Regulations Section 1865.39.
- n. Apply for funding for the construction of a gymnasium or multipurpose room on the site where it constructed or otherwise acquired school facilities with 100 percent local funding, pursuant to Education Code Section 17018.7, subdivision (a).
- o. Contract with a firm for construction project management services to assist in the development or implementation of a project for which the district has applied for funding under this chapter, subject to the requirement that a performance bond be required from all building contractors hired to construct the project in order to ensure the completion

- of performance under the contract, pursuant to Education Code Section 17019.3, subdivision (a).
- p. Submit to the State Allocation Board a portion of any contract concerning the final phase of construction of the project for approval, pursuant to Education Code Section 17019.3, subdivision (b).
 - q. Obtain approval from the State Allocation Board for a supplemental apportionment up to five thousand five hundred dollars (\$5,500) for any new construction project, and up to one thousand three hundred twenty dollars (\$1,320) for any other project approved under this chapter, as reimbursement for administrative expenses incurred by the district in filing the application for the project, pursuant to Education Code Section 17019.5.
 - r. First apply for a project, which includes only the advance purchase of the land and preparation of plans and specifications, and then apply for a subsequent project or projects to complete the total school facility, pursuant to Education Code Section 17020, subdivision (a).
 - s. Provide an estimate of average daily attendance for the purpose of justifying an application for up to and including two years longer than the enrollment projections made for the third fiscal year beyond the fiscal year in which the application is made for a project for kindergarten or any of grades 1 to 6, inclusive, and for the fourth fiscal year beyond the fiscal

year in which the application is made for a junior high school or high school project, pursuant to Education Code Sections 17020, subdivision (c), and 17040.

- t. Beginning in the fifth fiscal year following the fiscal year in which any apportionment is made to a school district, repay the apportionment, with interest, in 10 equal annual installments, unless and until the district has qualified for an apportionment pursuant to an application for utilization of the site under this chapter, pursuant to Education Code Section 17020, subdivision (d).
- u. Demonstrates to the satisfaction of the State Allocation Board that:
 - (1) The project will enhance the capacity of the facility to achieve one or more educational purposes, pursuant to Education Code Section 17021.3, subdivision (b)(1); and
 - (2) The resulting pupil capacity of the facility, as measured in units of average daily attendance, will equal or exceed 80 percent of the facility's maximum capacity as determined under the board standards established under this chapter, pursuant to Education Code Section 17021.3, subdivision (b)(2).
- v. Demonstrate to the satisfaction of the State Allocation Board that the applicant will utilize all existing facilities and sites to the extent economically and practically feasible, pursuant to Education Code Section

17022.

- w. Explore cooperative efforts with adjacent districts in order that all existing or planned facilities in the general area of need shall be utilized, pursuant to Education Code Section 17022.
- x. Obtain the written approval of the State Department of Education that the site selection, and the building plans and specifications, comply with the standards adopted by the department before the State Allocation Board shall authorize the selection of any schoolsite, or a contract for the construction of any new school building, or for any addition to, or alteration of, any existing building, for lease-purchase to any school district, pursuant to Education Code Section 17024, subdivision (a), and 17251, subdivisions (b) and (c).
- y. Certify to the State Department of Education and the State Allocation Board that the site selection, and the building plans and specifications, comply with the standards adopted by the department, pursuant to Education Code Section 17024, subdivision (b), and 17251, subdivisions (b) and (c).
- z. Maintain documentation as required by the State Allocation Board subject to subsequent audit by the State Department of Education, pursuant to Education Code Section 17024, subdivision (b).
- aa. Be subject to penalties for any inaccurate information, pursuant to

- Education Code Sections 17024, subdivision (d);
- bb. Request binding determination by an arbitrator the issue of whether the penalties imposed are disproportionate to the inaccuracy certified by the district, pursuant to Education Code Section 17024, subdivision (e).
 - cc. Submit plans for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building to the Department of General Services and obtain the written approval of the department pursuant to Article 3 of Chapter 3 "Construction of School Buildings" of Part 10.5 "School Facilities" before the State Allocation Board approves any contract for lease-purchase to any school district, pursuant to Education Code Section 17025.
 - dd. Certify the compliance of a project with geological and engineering investigations of prospective schoolsites, with CEQA, and with any other law that applies to that project, but the State Allocation Board may require documentation of compliance only as to requirements that are applicable under this chapter, pursuant to Education Code Sections 17025, subdivision (b).
 - ee. Be the "lead agency" with regard to any project funded for that district under this chapter, pursuant to Education Code Section 17025, subdivision (b).
 - ff. Act as the State Allocation Board's agent in the performance of acts

specifically approved by the board and all acts required pursuant to Article 3 of Chapter 3 "Construction of School Buildings" of Part 10.5 "School Facilities," including, but not limited to, the selection of schoolsites, the securing of appraisals, the contracting for architectural services, the advertisement for construction bids and the entering into of contracts therefore and the purchase of furniture and equipment, pursuant to Education Code Section 17029, subdivision (a).

(1) Before requesting funds for furniture and equipment for a project, give full consideration to all usable furniture and equipment existing in the district, comply with the standard established by the State Allocation Board to complete the project, and the cost must not exceed 50 percent of the allowance for comparable new facilities unless approved by the board, pursuant to Title 2, California Code of Regulations Section 1865.42, subdivision (c).

(2) Furniture and equipment shall be purchased by competitive bidding if the State Allocation Board believed that it is likely that such bidding would result in a lower cost than other methods, pursuant to Title 2, California Code of Regulations Section 1865.42, subdivision (e).

gg. Acting as the agent of the State Allocation Board, submit to the board two or more independent appraisals and certify to the board that the

appraisals were performed by appraisers licensed or certified and were obtained in accordance with standards and procedures imposed by the board for that purpose, the district shall not be required to document its compliance with those standards and procedures except as specified in Section 17041.2 (providing that where 75 percent or more of the total cost of a project is to be funded by the applicant district from sources other than any state program administered by the board, the area of the allowable new building construction for that project, and the amount of the building cost allowed for that project, shall each be increased by 5 percent, plus 1 percent for each 1 percent by which the local contribution exceeds 75 percent), pursuant to Education Code Section 17029, subdivision (b).

- hh. Acting as agent to the State Allocation Board, as the lowest responsible bid for a construction contract does not exceed the cost limit established by the board for that purpose, certify to the board that the bid was obtained in accordance with standards and procedures imposed by the board for that purpose, the district shall not be required to document its compliance with those standards and procedures except as specified in Section 17041.2, pursuant to Education Code Section 17029, subdivision (c).
- ii. Be liable for all torts, breaches of contract, or any other actions for

damages caused by the school district arising from those contracts, including, but not limited to, contracts between the school district and its construction contractors, construction managers, architects, or engineers, pursuant to Education Code Section 17029.5.

- jj. In expending funds for any project under this chapter, act as an agent of the state and all sites purchased and improved, all equipment purchased, and all buildings constructed, altered or added to through the expenditure of funds apportioned under this chapter are the property of the state, pursuant to Education Code Section 17030, subdivision (a).
- kk. Obtain specific authorization from the State Allocation Board or its designated representatives to expend funds, pursuant to Education Code Section 17030.5.
- ll. Acting as agent for the state, comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to school buildings, pursuant to Education Code Section 17031.
- mm. Pursuant to written agreement with any other public or private person or entity, utilize any school buildings, land, or other real property interest that the governing board determines is not needed for school purposes, and will not be needed for school purposes within the next 30 years, in a joint venture with that person or entity to generate revenues for school facilities purposes, pursuant to the following conditions:

- (1) The district has developed a school district asset utilization plan, setting forth specific information, which plan has been the subject of a public hearing, and the governing board of the district has made the finding that the implementation of the plan will benefit the district;
- (2) Prior to the execution by the school district governing board of any agreement regarding the utilization of the school buildings or land, or both, under a joint venture pursuant to this section, the school district asset utilization plan has been submitted for, and has received, the review and approval of the State Allocation Board;
- (3) Once every three years after the approval of any plan, the school district shall update the plan with information regarding the disposition of the revenues received by the district from the utilization of the school buildings or land, or both, under the joint venture, including the effect of those revenues upon the school facility needs for which the district may otherwise be eligible under this chapter or under any other school facilities program administered by the State Allocation Board, together with such other information as the board may require, and shall resubmit the plan to the board for its review and approval;
- (4) Pursuant to a school district asset utilization plan approved under

this section, the school district may utilize school buildings or land, or both, in a joint venture, the revenues from which shall be placed by the district in a separate fund, from which the principal and interest may be expended by the district only for the following school facilities purposes, as authorized under the approved plan, in accordance with the pupil loading and cost standards established pursuant to this chapter: the acquisition of land, new construction, reconstruction, modernization, rehabilitation, and deferred maintenance, pursuant to Education Code Section 17032.3, subdivision (a).

nn. Include in the asset utilization plan all of the following:

- (1) A specific description of the surplus school buildings or land, or both, to be utilized under the joint venture;
- (2) The identification of the current educational uses of the surplus school buildings or land, or both, and of the educational uses proposed under the joint venture;
- (3) The identification of the current noneducational uses of the surplus school buildings or land, or both, and of the noneducational uses proposed under the joint venture, and a specific assessment of the compatibility of those uses with any applicable general or specific governmental land use plans and with applicable zoning

- restrictions;
- (4) A description of the prospective economic benefits to be derived by the district from the joint venture;
 - (5) A description of the prospective educational benefits to be derived by the district from the joint venture;
 - (6) A comprehensive description of the joint venture, including, but not limited to, a description of the intended means of financing the joint venture; and
 - (7) A plan for the disposition of the revenues received by the district from the joint venture, pursuant to Education Code Section 17032.3, subdivision (b); see also Education Code Section 17061, subdivision (d) for similar duties.
- oo. When leasing portable classrooms, meet the annual rent and conditions established by the State Allocation Board, and undertake, while bearing all costs incurred, all necessary maintenance, repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition, pursuant to Education Code Section 17032.5.
- pp. Expend funds from the county school lease-purchase fund only when specifically authorized by the State Allocation Board for either direct project costs or reimbursements, pursuant to Education Code Section

- 17036, subdivision (a).
- qq. Upon specific authorization by the State Allocation Board, obtain reimbursement from the county school lease-purchase fund for expenditures, or commitments therefore, made prior to the approval of a project by the board, pursuant to Education Code Section 17036, subdivision (b).
- rr. Insure at its own expense for the benefit of the state, all sites, equipment and buildings, which are, the property of the state, against such risks and in such amounts that will guarantee full replacement or repair of the facilities for which claims are made, pursuant to Education Code Section 17038, and Title 2, California Code of Regulations Section 1865.8.
- ss. Enter into a lease-purchase agreement with the state in the form of either:
- (1) A lease-purchase for feasibility studies, pursuant to Title 2, California Code of Regulations Section 1865.50;
 - (2) The lease-purchase of a site and/or plans, pursuant to Title 2, California Code of Regulations Section 1865.50; or
 - (3) The lease-purchase of an entire project, pursuant to Title 2, California Code of Regulations Section 1865.50.
- tt. If the State Allocation Board determines that it will not be economical or practical to utilize all existing facilities or land of the applicant school district, agree to dispose of any salable interest in any building or site that

the board determines cannot be utilized and contribute the net proceeds of the sales to the State School Building Lease-Purchase Fund as rents, pursuant to Section 17032, and Title 2, California Code of Regulations Sections 1865.32.5, subdivision (a), and 1865.70

Article 4. Allowances

- a. Make enrollment projections for the third fiscal year beyond the fiscal year in which the application is made for a project for kindergarten or any of grades 1 to 6, inclusive, and for the fourth fiscal year beyond the fiscal year in which the application is made for a junior high school or high school project, pursuant to Education Code Section 17040.
- b. Base estimates of average daily attendance upon the number of family dwellings and mobile home parks, under construction or newly constructed and never occupied in the district and the number of children residing in the district, pursuant to Education Code Section 17040.
- c. Calculate the estimate of average daily attendance for up to and including two years longer than the period of time permitted by Section 17040, as requested by the district, where 50 percent or more of the cost of the project is provided by the district from funding sources other than any state program administered by the State Allocation Board, pursuant to Education Code Section 17040.3, subdivision (a), and the "Lease-Purchase Applicant Handbook, April 1998," Appendix, 1-1.

- d. For any subsequent project application based upon additional growth in pupil enrollment, estimate its average daily attendance based on enrollment projections for any period of time, as requested by the district, up to and including that permitted by Section 17040, pursuant to Education Code Section 17040.3, subdivision (a).
- e. Exclude from the calculation of the area of adequate school construction for the purposes of all subsequent project applications by the district under this chapter any increase in building area, funded exclusively from sources other than any state programs administered by the State Allocation Board, in a project for which construction commenced on or after January 1, 1987, not to exceed 110 percent of the area that would be allowed under applicable state standards, pursuant to Education Code Section 17040.1
- f. Increase the area of the allowable new building construction for that project, and the amount of the building cost allowed for that project under this chapter by 5 percent, plus 1 percent for each 1 percent by which that local contribution exceeds 75 percent where 75 percent or more of the total cost of a project approved under this chapter is to be funded by the district from sources other than any state program administered by the State Allocation Board, pursuant to Education Code Section 17040.2.
- g. Based upon the results of an audit to be conducted upon completion of

the project, pay to the State Allocation Board any amount that is necessary to conform to the allocation of project costs determined upon the board's approval of the project, pursuant to Education Code Section 17040.3, subdivision (b).

- h. Requested approval of an extension of up to 6 months from the State Allocation Board due to one or more delays resulting from circumstances beyond the district's control, pursuant to Education Code Section 17040.3, subdivision (b).
- i. Report all of the existing building area owned or operated by the district regardless of conditions or purpose for which used, to the State Allocation Board by the district including: all existing building area not otherwise, building area for which applications have been approved under any state or federal building program, any building area being acquired by any lease-purchase agreement, proposed building area which has been otherwise financed or any building area which has been used to justify any site and/or plans lease-purchased project, pursuant to Education Code Sections 17040 through 17049, and Title 2, California Code of Regulations Section 1865.33, subdivision (c).
- j. Exclude the existing building area owned or operated by the district regardless of conditions or purpose for which used, from the project application to the State Allocation Board includes: the area of any building

to which Article 3 of Chapter 2, Part 23 of the Education Code would not apply, the area of any relocatable structure for temporary use building under lease pursuant to Education Code Sections 39243 or 39246, and the area of any district administration or district maintenance facilities except those constructed pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976, pursuant to Title 2, California Code of Regulations Section 1865.33, subdivision (c).

- k. Compute existing and proposed building, pursuant to Title 2, California Code of Regulations Section 1865.33, subdivision (d).
- l. For the purpose of calculating the district's eligibility for project funding under this chapter, certify:
 - (1) The total allowable building area for which the district is eligible for project funding under this chapter;
 - (2) The district's area of existing adequate school construction, including, but not limited to, the conducting of field inspections for this purpose, pursuant to Education Code Section 17041.1, subdivision (a).
- m. Maintain documentation as required by the State Allocation Board, which shall be subject to subsequent audit as the board may direct, pursuant to Education Code Section 17041.1, subdivision (c).
- n. All estimates of average daily attendance shall be made by the district in

accordance with the standards governing those estimates that are adopted by the State Allocation Board, and reviewed for accuracy by the board or by the county office of education in the county in which the district is located, pursuant to Education Code Section 17041.1, subdivision (d).

- o. Include any building area constructed as a result of a material inaccuracy in the certification for funding, in excess of the building area to which the district was entitled for purposes of that project, in the calculation of the area of adequate school construction for the purposes of all subsequent project applications by the district under this chapter, pursuant to Education Code Section 17041.2, subdivision (b).
- p. If any information certified is found by the State Allocation Board to contain any material inaccuracy, the school district shall be subject to penalties,
pursuant to Education Code Section 17041.2, subdivision (b).
- q. Submit for binding determination by an arbitrator the issue of whether the penalties imposed are disproportionate to the inaccuracy certified by the district, pursuant to Education Code Section 17041.2, subdivision (c).
- r. Apply supplemental project funding to the purposes of the project funded, in compliance with any requirements set forth, but need not comply in that regard with the allowable building area of that project as otherwise

calculated under this chapter, pursuant to Education Code Sections 17040.6, 17040.7, 17040.8, and 17041.8, subdivision (a).

- s. Exempt any supplemental project funding from the total building cost standards applicable to the project, and exempt any increase in building area from the calculation of existing adequate school construction of the district in subsequent applications for funding, pursuant to Education Code Section 17041.8, subdivision (a).
- t. Use the pupil loading standard established pursuant to a class size reduction program, pursuant to Education Code Section 17042.7, subdivision (b).
- u. Design and locate on the schoolsite all school facilities purchased or newly constructed pursuant to this chapter for use, in whole or in part, by pupils who are individuals with exceptional needs, so as to maximize interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both, pursuant to Education Code Section 17047.5, subdivision (a).
- v. Ensure that school facilities for pupils who are individuals with exceptional needs are integrated with other school facilities in applying for the purchase or new construction of school facilities pursuant to this chapter, pursuant to Education Code Section 17047.5, subdivision (b).

- w. Consult with the State Department of Education and representatives from county offices of education, special education services regions in conjunction with the State Allocation Board's development and adoption of any regulations necessary to implement the preceding two duties, pursuant to Education Code Section 17047.5, subdivision (c).
- x. File a written request for waiver that documents the reasons for its inability to comply with the requirement for integration of school facilities, and the subsequent review and adoption by the Superintendent of Public Instruction, pursuant to Education Code Section 17047.5, subdivision (d).
- y. As a condition of receiving funding for any project under this chapter for kindergarten or any of grades 1 to 12, inclusive, or for any facilities for special education or continuation high school purposes, allocate at least 30 percent of the allowable new building construction for classrooms under the project to be utilized for relocatable structures, pursuant to Education Code Section 17049, subdivision (a).
- z. Apply relocatable structures acquired up to two years preceding the final approval by the State Allocation Board of the project application to the 30 percent application requirement, pursuant to Education Code Section 17049, subdivision (d).
- aa. Apply relocatable structures acquired up to 10 years preceding the final approval by the State Allocation Board of the project application to the 30

percent requirement if the relocatable structures are to be situated on the site of a new school to be constructed under the project and all of the following conditions are met:

- (1) The relocatable structures were not previously used to satisfy the 30 percent requirement under any other project constructed pursuant to this chapter;
- (2) The State Allocation Board determines that the relocatable structures are in satisfactory condition upon being moved to the new schoolsite, and are usable for classroom purposes without requiring major repair or renovation for a period of not less than 20 years subsequent to that relocation; and
- (3) Subsequent to moving the relocatable structures to the new schoolsite, at least 30 percent of the classroom space at the schoolsite where the structures were previously located consists of relocatable structures, pursuant to Education Code Section 17049, subdivision (e).

Article 5. Space Saver Schools

In the case of space saver schools:

- (1) Identify an area within the district that it determines to be appropriate for the construction of the school;
- (2) Establish criteria for the purpose of identifying the school design

that will most effectively accomplish the purposes of this article and the needs of the district; and

- (3) Issue a request for architectural design proposals incorporating the State Allocation Board's criteria, pursuant to Education Code Section 17056.

Article 6. Alternative Use of Apportionments

- a. Where overcrowding has created a need for new school facilities in neighborhoods where little or no vacant land exists, acquire property that already has been developed with structures, demolish these structures and construct classroom space, pursuant to Education Code Section 17059.
- b. Acquire and convert an existing commercial building to school facility purposes, pursuant to Education Code Section 17059.1.
- c. Initiate a request for the transfer of an apportionment from one Lease-Purchase project to another on a School District Appeal Request, Form SAB 189, pursuant to the "Lease-Purchase Applicant Handbook, April 1998," Appendix, 4-1.

Article 7. Joint Venture School Facilities Construction Projects

- a. Apply to the State Allocation Board for funding for the costs of property acquisition and the cost of construction, as specified in this chapter, of the school facilities portion of a joint venture project, pursuant to Education

Code Section 17061, subdivision (a).

- b. Publicly solicit proposals for the joint venture project pursuant to the procedures set forth in Education Code Sections 17061, subdivision (a), and 17062. The request for proposals shall include, but not necessarily be limited to, all of the following:
- (1) A specific description of the school buildings or land, or both, to be constructed or utilized under the joint venture and a description of how the costs of the project have been determined;
 - (2) The identification of the current educational uses of the school buildings or land, or both, and of the educational uses proposed under the joint venture;
 - (3) The identification of the current noneducational uses of the proposed school buildings or land, or both, and of the noneducational uses proposed under the joint venture, and a specific assessment of the compatibility of those uses with any applicable general or specific governmental land use plan and with applicable zoning restrictions;
 - (4) A description of the prospective economic benefits to be derived by the school district from the joint venture;
 - (5) A description of the prospective educational benefits to be derived by the school district from the joint venture;

- (6) A request that each request for proposal response include a comprehensive description of the joint venture, including, but not limited to, a description of the intended means of financing the joint venture, pursuant to Education Code Section 17061, subdivision (d); see also Education Code Section 17032.3, subdivision (b) for similar duties.
- c. Utilize a request for qualifications and proposal process to select and enter into a joint venture agreement with a developer to construct school facilities, which must include, but need not be limited to, all of the following terms:
- (1) The cost of the project approved by the State Allocation Board as the amount that the district would pay to the developer pursuant to the joint venture agreement upon completion of the project, pursuant to Education Code Sections 17062, subdivision (b), and 17063, subdivision (a);
 - (2) A detailed description of the project, including, but not limited to, the school facilities and any other facilities that may be included in the project, pursuant to Education Code Sections 17062, subdivision (b), and 17063, subdivision (a);
 - (3) The time frame for completion of the project, pursuant to Education Code Sections 17062, subdivision (b), and 17063, subdivision (a);

and

- (4) A requirement that there shall be no state liability if funds are not made available within the four-year period, pursuant to Education Code Sections 17062, subdivision (b), and 17063, subdivision (a).
- d. Upon completion of the joint venture agreement, transmit the agreement to the State Allocation Board for final review, pursuant to Education Code Section 17063.
- e. Select any design professional in accordance with Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, pursuant to Education Code Section 17064.
- f. Comply with Article 3 of Chapter 2 of Part 10.5 for the design and construction of facilities, pursuant to Education Code Section 17065.
- g. Comply with the prevailing wage requirements of Article 2 (commencing with Section 1770) of Chapter 2 of Part 7 of Division 2 of the Labor Code with respect to the school facilities portion of a joint venture project, pursuant to Education Code Section 17066.

CHAPTER 12.5 "THE LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998," as added by Chapter 407, Statutes of 1998, Section 4:

Article 3. School Facility Program Application Procedure

- a. Consider the guidelines, adopted by the State Allocation Board (excluding any recommendations that would have a significant detrimental effect on educational programs) as of June 30, 1999, to achieve measurable reductions in the costs of school facilities construction, pursuant to Education Code Section 17070.33, subdivisions (a) through (d).
- b. Complete and file the following documents with the Office of Public School Construction:
 - (1) For new construction, either district wide or by High School Attendance Area, or modernization projects, an Application for Eligibility Determination, Form SAB 50-03, pursuant to Title 2, California Code of Regulations Section 1859.20, subdivision (a);
 - (2) For new construction projects, either district wide or by High School Attendance Area, an Enrollment Certification/Projection, Form SAB 50-01, pursuant to Title 2, California Code of Regulations Section 1859.20, subdivision (b);
 - (3) For new construction projects, an Existing School Building Capacity, Form SAB 50-02, pursuant to Title 2, California Code of Regulations Section 1859.20, subdivision (c).

- c. Complete and file with the Office of Public School Construction, the Application for Funding, Form SAB 50-04, pursuant to Title 2, California Code of Regulations Sections 1859.21 and 1859.70.
- d. Certify to the State Allocation Board, on the Application for Funding, Form SAB 50-04, that the services of any architect, structural engineer, or other design professional for any work under the project have been obtained pursuant to a competitive process and has obtained the written approval of the State Department of Education that the site selection, and the building plans and specifications, comply with the standards adopted by the department, to receive any funds from the board, pursuant to Education Code Sections 17070.50 and 17251, subdivisions (b) and (c), and the "School Facility Program Guidebook, January 2003," pages 9, 10, 22.
- e. Submit the Fund Release Authorization, Form SAB 50-05, within 18 months of an approved apportionment of the State Facility Program grant for the project, or the entire new construction or modernization adjusted grant shall be rescinded without further State Allocation Board action, and the pupils housed in the project will be added back to the district's baseline eligibility, pursuant to Title 2, California Code of Regulations Section 1859.90, and "School Facility Program Guidebook, January 2003," pages 11, 31.

- f. Obtain approval from the Division of the State Architect for all new construction plans and specifications, pursuant to the "School Facility Program Guidebook, January 2003," page 22.
- g. Respond to any allegations by the State Allocation Board that the school district falsely certified information in its funding or project application, and face penalties, pursuant to Education Code Section 17070.51, subdivisions (a) and (b), and Title 2, California Code of Regulations Sections 1859.104.1, subdivisions (a) through (c), 1859.104.2 and 1859.104.3.
- h. Provide supporting documentation as required pursuant to finding a material inaccuracy for a period of up to five years, pursuant to Title 2, California Code of Regulations Section 1859.104.2.
- i. Pay an amount of \$100 per hour for the additional hours necessary to process and review the district's applications submitted during the five years from when the board made the finding of the material inaccuracy, pursuant to Title 2, California Code of Regulations Section 1859.104.3.
- j. Be liable for all torts, breaches of contract (including, but not limited to, contracts between the school district and its construction contractors, construction managers, architects, or engineers), or any other actions for damages caused by the school district arising from new construction or

modernization by the district, pursuant to Education Code Section 17070.60.

- k. Certify that the grant amount, combined with local funds, shall be sufficient to complete the school construction project for which the grant is intended, pursuant to Education Code Section 17070.63, subdivision (a).
- l. Holds title to all property acquired, constructed, or improved with funds made available under this chapter by the State Allocation Board, pursuant to Education Code Section 17070.70, subdivision (a), and the "School Facility Program Guidebook, January 2003," page 27.
- m. Comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school buildings, pursuant to Education Code Sections 17070.70, subdivision (b), and 17070.71, subdivision (b).
- n. Use new construction or modernization funds provided pursuant to this chapter for real property leased to the district if the conditions of Education Code Section 17070.71, subdivision (a), Title 2, California Code of Regulations Section 1859.22, subdivision (b), and the "School Facility Program Guidebook, January 2003," are met.
- o. Make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition, while bearing all costs incurred for this purpose, pursuant to Education Code Section 17070.75, subdivision (a).

- p. Prior to the State Allocation Board's approval of a project, certify on the Application for Funding, Form SAB 50-04, that the district has established a Restricted Maintenance Account within the school district's general fund for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings, pursuant to Education Code Section 17070.75, subdivision (b)(1), Title 2, California Code of Regulations Section 1859.100, and the "School Facility Program Guidebook, January 2003," page 22.
- q. Certify, as part of the school district's annual budget process and beginning in the fiscal year in which the project is funded by the state, that it is in compliance with the maintenance plan and meeting the major maintenance requirements for the project, including all actions necessary to keep roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and other items designated by the governing board of the school district in good repair, for each project funded after January 1, 2002, pursuant to Education Code Section 17070.77, subdivisions (a) and (b), and Title 2, California Code of Regulations Section 1859.102.
- r. Certify that the plan includes and is being implemented with all of the following components:
- (1) Identification of the major maintenance needs for the project,

- pursuant to Education Code Section 17070.77, subdivision (c)(1);
- (2) Specification of a schedule for completing the major maintenance, pursuant to Education Code Section 17070.77, subdivision (c)(2);
 - (3) Specification of a current cost estimate for the scheduled major maintenance needs, pursuant to Education Code Section 17070.77, subdivision (c)(3);
 - (4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance needs, pursuant to Education Code Section 17070.77, subdivision (c)(4);
 - (5) Review of the plan annually, as a part of the school district's annual budget process, and update, as needed, the major maintenance needs, the estimates of expected costs, and any adjustments in funding the reserve, pursuant to Education Code Section 17070.77, subdivision (c)(5);
 - (6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district, pursuant to Education Code Section 17070.77, subdivision (c)(6);
and
 - (7) A provision in the school district's annual budget for the reserve that contains the total funding available for scheduled major

maintenance needs as specified in the updated plan, and an explanation if this amount of the reserve is less than that specified in the updated plan, pursuant to Education Code Section 17070.77, subdivision (c)(7).

- s. In the case of all school facilities purchased or newly constructed pursuant to this chapter for use, in whole or in part, by pupils who are individuals with exceptional needs, design and locate the schoolsite so as to maximize interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both, pursuant to Education Code Section 17070.80, subdivision (a).
- t. Ensure that school facilities for pupils who are individuals with exceptional needs are integrated with other school facilities, pursuant to Education Code Section 17070.80, subdivision (b).
- u. Consult with the State Allocation Board, State Department of Education and representatives from county offices of education, special education services regions in developing and adopting any regulations necessary to implement the integration of school facilities for those individuals with exceptional needs and other pupils, pursuant to Education Code Section 17070.80, subdivision (c).
- v. File a written request for waiver that documents the reasons for its inability to comply, and certain commissions and departments approve the waiver

after reviewing the documentation, pursuant to Education Code Section 17070.80, subdivision (d)(1) through (5).

- w. Certify, as part of its application, that it has considered the feasibility of the joint use of land and facilities with other governmental entities in order to minimize school facilities costs, and funds provided pursuant to this chapter for growth and modernization may be used for the school portion of joint-use facilities, pursuant to Education Code Section 17070.90.
- x. Certify, as part of its application for large construction and modernization projects, in conjunction with the career technical education advisory committee, that it has considered the need for vocational and career technical facilities to adequately meet its program needs, pursuant to Education Code Sections 17070.95, and the "School Facility Program Guidebook, January 2003," page 22.
- y. Insure against public liability or property damage in connection with any facility constructed or modernized with an apportionment under this chapter, pursuant to Education Code Section 17070.97.
- z. Contract for the provision of construction management, and may use funds provided under Article 7 "New Construction Grant Eligibility Determination," Article 9 "New Construction Funding Process," and Article 11 "Modernization Apportionment" for the cost of those services, pursuant to Education Code Sections 17070.98, 17072.10 et. seq., 17072.20 et.

seq., 17072.35, 17074.10 et. seq., and 17074.25.

Article 4. Determining Existing School Building Capacity

- a. Submit to the State Allocation Board a one-time report, consisting of classroom inventory, on the Existing School Building Capacity, Form SAB 50-02, pursuant to Education Code Section 17071.10, subdivision (b), and Title 2, California Code of Regulations Section 1859.30.
- b. Prepare a gross inventory consisting of all classrooms owned or leased in the district or the High School Attendance Area as appropriate, pursuant to Education Code Section 17071.30, Title 2, California Code of Regulations Section 1859.31, and the "School Facility Program Guidebook, January 2003," page 15.
- c. Submit records of the teaching stations existing in the district of High School Attendance Area as part of the inventory process, pursuant to the "School Facility Program Guidebook, January 2003," page 16. These records consist of diagrams of the facilities at each site in the district including all permanent and relocatable classrooms at the site, and documentation supporting any exclusion claimed from the gross inventory, pursuant to Title 2, California Code of Regulations Section 1859.32, and the "School Facility Program Guidebook, January 2003," pages 15, 16.
- d. Identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory, not

otherwise excluded, and include these classrooms on the Existing School Building Capacity, Form SAB 50-02, pursuant to Education Code Section 17071.25, subdivision (a), and Title 2, California Code of Regulations Section 1859.33.

- e. Determine the district's school building capacity as specified in Education Code Sections 17017.6, 17017.7, subdivision (c) 17071.25, 17071.33, 17071.35 and 17071.40, Title 2, California Code of Education 1859.35, and the "School Facility Program Guidebook, January 2003," page 15.
- f. When proposing to demolish a single story building and replace it with a multistory building on the same site, meet the requirements of Education Code Section 17071.46 to receive a supplemental grant for 50 percent of the replacement cost from the State Allocation Board.

Article 5. Enrollment Projections

- a. Provide an enrollment certification and report enrollment data, on the Enrollment Certification/Projection, Form SAB 50-01, serving as the basis for new construction funding, pursuant to Title 2, California Code of Regulations Section 1859.40.
- b. Demonstrate that existing seating capacity is insufficient to house the pupils existing and anticipated in the district using a five-year projection for enrollment, pursuant to the "School Facility Program Guidebook, January 2003," page 13.

- c. Request its eligibility determination for new construction grants be based on the High School Attendance Area or Super High School Attendance Area if it meets all of the following requirements of Title 2, California Code of Regulations Section 1859.41, and the "School Facility Program Guidebook, January 2003," pages, 13, 14 and 15.

Article 6. New Construction Eligibility Determination

Calculate its eligibility determination for new construction funding by completing the Eligibility Determination, Form SAB 50-03, and requesting determination based on either a district-wide basis or on a High School Attendance Area or Super High School Attendance Area basis, pursuant to Title 2, California Code of Regulations Sections 1859.20, 1859.50 and 1859.70.

Article 7. New Construction Grant Determinations

- a. Certify that there is no alternative available site, or that the district plans to sell an available site in order to use the proceeds of the sale for the purchase of the new site, pursuant to Education Code Section 17072.12, subdivision (a).
- b. Within one year after the completion of the project, certify in writing to the board that the nonschool function was in fact relocated, pursuant to Education Code Section 17072.12, subdivision (c).
- c. Include in its application to the board a cost-benefit analysis performed by

the school district demonstrating how utilizing existing nonschoolsite district property would be a more effective method of solving the school district's pupil housing problems than any other method of funding under this chapter, pursuant to Education Code Section 17072.12, subdivision (d).

- d. Apply to the board for site acquisition funding for that site prior to having construction plans for that site approved by the Division of the State Architect and State Department of Education subject to the preceding funding limits and without resulting in an increase in the funding limits available to a school district, pursuant to Education Code Section 17072.13, subdivision (c).
- e. Apply to the State Allocation Board for construction funding for the environmental hardship site when the project has received final Division of the State Architect plan approval and final State Department of Education site and plan approval, pursuant to Education Code Section 17072.13, subdivision (c).

Article 8. New Construction Additional Grants

- a. Make a detailed cost estimate if it requests additional grants for site development in its new construction funding application, pursuant to the "School Facility Program Guidebook, January 2003," page 22.
- b. Request an increase in a new construction grant for therapy areas used

by pupils that are severely disabled individuals with exceptional needs, not to exceed 3,000 square feet, plus 750 square feet per additional special day class classrooms needed, pursuant to Title 2, California Code of Regulations Section 1859.72, and the "School Facility Program Guidebook, January 2003," page 25.

- c. Certify on the Application for Funding, Form SAB 50-04, that the appraisal of the property was made utilizing the specifications pursuant to Title 2, California Code of Regulations Section 1859.74.1, subdivisions (a) through (e), and the "School Facility Program Guidebook, January 2003," pages 22, 26.
- d. Submit one appraisal, pursuant to Title 2, California Code of Regulations Sections 1859.74.1 and 1859.81, and the "School Facility Program Guidebook, January 2003," page 22.
- e. Certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the California Department of Education, pursuant to Title 2, California Code of Regulations Section 1859.75, subdivision (a); or certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site, pursuant to Title 2, California Code of Regulations Section 1859.75, subdivision (b).

- f. Obtain a contingent site approval letter from the California Department of Education indicating that the proposed site is the best available, pursuant to Title 2, California Code of Regulations Section 1859.75.1, subdivision (a)(2), and the "School Facility Program Guidebook, January 2003," page 22.
- g. Obtain a preliminary appraisal or an appraisal of the property by a qualified appraiser, pursuant to Title 2, California Code of Regulations Section 1859.75.1, subdivision (a)(3), and the "School Facility Program Guidebook, January 2003," page 22.
- h. Obtain a letter from the Department of Toxic Substances Control pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the Preliminary Endangerment Assessment and required in the Remedial Action Plan, will take at least 180 calendar days to complete, pursuant to Title 2, California Code of Regulations Section 1859.75.1, subdivision (a)(4).
- i. Submit a detailed cost estimate as specified by Title 2, California Code of Regulations Section 1859.76, subdivisions (a) through (c), and the "School Facility Program Guidebook, January 2003," page 28 for all requests for site development work and any justification documents that will support the work with the Application for Funding, Form SAB 50-04.

- j. Match the share contribution on a dollar-for-dollar basis, pursuant to Title 2, California Code of Regulations Section 1859.77.1.
- k. Include as its district-matching share any amounts expended on the project for energy audits made under Education Code Section 17077.10, Article 17, Duty (b), and any amounts applied to the project for incentive grants or rebates received by the district, pursuant to Title 2, California Code of Regulations Section 1859.77.1.

Article 9. New Construction Funding Process

- a. Submit at any time a request to the board for a project apportionment for all or a portion of the funding for which the school district is eligible, pursuant to Education Code Sections 17071.10, 17071.75, and 17072.20, subdivision (a).
- b. Request that the State's share of site acquisition assistance be provided to the district in amounts equal to the amount of the local match when the district enters escrow for a site included within a project, pursuant to Education Code Section 17072.33.
- c. After appropriate planning and board approval, use a grant for new construction for any and all costs specified pursuant to Education Code Sections 17072.35, 17213, and Title 2, California Code of Regulations Section 1859.77.2.

Article 10. Modernization Eligibility Determination

- a. Submit an application and site diagram, the Eligibility Determination, Form SAB 50-03, in the number of copies as required by the State Allocation Board, pursuant to Education Code Section 17073.10, and Title 2, California Code of Regulations Section 1859.60.
- b. Submit an Application for Funding, Form SAB 50-04, pursuant to Title 2, California Code of Regulations Section 1859.79.3, and the "School Facility Program Guidebook, January 2003," page 53.
- c. Submit the following information:
 - (1) A complete set of Division of the State Architect approved plans and specifications on CD-Rom or "Zip Drive" readable by AutoCAD or in hard copy or by diskette that is IBM compatible, pursuant to the "School Facility Program Guidebook, January 2003," page 51;
 - (2) A complete construction cost estimate signed by the architect or design professional equally as least 60 percent of the total project, pursuant to the "School Facility Program Guidebook, January 2003," page 51;
 - (3) An approval by the School Facilities Planning Division of the California Department of Education, pursuant to the "School Facility Program Guidebook, January 2003," page 51; and
 - (4) A complete certification by the school district to the following:

- i. The district has established a Restricted Maintenance Account, pursuant to the "School Facility Program Guidebook, January 2003," page 51;
- ii. The facilities to be modernized were not previously modernized under the Lease-Purchase Program, pursuant to the "School Facility Program Guidebook, January 2003," page 51;
- iii. Contracts for the services of an architect, structural engineer, or other design professional which were signed after November 4, 1998 were obtained pursuant to a qualifications based competitive process, pursuant to the "School Facility Program Guidebook, January 2003," page 51;
- iv. The property to be modernized is either owned by the district or county superintendent or is leased from another governmental entity, pursuant to the "School Facility Program Guidebook, January 2003," page 51;
- v. If the property is leased, the lease is for at least 40 years from a non-federal governmental agency or 25 years from a federal governmental agency, pursuant to the "School Facility Program Guidebook, January 2003," page 51; and

- vi. If the request is for a large modernization project, the district has consulted with the career technical advisory committee and it has considered the need for vocational and career technical facilities, pursuant to the "School Facility Program Guidebook, January 2003," page 51.
- d. Obtain eligibility determination by either identifying all classrooms on the site or by identifying all square footage on the site, pursuant to Title 2, California Code of Regulations Section 1859.60.

Article 11. Modernization Apportionment

- a. For a modernization application, filed on or before April 29, 2002, provide a 20-percent local match (as demonstrated by the district's expenditure for the project, or deposit in the county fund or expenditure by the district by the time of project completion, and evidence that the district has entered into a binding contract for the completion of that project), and receive approval of the project by the Department of General Services under the Field Act, pursuant to Education Code Section 17074.15, subdivisions (a) and (b). For a modernization application, filed after April 29, 2002, provide a 40-percent local match (as demonstrated by the district's expenditure for the project, deposit in the county fund, or expenditure by the district by the time of project completion, and evidence that the district has entered into a binding contract for the completion of that project), and

receive approval of the project by the Department of General Services under the Field Act, pursuant to Education Code Section 17074.16, subdivisions (a) and (b), and the "School Facility Program Guidebook, January 2003," page 56.

- b. Show at closeout that 40 percent of the expenditures for the project were from local sources or the apportionment will be reduced, pursuant to the "School Facility Program Guidebook, January 2003," page 56.
- c. To receive these funds, certify that all buildings modernized comply with specific geological and engineering studies, and certain factors are met regarding hazardous or solid waste disposal, and hazardous air emissions, pursuant to Education Code Section 17074.20.
- d. Submit a Fund Release Authorization, Form SAB 50-05, within 18 months of the School Facility Program grant apportionment from the State Allocation Board, or the modernization adjusted grant will be rescinded, pursuant to the "School Facility Program Guidebook, January 2003," page 56.
- e. Utilize modernization apportionments as specified pursuant to Education Code Sections 17074.25, 17074.26 and 17074.30, Title 2 California Code of Regulations Sections 1859.79, 1859.79.2 and the "School Facility Program Guidebook, January 2003," page 49.

Article 12. Modernization Additional Grants

- a. Submit verification to support the request as found on the Site Development Worksheet for Additional Grants, pursuant to the "School Facility Program Guidebook, January 2003," page 54.
- b. Attach the Division of the State Architect's letter that requires the elevators in the project for handicap access compliance, pursuant to the "School Facility Program Guidebook, January 2003," page 55.
- c. Match the share contribution equal to at least 20 percent of the total cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost, pursuant to Title 2, California Code of Regulations Section 1859.79.

Article 13. Automatic Fire Detection, Alarm, and Sprinkler Systems

- a. When submitting new construction applications on and after July 1, 2002 to the Division of the State Architect pursuant to this chapter that require the approval of the Department of General Services, include an automatic fire detection, alarm, and sprinkler system, and obtain approval by the State Fire Marshall, pursuant to Education Code Section 17074.50, subdivision (a).
- b. When submitting modernization projects on and after July 1, 2002 that have an estimated total cost in excess of two hundred thousand dollars (\$200,000) to the Division of the State Architect pursuant to this chapter

that require the approval of the Department of General Services, include an automatic fire detection and alarm system, and obtain approval by the State Fire Marshall, pursuant to Education Code Sections 17074.50, subdivision (b), 17074.52, subdivisions (a), (b), (c) and (e), 17074.54, subdivisions (a) and (b), and 17074.56, subdivision (c).

Article 14. Financial Hardship Application

- a. In order to qualify for hardship assistance, demonstrate both of the following:
 - (1) The district is financially unable to provide all necessary matching funds for an eligible project, pursuant to Education Code Section 17075.10, subdivision (b), Title 2, California Code of Regulations Section 1859.81, subdivision (a), and the "School Facility Program Guidebook, January 2003," page 57.
 - (2) The school district has made all reasonable effort to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal or greater than the developer fee otherwise justified under law at the time of request for hardship, pursuant to the "School Facility Program Guidebook, January 2003," page 57.
- b. Provide verification that a reasonable effort was made to meet the district's matching share requirement, and must have confirmation for the

Office of Public School construction that the district is unable to contribute the entire matching share requirement, pursuant to the "School Facility Program Guidebook, January 2003," page 57.

- c. Submit to the Office of Public School Construction Financial Hardship Audit Unit a letter stating why the district is requesting financial hardship, pursuant to the "School Facility Program Guidebook, January 2003," page 57, and provide the documents and evidence specified in Education Code Section 17075.15, subdivision (d), Title 2, California Code of Regulations Section 1859.81, subdivision (b), and the "School Facility Program Guidebook, January 2003," pages 57 through 60.
- d. Once the school district has been notified by the Office of Public School Construction that it meets the requirement of financial hardship, file an Application for Funding, Form SAB 50-04 under the provisions of financial hardship within a period of 180 calendar days from the date of notification, pursuant to Title 2, California Code of Regulations Section 1859.81, and the "School Facility Program Guidebook, January 2003," page 61.
- e. To obtain pre-approval within six months, submit a Financial Hardship Project Worksheet for the project along with expenditure reports, pursuant to the "School Facility Program Guidebook, January 2003," page 60.
- f. In order to be eligible for a separate apportionment for site acquisition for a new construction project:

- (1) Obtain a contingent site approval letter from the California Department of Education indicating that the proposed site is the best available, pursuant to Title 2, California Code of Regulations Section 1859.81.1, subdivision (a)(2), and the "School Facility Program Guidebook, January 2003," page 22; and
 - (2) Obtain a preliminary appraisal of the property by a qualified appraiser, pursuant to Title 2, California Code of Regulations Section 1859.81.1, subdivision (a)(3), and the "School Facility Program Guidebook, January 2003," page 22.
- g. Request a separate apportionment for the design and for site acquisition for the same new construction project, pursuant to Title 2, California Code of Regulations Section 1859.81.1.
 - h. Submit an Application for Funding, SAB 50-04, pursuant to Title 2, California Code of Regulations Section 1859.81.1.
 - i. Request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed, if a new construction project received a previous design apportionment, pursuant to Title 2, California Code of Regulations Section 1859.81.1.

Article 15. Facility Hardship Grant

- a. Demonstrate that one of the following conditions exists to be eligible for a facility hardship grant for new classrooms and/or subsidiary facilities

(corridors, toilets, kitchens and other non-classroom space) or

replacement facilities:

- (1) The facilities must be replaced due to an imminent health and safety threat, pursuant to Education Code Section 17075.10, subdivision (b), California Code of Regulations Section 1859.82, and the "School Facility Program Guidebook, January 2003," page 63; or
- (2) The existing facilities have been lost to fire, flood, earthquake or other disaster, pursuant to Education Code Section 17075.10, subdivision (b), California Code of Regulations Section 1859.82, and the "School Facility Program Guidebook, January 2003," page 63; and
- (3) There must be an unmet need to repair or replace the facility to accommodate projected enrollment, pursuant to Education Code Section 17075.10, subdivision (b), California Code of Regulations Section 1859.82, and the "School Facility Program Guidebook, January 2003," page 63.

- b. Prepare a cost/benefit analysis and submit it to the Office of Public School construction indicating the total costs to remain in the classroom or related facility and mitigate the problem of at least 50 percent of the current replacement cost of the classroom or related facility, including

applicable site development costs as outlined in Section 1859.76, pursuant to Title 2, California Code of Regulations Section 1859.82, and the "School Facility Program Guidebook, January 2003," page 64.

- c. Include in the cost/benefit analysis a report from a licensed design professional identifying the minimum work necessary for Division of the State Architect approval and a detailed cost estimate of repairs, pursuant to Title 2, California Code of Regulations Section 1859.82, and the "School Facility Program Guidebook, January 2003," page 64.
- d. Demonstrate that any facility lost or destroyed as a result of a disaster was uninsurable or the cost of insurance was prohibitive by providing documentation of the following:
 - (1) Photos and written verification from the appropriate expert that documents the loss or extent of damage to the school facility, pursuant to the "School Facility Program Guidebook, January 2003," page 65;
 - (2) A copy of the district's insurance policy that documents the level and type of coverage provided, pursuant to the "School Facility Program Guidebook, January 2003," page 65;
 - (3) Written verification from the district's insurance carrier that documents the amount of funds that the district has and/or will recover as a result of the disaster, pursuant to the "School Facility

Program Guidebook, January 2003," page 65; and

- (4) A licensed structural engineer's report illustrating the extent of the damages, if the facility was damaged as opposed to entirely destroyed, and that the facility poses an immediate threat to the health and safety of the students and staff, pursuant to the "School Facility Program Guidebook, January 2003," page 65.

e. Submit:

- (1) An Application for Funding, Form SAB 50-04 for the replaced facilities within 18 months if the replacement facilities will be located on the same site or within 24 months if the replacement facilities will be located on a replacement site, pursuant to Title 2, California Code of Regulations Section 1859.82, subdivision (c), and the "School Facility Program Guidebook, January 2003," page 65;
- (2) A School District Appeal Request, Form SAB 189, that summarizes the district's request for a facility hardship including how the condition presents an imminent threat to the health and safety of the students and staff, pursuant to the "School Facility Program Guidebook, January 2003," page 65; and
- (3) A plot diagram that indicates the overall site layout, the facilities designation of the buildings and square footage, and the specific

structures at the school site for which the facility hardship request is being submitted, pursuant to the "School Facility Program Guidebook, January 2003," page 65.

- f. Submit a complete funding application within 18 months if the district receives a conceptual approval, or within 24 months if a new replacement school site is required, pursuant to the "School Facility Program Guidebook, January 2003," page 65.

Article 16. Program Accountability

- a. Submit a summary report of expenditure of state funds and district matching funds annually until all state funds and district matching funds are expended, and shall then submit a final report to the State Allocation Board, pursuant to Education Code Section 17076.10, subdivision (a), and the "School Facility Program Guidebook, January 2003," page 67.
- b. Submit an Expenditure Report, Form SAB 50-06, pursuant to Title 2, California Code of Regulations Section 1859.104, subdivision (a), and the "School Facility Program Guidebook, January 2003," page 68.
- c. Provide a progress report within 18 months from the date any funds for separate design (for financial hardship projects) were released to the district, including information regarding the progress the district has made towards substantial completion of the project, pursuant to Title 2, California Code of Regulations Section 1859.104, subdivision (b), and the

“School Facility Program Guidebook, January 2003,” page 67.

- d. Provide a progress report within 18 months from the date any funds for separate sites (for financial hardship projects) were released to the district, including information regarding the progress the district has made towards substantial completion of the project, pursuant to Title 2, California Code of Regulations Section 1859.104, subdivision (b), and the “School Facility Program Guidebook, January 2003,” page 68.
- e. Provide a progress report within 12 months from the date any funds for separate sites (environmental hardship) were released to the district, including information regarding the progress the district has made towards acquiring the site, and provide a progress report within 18 months from the date any funds for adjusted grants were released to the district, including submission of a progress report, pursuant to Education Code Section 17072.13, subdivision (c), Title 2, California Code of Regulations Sections 1859.104, subdivision (c), and 1859.105.1, and the “School Facility Program Guidebook, January 2003,” page 68.
- f. Assist in any audit by the State Allocation Board to ensure that all funds received pursuant to this chapter are expended in accordance with program requirements, pursuant to Education Code Section 17076.10, subdivision (a), Title 2, California Code of Regulations Section 1859.105, and the “Substantial Progress and Expenditure Audit Guide, May 2003.”

- g. Have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises, pursuant to Educ. Code Section 17076.11.
- h. Maintain all appropriate records that support all district certifications and expenditure for all costs associated with School facility Program projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies to perform their audit responsibilities, pursuant to Title 2, California Code of Regulations Section 1859.106, subdivision (c).
- i. Amend its funding application as required by Title 2, California Code of Regulations Sections 1859.41 and 1859.107, and Forms SAB 50-02, SAB 50-03, SAB 50-04.

Article 17. School Project Safety Components

On or after January 1, 2000, include in its plans and specifications for the construction or fabrication of a new or modernized school building, that includes the construction or fabrication of new or modernized classrooms, a hard-wired connection to a public switched telephone network in each new or modernized classroom, but a school district may meet this requirement by utilizing wireless technology equal to a hard-wired connection to a public switched telephone network, pursuant to Education Code Section 17077.10, subdivision (d).

Article 18. Energy Efficiency

- a. Certify that an energy analysis and report has been prepared that sets forth the utility savings that would be generated if the facilities were designed, constructed, and equipped, with the energy efficiency and renewable technologies that would make the facilities exceed the minimum building energy-efficiency standards mandated for new public buildings pursuant to the latest edition of the California Building Standards Code through the use of energy efficiency and renewable energy technologies, pursuant to Education Code Section 17077.30, subdivisions (a) through (d).
- b. Seek a grant adjustment for the state's share of the increased costs associated with those components, pursuant to Education Code Section 17077.35, subdivision (a).
- c. Certify that the cost for the project exceeds the amount of funding otherwise available to the applicant under this chapter, pursuant to Education Code Section 17077.35, subdivision (d), and the "School Facility Program Guidebook, January 2003," page 22.

Article 19. Joint-Use Facilities

- a. As may be necessary, apply to the State Allocation Board funding for joint-use projects to construct facilities on kindergarten to grade 12, inclusive, pursuant to Education Code Section 17077.40, subdivision (b).

- b. Demonstrate that it has complied with Education Code Sections 17077.40, and 17077.42, subdivisions (a) through (e), and the "School Facility Program Guidebook, January 2003," page 42.
- c. Obtain approval required pursuant to this chapter, including, but not limited to, the approval of the Division of the State Architect before the State Allocation Board releases funds, pursuant to Education Code Section 17077.45, subdivision (c).
- d. Submit an Application for Joint-Use Funding, Form SAB 50-07, certifying that the district has met specific criteria of the law and regulations, pursuant to the "School Facility Program Guidebook, January 2003," page 43.

A school district must apply for joint use funding on the.
- e. Submit approved plans by the Division of the State Architect within one year of the date of apportionment, pursuant to the "School Facility Program Guidebook, January 2003," page 43.
- f. Make a request for fund release, and submit reports on expenditures, pursuant to the "School Facility Program Guidebook, January 2003," page 43.
- g. Certify that the joint use partner's matching share has been deposited in the County School Facility Fund, the funds have been expended by the school district, or will be expended by the district prior to the Notice of

Completion for the project, pursuant to the "School Facility Program Guidebook, January 2003," page 47.

- h. Submit a Fund Release Authorization, Form SAB 50-05, within 18 months of the Joint Use grant apportionment from the State Allocation Board, or the grant will be rescinded, pursuant to the "School Facility Program Guidebook, January 2003," page 47.
- i. Submit final Division of the State Architect plans, and another 18 months from the date the Office of Public School Construction receives these plans to submit a Fund Release Authorization, Form SAB 50-05, or the grant will be rescinded, pursuant to the "School Facility Program Guidebook, January 2003," page 47.

Article 20. Critically Overcrowded School Facilities

- a. Meet all of the criteria of Education Code Section 17078.18, subdivisions (a) through (c), and the "School Facility Program Guidebook, January 2003," pages 37, 38.
- b. Submit an Application for Preliminary Apportionment, Form SAB 50-08, to the State Allocation Board by May 1, 2003, for projects to be funded with the proceeds of bonds approved by the voters at the November 5, 2002, statewide general election, pursuant to Education Code Section 17078.20, subdivisions (b) and (c), and the "School Facility Program Guidebook, January 2003," page 37.

- c. Preliminary applications shall:
 - (1) Establish per-unhoused-pupil eligibility as set forth under the article entitled "New Construction Eligibility Determination";
 - (2) Identify the unhoused pupil population that the proposed project will serve by determining the number of pupils to be served and the likely source school or schools from which the pupils population will be drawn;
 - (3) Identify the proposed general location of the needed new facilities;
and
 - (4) Estimate the total facility cost on a per-pupil basis and estimate the total site acquisition and development costs, pursuant to Education Code Sections 17071.75, 17078.22, subdivision (a), and 17078.24, subdivision (c).
- d. Demonstrate to the satisfaction of the State Department of Education that a variance is necessary in order to adequately provide facilities for the identified source school pupils, pursuant to Education Code Section 17078.22, subdivisions (a) and (b).
- e. Complete the application for final apportionment, pursuant to Education Code Section 17078.25, subdivision (a), and the "School Facility Program Guidebook, January 2003," page 37.
- f. As may be necessary, request a single one-year extension of the period,

and the State Allocation Board may grant the request if the applicant has made substantial progress towards completing the requirements for filing an application for final apportionment, pursuant to Education Code Section 17078.25, subdivision (b), and the "School Facility Program Guidebook, January 2003," page 37.

- g. Report annually to the State Allocation Board regarding the progress made toward completing the requirements for filing an application for final apportionment, and shall annually hold, at a regularly scheduled meeting of the governing board, a public hearing pursuant to the Ralph M. Brown Act to discuss, and to receive public comment regarding, the report, pursuant to Education Code Section 17078.25, subdivision (d), and the "School Facility Program Guidebook, January 2003," page 40.
- h. Certify that the California Department of Education has determined in writing that there is at least one approvable site within the proposed general location of the proposed facility, or within the variance location, pursuant to Education Code Sections 17078.22, subdivisions (a) and (b), and 17078.25, subdivision (e), and the "School Facility Program Guidebook, January 2003," page 40.

CHAPTER 14 "EMERGENCY SCHOOL CLASSROOM LAW OF 1979," as added by
Chapter 277, Statutes of 1996, Section 2:

Article 1. General Provisions

- a. Submit an application for lease of a portable classroom under the State Relocatable Classroom Law of 1979, which includes:
 - (1) A resolution on forms provided by the State Allocation Board, by the governing board of the eligible school district authorizing the filing of an application and the signing of a lease agreement or agreements for such numbers of portable classrooms as the State Allocation Board may approve, pursuant to Title 2, California Code of Regulations Section 1862.52;
 - (2) A complete application of forms provided by the State Allocation Board, including:
 - i. Enrollment Certification/Projection, Form SAB 50-01, pursuant to Title 2, California Code of Regulations Section 1862.52, and the "State Relocatable Classroom Program Handbook, January 2003," page 5;
 - ii. Eligibility Worksheet, Form SAB 25-1, pursuant to Title 2, California Code of Regulations Section 1862.52, and the "State Relocatable Classroom Program Handbook, January 2003," page 5;

- iii. Application to Lease State Relocatable Classroom(s), Form SAB 25-2, pursuant to Title 2, California Code of Regulations Section 1862.52, and the "State Relocatable Classroom Program Handbook, January 2003," page 5.
- (3) Layout plans clearly showing the location on the site of the proposed portable classroom buildings as well as the location of existing buildings, pursuant to Title 2, California Code of Regulations Section 1862.52;
- (4) A certification by the authorized agent that the school district hired or will hire a teacher for each portable classroom leased to the district for the term of the lease, pursuant to Title 2, California Code of Regulations Section 1862.52; and
- (5) A certification or other evidence, satisfactory to the State Allocation Board, that the school district has no available bond proceeds which could be used for the purchase of classroom facilities, pursuant to Education Code Section 17092, subdivision (a), and Title 2, California Code of Regulations Section 1862.52.
- (6) A lease agreement executed by the authorized agent of a school district is subject to any further conditions required by the State Allocation Board as specified by Education Code Sections 17089, 17090, Title 2, California Code of Regulations Section 1862.53,

and the "State Relocatable Classroom Program Handbook,
January 2003," page 9.

- b. Make the following site preparations prior to the delivery of relocatable classrooms:
- (1) Provide at its own expense a near flat surface (clear and graded), with the elevation of a 30 feet times 50 feet "pad," not exceeding 9 inches in grade from the highest to the lowest point in any direction, for placement of each portable classroom, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 7;
 - (2) Place the portable classroom(s) a minimum of four feet apart, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 7;
 - (3) Determine that the site has a minimum soil bearing capacity of 1,000 pounds per square foot, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 7;
 - (4) Build a "pad" at least 30 feet times 50 feet, turf-free with at least 2 percent drainage to prevent water from ponding beneath and around the relocatable classroom(s), pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 7;

- (5) Place the relocatable classroom(s) in location(s) clear of any sprinkler systems to reduce the problems of deterioration, dry rot or rust, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 7;
 - (6) Ensure the location and access for maneuvering space of, or the entry turnaround and exit of, a large truck and trailer (85 feet clearance at front or back), pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 7;
 - (7) Furnish a hard surfaces walkway in compliance with Title 21, Chapter 1, Subchapter 2, of the California Administrative Code "Access Public Buildings by Persons with Disabilities," pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 7; and
 - (8) Connect the building to an adequate fire alarm system in accordance with current law, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 7.
- c. Submit a study examining the feasibility of implementing in the district a year-round multitrack educational program that is designed to increase pupil capacity in the district by at least 20 percent, pursuant to Education Code Section 17088.3, subdivision (a).

- d. Certify on the Application to Lease State Relocatable Classroom(s), Form SAB 25-2, that it meets the Multi-Track-Year-Round Education requirement addressing the feasibility of the district to proceed on a the Multi-Track-Year-Round Education calendar by the Department of Education, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 4.
- e. Act as its agent in contracting for architectural and construction services and purchasing furniture and equipment, pursuant to Education Code Section 17088.5, subdivision (a).
- f. In the case where adequate funds are not available to the State Allocation Board for the purchase of those classrooms, purchase portable classrooms subject to the following conditions:
 - (1) Under a procedure determined by the State Allocation Board, pursuant to either a bidding process implemented by the school district or county superintendent of schools or by the State Office of Procurement, pursuant to Education Code Section 17088.5, subdivision (b)(1), and the "State Relocatable Classroom Program Handbook, January 2003," page 13; and
 - (2) Sell the portable classroom or classrooms to the State Allocation Board at a price necessary to reimburse the district or the county superintendent for the purchase price less the amount that would

have been charged by the State Allocation Board by way of a lease from the date of purchase, pursuant to Education Code Sections 17088.5, subdivision (b)(2), and 17089.

- g. Submit the following forms after receiving State Allocation Board approval of its application:
 - (1) Site Readiness Certification, Form SAB 25-3, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 5; and
 - (2) Certification for Reimbursement, Form SAB 25-4, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 5.
- h. Select an architect and a site inspector (with the architect's assistance), contract for electrical services, sign a "Notice of Completion," obtain insurance for building (see below), submit the Inspector of records 100 percent complete final Verified Report, Form DSA 6 to the Office of Public School Construction, signs a lease agreement that was issued to the district by the Office of Public School Construction and returns it for final processing, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 5.
- i. Submit the complete site building plans to the Division of the State Architect within 60 days of receiving the manufacturer's plans from the

Office of Public School Construction or the building may be reassigned to another district, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 4.

- j. Accept delivery of the relocatable classroom(s) within 60 days after it is deemed available by the Office of Public School Construction or the building assignment may be reallocated, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," pages 4, 5.
- k. Certify with the California Environmental Quality Act (CEQA) on the Application to Lease State Relocatable Classroom(s), Form SAB 25-2, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 4.
- l. Purchase portable classrooms, pursuant to Education Code Section 17088.7, subdivision (a).
- m. In the case of portable classrooms purchased pursuant to a joint powers agreement, the agreement must identify the school district or districts and county superintendent or superintendents of schools that are party to the agreement, identify the district or districts providing the revenues, specify the manner in which the revenues are to be expended, and specify the distribution of portable classrooms subsequent to purchase, which distribution shall be in accordance with the eligibility requirements of the

the State Relocatable Classroom Law of 1979, pursuant to Education Code Section 17088.7, subdivision (e).

- n. In order to purchase the portable classroom, leased from the State Allocation Board prior to December 1, 1991, pay an amount equal to the price paid by the State Allocation Board less any amount of rent already paid in equal annual installments for an agreed upon term not to exceed nine years, pursuant to Education Code Section 17089.2. The school district must provide the following documentation:
 - (1) Application to Purchase State Relocatable Classroom(s), Form 25-46, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 14; and
 - (2) Application to Purchase State Relocatable Classroom(s) Attachment A, Form 25-46A, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 14.
- o. For any lease entered into on or after January 1, 2000, the lease shall include a provision for a telephone in each portable classroom obtained under the State Relocatable Classroom Law of 1979, and the school district must connect the telephone to a public switched network, or utilize wireless technology equivalent to a hard-wired connection, at the time of installation of the building, pursuant to Education Code Section 17096.
- p. In order to obtain reimbursement by the State Allocation Board for the

costs associated with the site preparation, electrical hook-up, plumbing connection, Division of the State Architect plan checking, insurance, and maintenance submit:

- (1) Certification for Reimbursement, Form SAB 25-4, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 11;
 - (2) The Architect's final 100 percent complete Verified Report, Form DSA-6, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 11; and
 - (3) The Inspector of Record's final 100 percent completed Verified Report, Form DSA-6, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 11.
- q. Submit its reimbursement request to the Office of Public School Construction within 90 days of delivery or the district will be ineligible for reimbursement, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 11.
- r. Notify the Office of Public School Construction, in writing, prior to relocating building, and receive approval from the Division of the State Architect for the new site, pursuant to the "State Relocatable Classroom Program Handbook, January 2003," page 13.

- s. Return a relocatable classroom(s), the district must send a letter to the Office of Public School Construction stating the current site of the building(s), address, and the Office of Public School Construction building number(s) to be returned along with the date the district wished to return the classroom(s) , pursuant to the “State Relocatable Classroom Program Handbook, January 2003,” page 13.
- t. Prior to relocating the building, restore the relocatable classroom(s) to a “like new” condition and must assure that the relocatable classroom(s) is totally accessible to the moving contractor for the State to bear the costs associated with the relocatable classroom(s) return, pursuant to the “State Relocatable Classroom Program Handbook, January 2003,” page 13.

CHAPTER 15 “SCHOOL DISTRICT REVENUE BONDS,” as added by Chapter 277, Statutes of 1996, Section 2:

Article 2. Revenue Bonds

- a. As may be necessary, issue for sale revenue bonds to finance the construction of joint occupancy facilities as prescribed in Article 8 “Joint Occupancy” of Chapter 4 “Property: Sale, Lease, Exchange” of Part 10.5 “School Facilities,” (the subject of another test claim) which facilities are necessary to relieve overcrowded schools, pursuant to Education Code Section 17110.

- b. Use the proceeds from the rental and lease of the facilities to repay the revenue bonds, pursuant to Education Code Section 17110.
- c. Meet the requirements of Article 3 "Approvals" and Article 6 "Fitness for Occupancy" of Chapter 3 "Construction of School Buildings" of Part 10.5 "School Facilities," (the subject of another test claim), pursuant to Education Code Section 17110, subdivision (b).
- d. Contract with any person, firm, partnership, joint venture, or other private entity for the purpose of issuing revenue bonds and for the purpose of renting or leasing the facilities constructed under School District Revenue Bonds, pursuant to Education Code Sections 17111.

CHAPTER 16 "PUBLIC DISCLOSURE OF NON-VOTER-APPROVED DEBT," as amended by Chapter 734, Statutes of 2001, Section 11:

- a. Upon approval by the governing board of the school district to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 18 "California School Finance Authority," notify the county superintendent of schools and the county auditor, pursuant to Education Code Section 17150, subdivision (a).
- b. Provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county

auditor, the county superintendent, the governing board, and the public,
pursuant to Education Code Section 17150, subdivision (a).

CHAPTER 18 "THE CALIFORNIA SCHOOL FINANCE AUTHORITY ACT," as added by
Chapter 277, Statutes of 1996, Section 2:

- a. As an agent of the California School Finance Authority, enter into contracts to determine the location and character of any project to be financed under the California School Finance Authority Act, and acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, or regulate the same, pursuant to Education Code Section 17180, subdivisions (f)(1) and (2).
- b. As an agent of the California School Finance Authority, acquire by purchase solely from funds provided under the California School Finance Authority Act, or by gift or devise, and sell, by installments or otherwise, property, rights, rights-of-way, franchises, easements, and other interests in lands, including, but not limited to, lands lying under water, and riparian rights, located within the state which the California School Finance Authority deems necessary or convenient for the acquisition, construction, financing, or operation of a project, pursuant to Education Code Section 17180, subdivision (g).
- c. Comply with and terms and conditions deemed appropriate by the

California School Finance Authority or the lease may be terminated, pursuant to Education Code Section 17180, subdivision (j).

- d. Pay the administrative costs and expenses incurred by the California School Finance Authority under the California School Finance Authority Act, pursuant to Education Code Section 17180, subdivision (k).
- e. Demonstrate the financial feasibility of a project by taking into account all district funds, basing future projections upon historical experience or reasonable expectations, or a combination thereof, to obtain project financing under the California School Finance Authority Act, pursuant to Education Code Section 17183.5.
- f. In connection with receiving from a public credit provider credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness, agree to adopt a resolution by a majority vote of its board to participate under this section, provide notice to the Controller of that election, including a schedule for the repayment of principal and interest on the bonds, notes, certificates of participation, or other evidence of indebtedness and identify the public credit provider that provided credit enhancement, pursuant to Education Code Section 17193.5, subdivision (a)(1). The notice shall be provided not later than the date of issuance of the bonds, pursuant to Education Code Section 17193.5, subdivision (a)(1).

- g. Perform any acts specifically approved by the California School Finance Authority, including:
- (1) The selection of school sites, pursuant to Education Code Section 17194, subdivision (a);
 - (2) The securing of appraisals, pursuant to Education Code Section 17194, subdivision (b);
 - (3) Contracts for architectural services, pursuant to Education Code Section 17194, subdivision (c);
 - (4) The advertisement for construction bids and the entry into contracts for construction, pursuant to Education Code Section 17194, subdivision (d); and
 - (5) The purchase of furniture and equipment, pursuant to Education Code Section 17194, subdivision (e).
- h. For the purpose of securing financing or refinancing of projects or working capital pursuant to this chapter through the issuance, by California School Finance Authority, of revenue bonds, certificates of participation, or other means, and notwithstanding any other provision of law, shall, as may be necessary:
- (1) Sell to the California School Finance Authority all or part of any rights to or possibilities regarding the state's share of funding for school facilities approved by the State Allocation Board under "The

Leroy F. Greene School Facilities Act of 1998" including amounts apportioned and funded and amounts approved but not yet funded by the State Allocation Board from proceeds of state bonds already authorized by the electors but not yet issued, pursuant to Education Code Section 17199.1, subdivision (a)(1);

- (2) Issue bonds to the California School Finance Authority, pursuant to Education Code Section 17199.1, subdivision (a)(2);
- (3) Borrow money or purchase or lease educational facilities from the California School Finance Authority, and in connection therewith, sell or lease property to the California School Finance Authority, in each case at any interest rate or rates, rental provisions, with any maturity date or dates or term, and with any other transfer, assignment, payment, security, default, remedy, and other terms or provisions as may be specified in the sale of rights agreement or the bonds of the participating district or a loan, loan purchase, installment sale, lease, or other agreement between the California School Finance Authority and the participating district, pursuant to Education Code Section 17199.1, subdivision (a)(3).

- i. As may be necessary, enter into any agreement for liquidity or credit enhancement, with any reimbursement, payment, interest, security, default, remedy, and other terms it may deem necessary or appropriate in

connection with the issuance of bonds, the borrowing of money or the lease or purchase of educational facilities, whichever is applicable, pursuant to Education Code Section 17199.1, subdivision (c).

- j. Do all things and execute all documents as may be necessary or desirable in connection with the issuance of certificates of participation, or other interests, in any bond, loan, installment sale, lease, or other agreement of the district, pursuant to Education Code Section 17199.1, subdivision (c).
- k. By resolution authorize the board of education to act as its agent in the performance of any of the matters permitted by this section or any other provision of the California School Finance Authority Act, binding the district to any contract, agreement, instrument, or other document executed by the agent on behalf of the district, pursuant to Education Code Section 17199.1, subdivision (d).
- l. Elect to guarantee or provide for payment of the bonds in accordance with the following conditions:
 - (1) If the district adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election, including a schedule for the repayment of principal and interest on the bonds and identify a trustee appointed by the participating school district or county office of

education or the authority for purposes of this section, pursuant to Education Code Section 17199.4, subdivision (a)(1). The notice shall be provided not later than the date of issuance of the bonds, pursuant to Education Code Section 17199.4, subdivision (a)(1); and

(2) If, for any reason, the district will not make the payment of principal and interest at the time the payment is required, the district or county office must notify the trustee of that fact and of the amount of the deficiency, pursuant to Education Code Section 17199.4, subdivision (a)(2); or

(3) The district may provide a transfer schedule in its notice to the Controller of its election to participate under this section, setting forth amounts to be transferred to the trustee and the date for the transfers, pursuant to Education Code Section 17199.4, subdivision (a)(4).

m. Apply to the California School Finance Authority to participate, pursuant to Education Code Section 17199.4, subdivision (c).

PART 68.1 "KINDERGARTEN-UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT OF 2002," as added by Chapter 33, Statutes of 2002, Section 30, and approved by passage of Initiative Measure [Prop. 47] on November 5, 2002:

CHAPTER 2 "KINDERGARTEN THROUGH 12TH GRADE"

Article 1. Kindergarten Through 12th Grade School Facilities Program Provisions

- a. File an application, including, but not limited to, hardship applications, with the Office of Public School Construction after February 1, 2002, to be eligible for the three billion four hundred fifty million dollars (\$3,450,000,000) assigned under this chapter for the new construction of school facilities in accordance with the "Leroy F. Greene School Facilities Act of 1998," Chapter 12.5, pursuant to Education Code 100620, subdivision (a)(1).
- b. File an application, including, but not limited to, hardship applications, with the Office of Public School Construction after February 1, 2002, to be eligible for the one billion four hundred million dollars (\$1,400,000,000) assigned under this chapter for the modernization of school facilities in accordance with the "Leroy F. Greene School Facilities Act of 1998," Chapter 12.5, pursuant to Education Code Section 100620, subdivision (a)(2).

- c. File an application, including, but not to, hardship applications, with the Office of Public School Construction on or before February 1, 2002, to be eligible for the two billion nine hundred million dollars (\$2,900,000,000) assigned under this chapter for new construction of school facilities in accordance with the "Leroy F. Greene School Facilities Act of 1998," Chapter 12.5, pursuant to Education Code Section 100620, subdivision (a)(3).

- d. File an application, including, but not to, hardship applications, with the Office of Public School Construction on or before February 1, 2002, to be eligible for the one billion nine hundred million dollars (\$1,900,000,000) assigned under this chapter for the modernization of school facilities in accordance with the "Leroy F. Greene School Facilities Act of 1998," Chapter 12.5, pursuant to Education Code Section 100620, subdivision (a)(4).

It is estimated that the Clovis Unified School District incurred approximately \$1,000 in costs in excess of the funding provided to the district by the state for the period from July 2001 through 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the

Declaration of William C. McGuire
Test Claim of Clovis Unified School District
School Facilities Funding Requirements

foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 4th day of June 2003, at Clovis, California



William C. McGuire
Associate Superintendent
Clovis Unified School District

DECLARATION OF THOMAS J. DONNER

Santa Monica Community College District

Test Claim of Clovis Unified School District

COSM No. _____

- Chapter 199, Statutes of 2002
- Chapter 132, Statutes of 2001
- Chapter 193, Statutes of 2000
- Chapter 44, Statutes of 2000
- Chapter 1076, Statutes of 1998
- Chapter 741, Statutes of 1998
- Chapter 940, Statutes of 1997
- Chapter 893, Statutes of 1997
- Chapter 277, Statutes of 1996

Education Code Sections:

15271	15272	15274	15280	15284	15301	15302
15303	15320	15321	15322	15323	15324	15325
15326	15327	15336	15340	15341	15342	15343
15346	15347	15349	15349.1	15350	15351	15352
15354	15355	15359.2	15359.3	15380	15381	15384
15390	15391	17180	17183.5	17193.5	17194	
17199.1	17199.4					

School Facilities Funding Requirements

I, Thomas J. Donner, Executive Vice President of Business and Administration, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Executive Vice President of Business and Administration, I am responsible for the acquisition of funding for facility construction. I am familiar with the provisions and requirements of the statutes, code sections and regulations enumerated above, which require the district to:

PART 10 "SCHOOL BONDS"

CHAPTER 1.5 "STRICT ACCOUNTABILITY IN LOCAL SCHOOL CONSTRUCTION

BONDS ACT OF 2000," as added by Chapter 44, Statutes of 2000, Section 3:

Article 1. General Provisions

- a. When the governing board decides, with a two-thirds vote, to pursue the issuance of bonds under Paragraph (3), Subdivision (b), Section 1, of Article XIII A of the California Constitution and Subdivision (b), Section 18, of Article XVI of the California Constitution, an election shall be ordered, as may be necessary, on the question of whether community college district bonds shall be issued under Subdivision (b), Section 18, of Article XVI of the California Constitution at a primary election, a regularly scheduled local election, or a statewide special election, pursuant to Education Code Section 15266, subdivision (a).
- b. Upon resolution to incur bonded indebtedness and after the question has been submitted to the voters, if approved at the election, the governing board cannot, regardless of the number of votes cast in favor of the bond, subsequently proceed under Chapter 2, "Bonds of School Facilities Improvement Districts," pursuant to Education Code Section 15266, subdivision (b).
- c. Issue bonds that do not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or

- counties in which the district is located, pursuant to Education Code Section 15270, subdivision (a).
- d. Issue, as may be necessary, bonds if the tax rate levied to meet the requirements of Section 18, of Article XVI of the California Constitution in the case of indebtedness incurred under the “Strict Accountability in Local School Construction Bonds Act of 2000” at a single election of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution, pursuant to Education Code Section 15270, subdivision (a).
- e. Compute its outstanding bonded indebtedness, pursuant to Education Code Section 15270, subdivision (c).
- f. Proceed under the “Strict Accountability in Local School Construction Bonds Act of 2000” on behalf of a school facilities improvement district and act on behalf of the school facilities district as provided under Chapter 2, “Bonds of School Facilities Improvement Districts,” pursuant to Education Code Section 15271.
- g. Provide a written statement on all bond ballots stating that the board will appoint a citizens’ oversight committee and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes, pursuant to Education Code Section 15272.

- h. Make an entry upon its minutes if it appears from the certificate of election results that 55 percent of the votes cast on the proposition of issuing bonds pursuant to Subdivision (b) of Section 18 of Article XVI of the California Constitution are in favor of issuing bonds, pursuant to Education Code Section 15274.
- i. Certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the district, all proceedings "had in the premises," pursuant to Education Code Section 15274.

Article 2. Citizens' Oversight Committee

- a. If a bond measure is authorized, establish and appoint members to an independent citizens' oversight committee, within 60 days of the date the governing board enters the election results on its minutes, pursuant to Education Code Sections 15274, 15728, subdivisions (a) and (b), and 15782.
- b. Without expending bond funds, provide the citizens' oversight committee with any technical assistance and must provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee, pursuant to Education Code Section 15280, subdivision (a).
- c. Maintain an Internet website to make available the minutes of the proceedings of the citizens' oversight committee, all documents received

and all reports issued, pursuant to Education Code Section 15280, subdivision (b).

Article 3. Bond Accountability – “School Bond Waste Prevention Action”

Respond to any restraining orders files by a citizen residing in the district who is assessed and is liable to pay, or who has paid within one year before the commencement of any action, an ad valorem tax on real property, pursuant to Education Code Section 15284, subdivision (a).

CHAPTER 2 “BONDS OF SCHOOL FACILITIES IMPROVEMENT DISTRICTS,” as added by Chapter 277, Statutes of 1996, Section 2:

Article 1. General Provisions

- a. If the district that has a community facilities district formed under the “Mello-Roos Community Facilities Act of 1982,” that has as one of its purposes the construction of school facilities within a portion of the territory of the community college district, shall, as may be necessary, proceed under the “Bonds of School Facilities Improvement Districts,” pursuant to Education Code Section 15301, subdivision (a).
- b. Proceed without meeting the requirements of the previous Duty (a), if the governing board determines it is necessary and in the best interest of the community college district to form a school facilities improvement district to finance any or all of the improvements set forth in Section 15302, Duty (g), pursuant to Education Code Section 15301, subdivision (c).

- c. Make a finding that the overall cost of other facilities financing options available to the community college district, including, but not limited to the "Mello-Roos Communities Facilities Act of 1982," pursuant to Education Code Section 15301, subdivision (c).
- d. Define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the community college district, except that the boundaries may not include all or a portion of the territory of the community facilities district described in Duty (a), pursuant to Education Code Section 15301, subdivision (c).
- e. Comply with the filing requirements established by Section 54902 of the Government Code (providing that on or before December 1 of the year immediately preceding the year in which the assessments or taxes are to be levied, the statement shall be filed with the auditor of each levying county, and the statement and the map or plat shall be filed with each assessor whose roll is used for the levy and with the State Board of Equalization in Sacramento), pursuant to Education Code Section 15301, subdivision (d).
- f. Specifically identify any property, located within the community college district, that is not located within the improvement district established by the community college district under this chapter, pursuant to Education Code Section 15301, subdivision (d).

- g. Issue general obligation bonds for the following purposes, if the purpose of the bonds is to benefit the land within the school facilities improvement district consistent with any of the following:
- (1) To purchase real property upon which to construct school facilities, pursuant to Education Code Section 15302, subdivision (a);
 - (2) To build or purchase school facilities, pursuant to Education Code Section 15302, subdivision (b);
 - (3) To make alterations or additions to the school facilities other than those necessary for ordinary maintenance, operation, or repairs, pursuant to Education Code Section 15302, subdivision (c);
 - (4) To repair, restore, or rebuild any school facilities damaged, injured, or destroyed by fire or other public calamity, pursuant to Education Code Section 15302, subdivision (d);
 - (5) To supply playgrounds with furniture, equipment, or necessary apparatus of a permanent nature, pursuant to Education Code Section 15302, subdivision (e);
 - (6) To permanently improve school grounds, pursuant to Education Code Section 15302, subdivision (f);
 - (7) To refund any valid outstanding indebtedness of the school facilities improvement district that is evidenced by bonds, pursuant to Education Code Section 15302, subdivision (g);

- (8) To carry out the projects or purposes authorized in Section 17577 (granting the governing board of each community college district the power to provide sewers and drains adequate to treat and/or dispose of sewage and drainage on or away from each school property), the constructing of which may be paid from the building fund, including any bond moneys therein), pursuant to Education Code Section 15302, subdivision (h); and/or
 - (9) To demolish or raze any school building with the intent to replace it with another school building, whether in the same location or in any other location, pursuant to Education Code Section 15302, subdivision (i).
- h. Provide the information to allow the board of supervisors of the county in which the superintendent of schools having jurisdiction over the community college district in which the school facilities improvement district is located or, if a school facilities improvement district lies in two or more counties, the board of supervisors for those countries, to adopt by a majority vote this chapter before it becomes operative and applicable to any county or counties, pursuant to Education Code Section 15303.

Article 2. Formation of a District

- a. Adopt a resolution of intention that states all of the following:
 - (1) The intention of the governing board to form the proposed school

- facilities improvement district, pursuant to Education Code Section 15320, subdivision (a);
- (2) The purpose for which the proposed school facilities improvement district is to be formed, consistent with the requirements set forth in Section 15302, Article 1, Duty (g), pursuant to Education Code Section 15320, subdivision (b);
 - (3) The estimated cost of the school facilities improvement project, pursuant to Education Code Section 15320, subdivision (c);
 - (4) That any taxes levied for the purpose of financing the general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities improvement district, pursuant to Education Code Section 15320, subdivision (d);
 - (5) That a map showing the exterior boundaries of the proposed school facilities improvement district is on file with the governing board of the community college district and is available for inspection by the public, pursuant to Education Code Sections 15301, subdivision (b), and 15320, subdivision (e);
 - (6) The time and place for a hearing by the governing board on the formation of the proposed school facilities improvement district, pursuant to Education Code Section 15320, subdivision (f); and

- (7) That any interested persons, including all persons owning lands in the community college district, or in the proposed school facilities improvement district, may appear and be heard, pursuant to Education Code Section 15320, subdivision (h).
- b. Provide notice of the hearing by publishing a copy of the resolution of intention in a newspaper of general circulation, at least 14 days prior to the time fixed for the hearing, and must post a copy of the resolution in three public places within the proposed school facilities improvement district for at least 14 days prior to the time fixed for the hearing, pursuant to Education Code Section 15321.
- c. Hold the hearing provided for by resolution of intention at the time and place fixed by that resolution, pursuant to Education Code Section 15322.
- d. At the hearing, adopt a resolution proposing modification, consistent with Section 15302, Article 1, Duty (g), of the purpose stated in the resolution of intention, pursuant to Education Code Section 15323.
- e. Describe, in the district's resolution proposing modification, the proposed modifications, state the change, if any, in the estimated cost of carrying out the purpose, and fix a time and place for hearing, pursuant to Education Code Section 15323.
- f. Publish the resolution proposing the modifications to the resolution of intention once in the same newspaper in which the resolution of intention

was published at least 14 days prior to the date of hearing on the proposed modifications, pursuant to Education Code Section 15324.

- g. Hold the hearing on any proposed modifications at the same time and place as any continued hearing on the resolution of intention and both hearings shall be held and conducted concurrently, pursuant to Education Code Section 15325.
- h. At the conclusion of the hearing on the resolution of intention and of the hearing, if any, upon proposed modifications, order the school facilities district formed for the purpose and with the boundaries described in the resolution of intention, and if relevant, the resolution proposing modifications, pursuant to Education Code Section 15326.
- i. State, in the district's resolution ordering the school facilities improvement district formed, the estimated cost of carrying out the purpose described in the resolution, and number and designate the school facilities improvement district substantially as "School Facilities Improvement District of the ____ Community College District," pursuant to Education Code Section 15326.
- j. Provide the governing board the same rights, powers, duties and responsibilities with respect to the formation and government of school facilities improvement district as the governing board has with respect to

the community college district, pursuant to Education Code Section 15327.

Article 3. Financing the Bonds

Submit, within 30 days after the end of each fiscal year, a report containing the information pertaining to an election under Article 4, "General Provisions for Bond Elections," to the county superintendent of schools who has jurisdiction over the community college district along with:

- (1) The total amount of the bond issue, bonded indebtedness, or other indebtedness involved, pursuant to Education Code Section 15336, subdivision (a);
- (2) The percentage of qualified electors who are residents of the school facilities improvement district who voted at the election, pursuant to Education Code Section 15336, subdivision (b);
- (3) The results of the election, with the percentage of votes cast for and against the proposition involved, pursuant to Education Code Section 15336, subdivision (c).

Article 4. General Provisions for Bond Elections

- a. After adopting the resolution ordering the formation of the school facilities improvement district, provide for and call a special bond election within the school facilities improvement district to submit to the voters of the

school facilities improvement district a proposition of whether or not an indebtedness of the district shall be incurred and bonds issued therefore in an amount not exceeding the estimate stated in the resolution ordering the school facilities improvement district formed, pursuant to Education Code Section 15340, subdivision (a).

- b. Not call a bond election within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as the statewide election, pursuant to Education Code Section 15341.
- c. Unite and vote upon any purposes enumerated in Section 15302, Article 1, Duty (g), in a single proposition, pursuant to Education Code Section 15342.
- d. Conduct the bond election in accordance with the Elections Code except as provided by the following:
 - (1) As otherwise provided under Chapter 2 "Bonds of School Facilities Improvement Districts," pursuant to Education Code Section 15343, subdivision (a);
 - (2) That the formal notice of the election shall contain the items specified in Section 5361, pursuant to Education Code Section 15343, subdivision (b).

- (3) No election shall be held under the provisions of this section in any school facilities improvement district for a period of 90 days after an election in the same school facilities improvement district, pursuant to Education Code Section 15343, subdivision (c).
- e. Have the ballots prepared to state, "Bonds--Yes" and "Bonds--No," or words of similar import, a brief statement of the proposition, setting forth the amount of the bonds to be voted upon, the maximum rate of interest, the purposes for which the proceeds of the sale of the bonds are to be used, and any other forms and details as required by the ballot provisions of Part 4 of the Government Code, pursuant to Education Code Sections 15346 and 15347.
- f. If it appears from the certificate of election results that two-thirds of the votes cast by the voters voting on the proposition of issuing bonds of the school facilities improvement district are in favor of issuing the bonds, enter the fact upon the governing board's minutes, pursuant to Education Code Section 15349.
- g. Certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the community college district, all proceedings had in the premises, and the county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county, pursuant to Education Code Section 15349.

- h. Certify the proceedings relating to the authorization of bonds of a school facilities improvement district that is located within a community college district of any type to the board of supervisors of the county whose superintendent of schools has jurisdiction over the community college district in which the school facilities improvement district exists, pursuant to Education Code Section 15349.1.

Article 5. Issuance and Sale of Bonds

- a. Adopt a resolution prescribing the total amount of bonds to be sold, and, as may be necessary, prescribe the maximum interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, but not more than 25 years from the date of the bonds before the board of supervisors offers bonds of a school facilities improvement district for sale, pursuant to Education Code Sections 15350, 15351, 15354 and 15355.
- b. If the governing board receives satisfactory bids, award the bonds to the bidder whose bid will result in the lowest net interest cost for the group or for the bonds of any district within the group, pursuant to Education Code Section 15351.
- c. Issue the bonds in the name of the school facilities improvement district and designate them as "Bonds of the School Facilities Improvement District of the _____ Community College District" and each bond shall

state that the tax for the payment thereof shall be limited to annual taxes levied upon and collected from the lands within the school facilities improvement district, pursuant to Education Code Section 15352.

- d. By action of the governing board, prepare, or have prepared, bond brochures to serve as a prospectus for bond buyers to assist in the satisfactory sale of the bonds, the expense of the brochures shall be payable out of the funds of the district, but only after the issuance of the bonds to be sold has been approved by the electors of the school facilities improvement district pursuant to Article 4, "General Provisions for Bond Elections," pursuant to Education Code Section 15359.2, subdivision (a).
- e. By action of the governing board, expend funds of the school facilities improvement district for the purposes of advertising the availability of the bonds for purchase in any publication or newspaper that in the opinion of that governing board will give notice to prospective bond buyers that the bonds are available for purchase by bond buyers, pursuant to Education Code Section 15359.2, subdivision (b).
- f. Proceed pursuant to Chapter 1.5 "Strict Accountability in Local School Construction Bonds Act of 2000," and subject to the requirements therein on behalf of a school facilities improvement district that is created by and under the exclusive authority of the community college district under this chapter, pursuant to Education Code section 15359.3.

Article 8. Cancellation of Unsold Bonds

- a. Petition the board of supervisors that has jurisdiction of the issuance and sale of the bonds to cause the unsold bonds to be canceled if any bonds authorized under this chapter have not been offered for sale for one year from the date of the election at which they were authorized or remain unsold for a period of six months after having been offered for sale in the manner prescribed by the board of supervisors, pursuant to Education Code Section 15380.
- b. Have the petition signed by a majority of the governing board's members before the board of supervisors will fix a time for a hearing, not more than 30 days after receiving the petition, pursuant to Education Code Section 15381.
- c. Petition the board of supervisors to cancel the remaining authorization of that district to issue and sell bonds resulting from any particular school bond election after the sale of at least 90 percent of the bonds authorized at the election if the amount of the remaining authorization is not more than twenty-five thousand dollars (\$25,000) and in the opinion of the governing board the sale of the remaining bonds would not be economically justified, pursuant to Education Code Section 15384.

Article 9. Purchase of Bonds by Issuing School Districts

- a. Purchase in the open market bonds issued by the school facilities improvement district with available funds from the school facilities improvement fund, pursuant to Education Code Section 15390.
- b. After purchasing the bonds, notify the board of supervisors of its action, describing the bonds purchased, and at its first meeting thereafter, pursuant to Education Code Section 15391.

CHAPTER 18 "THE CALIFORNIA SCHOOL FINANCE AUTHORITY ACT," as added by Chapter 277, Statutes of 1996, Section 2:

- a. As an agent of the California School Finance Authority, enter into contracts to determine the location and character of any project to be financed under the California School Finance Authority Act, and acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, or regulate the same, pursuant to Education Code Section 17180, subdivisions (f)(1) and (2).
- b. As an agent of the California School Finance Authority, acquire by purchase solely from funds provided under the California School Finance Authority Act, or by gift or devise, and sell, by installments or otherwise, property, rights, rights-of-way, franchises, easements, and other interests in lands, including, but not limited to, lands lying under water, and riparian

- rights, located within the state which the California School Finance Authority deems necessary or convenient for the acquisition, construction, financing, or operation of a project, pursuant to Education Code Section 17180, subdivision (g).
- c. Comply with and terms and conditions deemed appropriate by the California School Finance Authority or the lease may be terminated, pursuant to Education Code Section 17180, subdivision (j).
 - d. Pay the administrative costs and expenses incurred by the California School Finance Authority under the California School Finance Authority Act, pursuant to Education Code Section 17180, subdivision (k).
 - e. Demonstrate the financial feasibility of a project by taking into account all district funds, basing future projections upon historical experience or reasonable expectations, or a combination thereof, to obtain project financing under the California School Finance Authority Act, pursuant to Education Code Section 17183.5.
 - f. In connection with receiving from a public credit provider credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness, agree to the following conditions:
 - (1) Adopt a resolution by a majority vote of its board to participate under this section, provide notice to the Controller of that election, including a schedule for the repayment of principal and interest on

the bonds, notes, certificates of participation, or other evidence of indebtedness and identify the public credit provider that provided credit enhancement, pursuant to Education Code Section 17193.5, subdivision (a)(1). The notice shall be provided not later than the date of issuance of the bonds, pursuant to Education Code Section 17193.5, subdivision (a)(1);

- g. Perform any acts specifically approved by the California School Finance Authority, including:
 - (1) The selection of college sites, pursuant to Education Code Section 17194, subdivision (a);
 - (2) The securing of appraisals, pursuant to Education Code Section 17194, subdivision (b);
 - (3) Contracts for architectural services, pursuant to Education Code Section 17194, subdivision (c);
 - (4) The advertisement for construction bids and the entry into contracts for construction, pursuant to Education Code Section 17194, subdivision (d); and
 - (5) The purchase of furniture and equipment, pursuant to Education Code Section 17194, subdivision (e).
- h. For the purpose of securing financing or refinancing of projects or working capital pursuant to this chapter through the issuance, by California School

Finance Authority, of revenue bonds, certificates of participation, or other means, and notwithstanding any other provision of law, shall, as may be necessary:

- (1) Sell to the California School Finance Authority all or part of any rights to or possibilities regarding the state's share of funding for school facilities approved by the State Allocation Board under "The Leroy F. Greene School Facilities Act of 1998" including amounts apportioned and funded and amounts approved but not yet funded by the State Allocation Board from proceeds of state bonds already authorized by the electors but not yet issued, pursuant to Education Code Section 17199.1, subdivision (a)(1);
- (2) Issue bonds to the California School Finance Authority, pursuant to Education Code Section 17199.1, subdivision (a)(2);
- (3) Borrow money or purchase or lease educational facilities from the California School Finance Authority, and in connection therewith, sell or lease property to the California School Finance Authority, in each case at any interest rate or rates, rental provisions, with any maturity date or dates or term, and with any other transfer, assignment, payment, security, default, remedy, and other terms or provisions as may be specified in the sale of rights agreement or the bonds of the participating district or a loan, loan purchase,

installment sale, lease, or other agreement between the California School Finance Authority and the participating district, pursuant to 17199.1, subdivision (a)(3).

- i. As may be necessary, enter into any agreement for liquidity or credit enhancement, with any reimbursement, payment, interest, security, default, remedy, and other terms it may deem necessary or appropriate in connection with the issuance of bonds, the borrowing of money or the lease or purchase of educational facilities, whichever is applicable, pursuant to Education Code Section 17199.1, subdivision (c).
- j. Do all things and execute all documents as may be necessary or desirable in connection with the issuance of certificates of participation, or other interests, in any bond, loan, installment sale, lease, or other agreement of the district, pursuant to Education Code Section 17199.1, subdivision (c).
- k. By resolution, authorize the board of governors or the Chancellor, to act as its agent in the performance of any of the matters permitted by this section or any other provision of the California School Finance Authority Act, binding the district to any contract, agreement, instrument, or other document executed by the agent on behalf of the district, pursuant to Education Code Section 17199.1, subdivision (d).

- I. Elect to guarantee or provide for payment of the bonds in accordance with the following conditions:
 - (1) If the district adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election, including a schedule for the repayment of principal and interest on the bonds and identify a trustee appointed by the participating school district or county office of education or the authority for purposes of this section, pursuant to Education Code Section 17199.4, subdivision (a)(1). The notice shall be provided not later than the date of issuance of the bonds, pursuant to Education Code Section 17199.4, subdivision (a)(1); and
 - (2) If, for any reason, the district will not make the payment of principal and interest at the time the payment is required, the district or county office must notify the trustee of that fact and of the amount of the deficiency, pursuant to Education Code Section 17199.4, subdivision (a)(2); or
 - (3) The district may provide a transfer schedule in its notice to the Controller of its election to participate under this section, setting forth amounts to be transferred to the trustee and the date for the

Declaration of Thomas J. Donner
Test Claim of Clovis Unified School District
School Facilities Funding Requirements

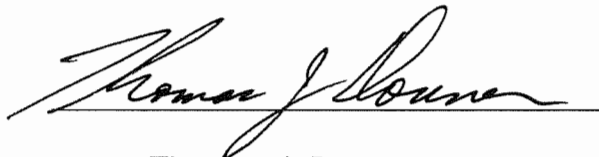
transfers, pursuant to Education Code Section 17199.4, subdivision (a)(4).

- m. Apply to the California School Finance Authority to participate, pursuant to Education Code Section 17199.4, subdivision (c).

It is estimated that the Santa Monica Community College District will incur more than \$1,000 in costs in excess of the funding provided the district by the state to implement these new duties mandated by the state for which the community college district will not be reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 4th day of June 2003, at Santa Monica, California



Thomas J. Donner
Vice President of Business and Administration
Santa Monica Community College District

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 424

An act to add Chapter 14.5 (commencing with Section 67350) to Part 40 of the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 21, 1986. Filed with
Secretary of State July 21, 1986.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares as follows:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the California State University, the California Community Colleges, and the California Maritime Academy. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs, which studies demonstrate that these needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of 1986 is to take the first step toward meeting the capital outlay financing needs of California's public higher education system.

SEC. 2. Chapter 14.5 (commencing with Section 67350) is added to Part 40 of the Education Code, to read:

CHAPTER 14.5. HIGHER EDUCATION FACILITIES BOND ACT OF
1986

67350. This chapter shall be known and may be cited as the Higher Education Facilities Bond Act of 1986.

67351. The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code) is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this chapter, and the provisions of that law are hereby incorporated in this chapter as though set out in full in this chapter. All references in this chapter to "herein" shall be deemed to refer both to this chapter and that law.

67352. As used in this chapter, and for the purposes of this chapter as used in the State General Obligation Bond Law, the following

words shall have the following meanings:

(a) "Board" means the State Public Works Board.

(b) "Committee" means the Higher Education Facilities Finance Committee, created pursuant to Section 67353.

(c) "Fund" means the Higher Education Capital Outlay Bond Fund, created pursuant to subdivision (e) of Section 67354.

67353. The Higher Education Facilities Finance Committee is hereby created, consisting of the Governor, the Controller, the Treasurer, the Director of Finance, the President of the University of California, the Chancellor of the California State University, and the Chancellor of the California Community Colleges, or their designees. The Treasurer shall serve as chairperson of the committee.

67354. (a) For the purpose of funding aid to the University of California, the California State University, the California Community Colleges, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, for the equipping of new, renovated, or reconstructed facilities, which equipment shall have a useful life of at least 10 years, to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings, and to provide funds to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code, the committee shall be and is hereby authorized and empowered to create a debt or debts, liability or liabilities, of the State of California, in the aggregate amount of four hundred million dollars (\$400,000,000) in the manner provided in this chapter, but not in excess thereof.

(b) The committee shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine when the bonds authorized under this chapter shall be issued in order to fund the authorized apportionments, and the amount of the bonds to be issued and sold.

(c) Up to two hundred fifty million dollars (\$250,000,000) shall be available for apportionment in the 1986-87 fiscal year, and up to one hundred fifty million dollars (\$150,000,000) shall be available for apportionment for the 1987-88 fiscal year, and in each subsequent fiscal year, except that the maximum aggregate debt or liability amount set forth in subdivision (a) shall not be exceeded.

(d) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at such different times as necessary to service expenditures required by the apportionments.

(e) The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Higher Education Capital Outlay Bond Fund, which is hereby created in the State Treasury.

67354.5. The proceeds of the bonds may also be used to provide short-term loans to community colleges for the purchase of instructional equipment. Those loans shall be repaid from the first moneys available in the Capital Outlay Fund for Public Higher Education beginning in the 1987-88 fiscal year.

67355. All bonds herein authorized, which shall have been duly sold and delivered as herein provided, shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereof.

There shall be collected annually in the same manner and at the same time as other state revenue is collected a sum, in addition to the ordinary revenues of the state, as is required to pay the principal and interest on the bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of the revenue, to do and perform each and every act which is necessary to collect the additional sum.

67356. There is hereby appropriated from the General Fund in the State Treasury for the purpose of this chapter, an amount that will equal the following:

(a) The sum annually as will be necessary to pay the principal of and the interest on the bonds issued and sold pursuant to the provisions of this chapter, as the principal and interest become due and payable.

(b) The sum as is necessary to carry out Section 67357, which sum is appropriated without regard to fiscal years.

67357. For the purposes of carrying out the provisions of this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund to be allocated by the board in accordance with this chapter. Any moneys made available under this section to the board shall be returned by the board to the General Fund, together with interest in the amount that those moneys would have earned in the Pooled Money Investment Account, which repayment shall be made from moneys received from the sale of bonds sold for the purpose of carrying out this chapter.

SEC. 3. Section 2 of this act shall take effect upon the adoption by the people of the Higher Education Facilities Bond Act of 1986, as set forth in Section 2 of this act. Sections 4 to 6, inclusive, of this act contain provisions relating to, and necessary for, the submission of the Higher Education Facilities Bond Act of 1986 to the people, and for returning, canvassing, and proclaiming the votes thereon, and shall take effect immediately.

SEC. 4. Notwithstanding Sections 3525 and 10218 of the Elections Code or any other provision of law, the Higher Education Facilities Bond Act of 1986, as set forth in Section 2 of this act, shall be

submitted to the people of the State of California for their ratification at the next general election, to be held November 4, 1986. Section 2 of this act shall in all other respects be submitted to the voters in accordance with provisions of the Government Code and Elections Code governing submission of statewide measures to the voters at a statewide election.

SEC. 5. All ballots at the election shall have printed thereon and in a square thereof, the words: "Higher Education Facilities Bond Act of 1986," and in the same square under the words the following in 8-point type: "This act provides for a bond issue of four hundred million dollars (\$400,000,000) to provide capital for construction or improvement of facilities at California's public higher education institutions, including the University of California's nine campuses, the California State University's 19 campuses, the California Community College's 106 campuses, and the California Maritime Academy, to be sold at a rate not to exceed two hundred fifty million dollars (\$250,000,000) per year."

Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act. However, where the voting of the elections is done by means of voting machines used pursuant to law in such manner as to carry out the intent of this section, the use of the voting machines, and the expression of the voters' choice by means thereof, shall be deemed to comply with the provisions of this section.

SEC. 6. The votes cast for or against the Higher Education Facilities Bond Act of 1986 shall be counted, returned, and canvassed and declared in the same manner and subject to the same rules as votes cast for state officers; and if it appears that the act shall have received a majority of all the votes cast for and against it at the election, then the act shall take effect as provided by this section, and shall not be repealed until the principal and interest of the liabilities created pursuant to this act shall be paid and discharged; but if a majority of the votes cast at the election are against this act, then the act shall not take effect.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the Higher Education Facilities Bond Act of 1986 may be placed on the ballot for the general election to be held November 4, 1986, it is necessary that this act take effect immediately.

CHAPTER 44

An act to add Chapter 14.3 (commencing with Section 67330) to Part 40 of the Education Code, relating to financing higher education costs by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 18, 1988. Filed with
Secretary of State March 18, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 14.3 (commencing with Section 67330) is added to Part 40 of the Education Code, to read:

CHAPTER 14.3. HIGHER EDUCATION FACILITIES BOND ACT OF
1988

Article 1. General Provisions

67330. This chapter shall be known and may be cited as the Higher Education Facilities Bond Act of 1988.

67331. The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the California State University, the California community colleges, and the California Maritime Academy. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California community colleges to assess their long-term and short-term capital needs, which studies demonstrate that these needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of 1988 is to assist in meeting the capital outlay financing needs of California's public higher education system.

67332. As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Higher Education Facilities Finance Committee created pursuant to Section 67353.

(b) "Fund" means the 1988 Higher Education Capital Outlay Bond Fund created pursuant to Section 67333.

Article 2. Higher Education Facilities Bond Act Program

67333. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the 1988 Higher Education Capital Outlay Bond Fund, which is hereby created.

67334. (a) The committee shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California community colleges, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, for the equipping of new, renovated, or reconstructed facilities, and to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings.

(b) Moneys made available under Section 67340 or 67342 may be used to provide short-term loans to community colleges for the purchase of instructional equipment. Those loans shall be repaid from the first moneys available in the Capital Outlay Fund for Public Higher Education beginning in the 1989-90 fiscal year, or from proceeds of the bonds.

Article 3. Fiscal Provisions

67335. (a) Bonds in the total amount of six hundred million dollars (\$600,000,000), not including the amount of any refunding bonds issued in accordance with Section 67343, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at such different times as necessary to service expenditures required by the apportionments.

67336. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter. For purposes of the State General Obligation Bond Law, the State Public Works Board is designated

the "board."

67337. The committee shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 67334 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

67338. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

67339. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 67340, appropriated without regard to fiscal years.

67340. For the purposes of carrying out this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, together with interest at the rate paid on moneys in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this chapter.

67341. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

67342. The board may request the Pooled Money Investment Board for a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, and may execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. The loan shall be deposited in the fund for the purpose of carrying out the provisions of this chapter. The amount of the loan shall not exceed the amount of the

unsold bonds that the committee, by resolution, has authorized to be sold for the purposes of this chapter.

67343. Any bonds issued and sold pursuant to this chapter may be refunded by the issuance and sale or exchange of refunding bonds in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code. The approval by the electors of this state of the issuance and sale of bonds under this chapter includes approval of the issuance and sale or exchange of any bonds issued to refund either those bonds or any previously issued refunding bonds.

SEC. 2. Section 1 of this act shall take effect upon the adoption by the voters of the Higher Education Facilities Bond Act of 1988, as set forth in Section 1 of this act.

SEC. 3. Section 1 of this act shall be submitted to the voters at the next statewide general election, to be held November 8, 1988, in accordance with provisions of the Government Code and the Elections Code governing submission of statewide measures to the voters, and shall appear as the first proposition on the ballot.

SEC. 4. Notwithstanding any other provision of law, all ballots of the election shall have printed thereon and in a square thereof, the words: "Higher Education Facilities Bond Act of 1988," and in the same square under those words, the following in eight-point type: "This act provides for a bond issue of six hundred million dollars (\$600,000,000) to provide funds for the construction or improvement of facilities of California's public higher education institutions, including the University of California's nine campuses, the California State University's 19 campuses, the 70 districts of the California community colleges, and the California Maritime Academy. The use of funds authorized under this act includes, but is not necessarily limited to, the construction or improvement of classrooms, laboratories, and libraries, and the implementation of earthquake and other health or safety improvements." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the measure proposed by this act may be considered and become operative at an appropriate time, it is necessary that this act take effect immediately.

CHAPTER 6

An act to amend Section 81831 of, to repeal Section 81838 of, and to add Chapter 14.4 (commencing with Section 67345) to Part 40 of, the Education Code, relating to financing of higher education facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 22, 1990. Filed with
Secretary of State February 22, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 14.4 (commencing with Section 67345) is added to Part 40 of the Education Code, to read:

CHAPTER 14.4. HIGHER EDUCATION FACILITIES BOND ACT OF
JUNE 1990

Article 1. General Provisions

67345. This chapter shall be known and may be cited as the Higher Education Facilities Bond Act of June 1990.

67345.1. The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the California State University, the California Community Colleges, and the California Maritime Academy. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of June 1990 is to assist in meeting the capital outlay financing needs of California's public higher education system.

67345.2. As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Higher Education Facilities Finance Committee created pursuant to Section 67353.

(b) "Fund" means the June 1990 Higher Education Capital Outlay Bond Fund created pursuant to Section 67346.

Article 2. Higher Education Facilities Bond Act Program

67346. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the June 1990 Higher Education Capital Outlay Bond Fund, which is hereby created.

67346.5. (a) The committee shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California Community Colleges, and the Hastings College of the Law, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures, the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990, renovation, and

reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, and for the equipping of new, renovated, or reconstructed facilities, and to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings. The addition of the Hastings College of the Law to this section is not intended to mark a change from the funding authorizations made by Section 67354, as contained in the Higher Education Facilities Bond Act of 1986, or Section 67334, as contained in the Higher Education Facilities Bond Act of 1988, but is intended to more clearly state what was intended by the Legislature in those sections as well.

(b) Moneys made available under Section 67347.5 or 67347.7 may be used to provide short-term loans to community colleges for the purchase of instructional equipment. Those loans shall be repaid from the first moneys available in the Capital Outlay Fund for Public Higher Education beginning in the 1990-91 fiscal year, or from proceeds of the bonds.

Article 3. Fiscal Provisions

67347. (a) Bonds in the total amount of four hundred fifty million dollars (\$450,000,000), not including the amount of any refunding bonds issued in accordance with Section 67347.8, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at any different times necessary to service expenditures required by the apportionments.

67347.1. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter. For purposes of the State General Obligation Bond Law, except as specified in Section 67347.7, each state agency administering an appropriation of the bond fund is designated the "board" for the projects funded by those appropriations.

67347.2. The committee shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments that are expressly authorized by the Legislature in

the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 67346.5 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

67347.3. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

67347.4. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 67347.5, appropriated without regard to fiscal years.

67347.5. For the purposes of carrying out this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, together with interest at the rate paid on moneys in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this chapter.

67347.6. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

67347.7. The board may request the Pooled Money Investment Board for a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, and may execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. The loan shall be deposited in the fund for the purpose of carrying out the provisions of this chapter. The amount of the loan shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purposes of this chapter.

For the purposes of requesting Pooled Money Investment Board loans in accordance with this section, "board" means: the President

of the University of California, the Dean of the Hastings College of the Law, the Chancellor of the California State University, the President of the California Maritime Academy, and the Chancellor of the California Community Colleges, each acting independently on his or her own behalf.

67347.8. Any bonds issued and sold pursuant to this chapter may be refunded by the issuance and sale or exchange of refunding bonds in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code. The approval by the electors of this state of the issuance and sale of bonds under this chapter includes approval of the issuance and sale or exchange of any bonds issued to refund either those bonds or any previously issued refunding bonds.

67347.9. Notwithstanding any provision of this chapter or the State General Obligation Bond Law set forth in Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, if the Treasurer sells bonds pursuant to this chapter the interest on which is intended to be excluded from gross income for federal tax purposes, the Treasurer shall be authorized to maintain separate accounts for the investment of bond proceeds and the investment earnings on these proceeds, and the Treasurer shall be authorized to use or direct the use of these proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

SEC. 2. Section 81831 of the Education Code is amended to read:

81831. The chancellor shall review and evaluate each proposed project with reference to the elements of the capital construction program specified in Section 81821. The review shall include the following elements:

(a) An architectural analysis to determine costs of the various phases of the project, with particular attention to be directed to the type of construction, unit costs, and the efficiency of particular buildings and facilities in terms of effective utilization of area.

(b) Determining the amount of federal funds available for the project, and taking appropriate measures to ensure that the project will qualify for the maximum amounts of federal funds practicable under the circumstances.

“Federal funds” means any construction and equipment moneys provided by the federal government to a community college district for the project or any part of the project, which are or will be available to the district for the project.

(c) Determining the total cost of the project, reducing the total cost by the amount of federal funds available therefor and determining the remainder thereof to be borne by the state.

(d) Determining the total of funds required for the first phase of the project to be provided by the state, and the total state

laboratories, and libraries, and the implementation of earthquake and other health or safety improvements." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This bill would provide the people of California with an opportunity to provide funding in 1990 for critically needed higher education facilities. In order to provide the opportunity for this funding at the earliest possible time, it is necessary that this act take immediate effect.

CHAPTER 13

An act to add Chapter 14.6 (commencing with Section 67358) and Chapter 14.7 (commencing with Section 67359.6) to Part 40 of the Education Code, relating to funding higher education facilities through the issuance and sale of bonds of the State of California, and by providing for the handling and disposition of those funds, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 11, 1992. Filed with
Secretary of State March 11, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 14.6 (commencing with Section 67358) is added to Part 40 of the Education Code, to read:

CHAPTER 14.6. HIGHER EDUCATION FACILITIES BOND ACT OF
JUNE 1992

Article 1. General Provisions

67358. This chapter shall be known and may be cited as the Higher Education Facilities Bond Act of June 1992.

67358.1. The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California containing nine campuses, the California State University containing 20 campuses, the California Community Colleges consisting of 71 districts containing 107 campuses, the Hastings College of the Law, the California Maritime Academy, and their respective off-campus centers. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of June 1992 is to assist in meeting the capital outlay financing needs of California's public higher education system.

67358.2. As used in this chapter, the following terms have the

following meanings:

(a) "Committee" means the Higher Education Facilities Finance Committee created pursuant to Section 67353.

(b) "Fund" means the 1992 Higher Education Capital Outlay Bond Fund created pursuant to Section 67358.3.

Article 2. Higher Education Facilities Bond Act Program

67358.3. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the 1992 Higher Education Capital Outlay Bond Fund, which is hereby created.

67358.4. The committee shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California Community Colleges, the Hastings College of the Law, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures; the equipping of new, renovated, or reconstructed facilities; funding for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings; renovation and reconstruction of facilities; and the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990, including the acquisition of sites upon which these facilities are to be constructed.

The addition of the Hastings College of the Law to this section is not intended to mark a change from the funding authorizations made by Section 67354, as contained in the Higher Education Facilities Bond Act of 1986, or Section 67334, as contained in the Higher Education Facilities Bond Act of 1988, but is intended to state more clearly what was intended by the Legislature in those sections as well.

Article 3. Fiscal Provisions

67358.5. (a) Bonds in the total amount of nine hundred million dollars (\$900,000,000), not including the amount of any refunding bonds issued in accordance with Section 67359.3, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds

authorized by the committee at any different times necessary to service expenditures required by the apportionments.

67358.6. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law shall apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter. For purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the bond fund is designated as the "board" for projects funded by those appropriations.

67358.7. The committee shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 67358.4 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

67358.8. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

67358.9. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out the provisions of Section 67359, appropriated without regard to fiscal years.

67359. (a) For the purposes of carrying out this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, together with interest at the rate paid on moneys in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this chapter.

(b) No funds shall be expended pursuant to this chapter for the acquisition and development of new campuses that would increase the number of campuses designated in Section 67358.1.

(c) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in Section 67358.4 by the University of California, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan of the particular university or college and shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, by the 2000-01 fiscal year, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college.

67359.1. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

67359.2. The board may request the Pooled Money Investment Board for a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, and may execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. The loan shall be deposited in the fund for the purpose of carrying out the provisions of this chapter. The amount of the loan shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purposes of this chapter.

67359.3. Any bonds issued and sold pursuant to this chapter may be refunded by the issuance and sale or exchange of refunding bonds in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code. The approval by the electors of this state of the issuance and sale of bonds under this chapter includes approval of the issuance and sale or exchange of any bonds issued to refund either those bonds or any previously issued refunding bonds.

67359.4. Notwithstanding any provision of this chapter or the State General Obligation Bond Law set forth in Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and the investment earnings on these proceeds, and the Treasurer shall be authorized to use or direct the use of these proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

67359.5. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 2. Chapter 14.7 (commencing with Section 67359.6) is added to Part 40 of the Education Code, to read:

CHAPTER 14.7. HIGHER EDUCATION FACILITIES REVENUE BOND
ACT

67359.6. The Legislature finds and declares, based on current depressed economic conditions, that immediate commencement of construction of certain higher education instructional and research facilities is necessary.

67359.7. The State Public Works Board may construct the following higher education instructional and research facilities to be financed from the Public Buildings Construction Fund, from proceeds from the sale of bonds, negotiable notes, or negotiable bond anticipation notes for the construction of those facilities pursuant to Chapter 3.8 (commencing with Section 15820.50) of Part 10b of Division 3 of Title 2 of the Government Code:

(a) University of California:

(1) Davis Campus:

99.03.090 Social Science and Humanities
Building—Working drawings and construction \$23,717,000
(The sum of twenty-three million seven
hundred seventeen thousand dollars)

(2) Riverside Campus:

99.05.050 Engineering Sciences
Building—Working drawings and construction \$36,300,000
(The sum of thirty-six million three hundred
thousand dollars)

(3) San Diego Campus:

99.08.085 Engineering Building Unit
2—Working drawings and construction \$25,286,000
(The sum of twenty-five million two hundred
eighty-six thousand dollars)

(b) The California State University:

(1) California State University, Long Beach:

06.71.092 Renovate Applied Arts and Sciences
and Additions—Working drawings and
construction \$18,758,000
(The sum of eighteen million seven hundred
fifty-eight thousand dollars)

(2) California State University, Northridge:

06.82.069 Engineering Addition, Asbestos
Abatement, Renovation, Phase I—Working

drawings and construction	\$12,719,000
(The sum of twelve million seven hundred nineteen thousand dollars)	
(3) California State University, San Bernardino: 06.78.070 Health, Physical Education, Classroom and Faculty Office Complex—Working drawings and construction	\$22,011,000
(The sum of twenty-two million eleven thousand dollars)	

67359.8. (a) In addition to the cost of construction, the State Public Works Board may authorize any additional amounts necessary to pay the costs of financing, including interest during construction of the project, a reasonably required reserve fund, and the cost of issuance of permanent financing.

(b) The State Public Works Board may authorize the cost of working drawings and construction relating to the projects listed in this act.

(c) The State Public Works Board may authorize the augmentation of the amounts authorized by Section 67359.7 subject to the limitations specified in Section 13332.11 of the Government Code.

(d) Notwithstanding Section 13340 of the Government Code, funds derived from the interim and permanent financing or refinancing of the projects authorized in Section 67359.7 are hereby continuously appropriated for those purposes.

SEC. 2.5. Section 1 of this act shall take effect upon the adoption by the voters of the Higher Education Facilities Bond Act of June 1992, set forth in Section 1 of this act.

SEC. 3. (a) Notwithstanding Sections 3525, 3528, 3529, 3560, and 3578 of the Elections Code, or any other provision of law, Section 1 of this act shall be submitted to the voters at the June 2, 1992, primary election.

(b) The Secretary of State shall ensure the placement of Section 1 of this act on the June 2, 1992, direct primary election ballot, in substantial compliance with any statutory time requirements applicable to the submission of statewide measures to the voters at a statewide election.

(c) The Secretary of State shall include, in the ballot pamphlet mailed pursuant to Section 3578 of the Elections Code, the information specified in Section 3570 of that code regarding the bond act contained in Section 1 of this act.

SEC. 4. Notwithstanding any other provision of law, all ballots of the election shall have printed thereon and in a square thereof, the words: "Higher Education Facilities Bond Act of June 1992," and in the same square under those words, the following in 8-point type: "This act authorizes a bond issue of nine hundred million dollars (\$900,000,000) to fund the construction or improvement of

California's public college and university facilities. These construction projects will create jobs, ensure access to higher education for California's students, and enable public colleges and universities to prepare a well trained and competitive workforce to strengthen the state's economy. Authorized projects for the 138 public campuses shall include, but are not necessarily limited to, earthquake and other health safety improvements, modernization of laboratories to keep up with scientific advances, and construction of classrooms and libraries." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This bill would provide the people of California with an opportunity to provide funding in 1992 for critically needed higher education facilities. In order that the Higher Education Facilities Bond Act of 1992 contained in Section 1 of this act, which provides for this funding, be included on the June 2, 1992, primary election ballot and in order to commence construction of the facilities described in the Higher Education Facilities Revenue Bond Act contained in Section 2 of this act as soon as possible, it is necessary that the act take effect immediately.

CHAPTER 1
FILED WITH SECRETARY OF STATE JANUARY 8, 1996
APPROVED BY GOVERNOR JANUARY 8, 1996
PASSED THE ASSEMBLY JANUARY 4, 1996
PASSED THE SENATE SEPTEMBER 14, 1995
AMENDED IN SENATE SEPTEMBER 12, 1995
AMENDED IN ASSEMBLY APRIL 24, 1995

INTRODUCED BY Assembly Member Campbell
(Principal coauthor: Senator Greene)
(Principal coauthor: Assembly Member Alpert)
(Coauthor: Assembly Member Lee)

FEBRUARY 23, 1995

An act to add Part 66 (commencing with Section 100000) to the Education Code, relating to public education facilities construction through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1168, R. Campbell. Bonds: public education facilities.

(1) The Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Greene Act) provides for the acquisition and construction of facilities by the state and the lease-purchase of those facilities by school districts.

The Higher Education Facilities Bond Act of 1986, the Higher Education Facilities Bond Act of 1988, and the Higher Education Facilities Bond Act of June 1992 provide for the issuance, pursuant to the State General Obligation Bond Law, of bonds in an amount not to exceed \$400,000,000, \$600,000,000, and \$900,000,000, respectively, and the expenditure of the proceeds therefrom to aid the University of California, the California State University, including the California Maritime Academy, and the California Community Colleges for, among other things, the construction and equipping of educational facilities, as specified. Existing law establishes the Higher Education Facilities Finance Committee to administer those acts and to authorize the issuance and sale of bonds to the extent necessary to fund the education facilities construction apportionments expressly authorized by the Legislature in the annual Budget Act.

This bill would enact the Public Education Facilities Bond Act of 1996 which, upon approval by the state electorate, would provide for the issuance of state general obligation bonds in an amount not to exceed \$3,000,000,000, exclusive of refunding bonds, issued pursuant to that act, and the expenditure of \$2,025,000,000 of revenues therefrom to provide aid to school districts, county superintendents of schools, and county boards of education, as specified, in accordance with the Greene Act and related school facilities programs, as specified, and would require that any funds remaining from designated school construction bond measures enacted in prior years be transferred to the State School Building Lease-Purchase Fund for apportionment under the Greene Act. The bill would also authorize the Treasurer to sell any unsold bonds from those

designated measures for purposes of the Greene Act.

This bill would provide that, of the bond proceeds authorized under the Public Education Facilities Bond Act of 1996, not more than \$900,000,000 may be used for, among other things, the acquisition of portable classrooms, the reconstruction or modernization of facilities, as specified, the purchase and installation of air-conditioning equipment and insulation materials, as specified, the funding of projects in districts with enrollment increases due to the locating or expansion of state or federal prisons, the acquisition of relocatable child care and development facilities, the funding of projects for county boards of education, as specified, the funding of projects in districts that lack funding priority due to the size of pupil enrollment, the funding of projects for high priority roof replacement, the construction projects or the purchase of furniture or equipment designed to increase school security, and the identification, assessment, or abatement of hazardous asbestos, as specified, and of lead.

This bill would provide that, of the bond proceeds authorized under the Public Education Facilities Bond Act of 1996, not more than \$100,000,000 may be used for seismic retrofit projects of existing public school facilities, not more than \$40,000,000 may be used by school districts that will contribute 60% or more of the cost of a project, and not more than \$25,000,000 may be used for projects that include joint use facilities.

This bill would provide that \$975,000,000 of the bond proceeds authorized under the Public Education Facilities Bond Act of 1996 be expended to assist in meeting the capital outlay financing needs of California's public higher education system and would expressly include the Hastings College of the Law, among the institutions for which the proceeds of those bonds may be expended, consistent with the purposes of the bill. The bill would specify that the addition of the Hastings College of the Law among the institutions for which the proceeds of the bonds may be expended is not intended to mark a change from the funding authorizations made under the Higher Education Facilities Bond Act of 1986, or the Higher Education Facilities Bond Act of 1988, but is intended to state more clearly what was intended by the Legislature in those acts as well.

This bill would require that any request for funds from the bonds issued pursuant to the Public Education Facilities Bond Act of 1996 for the purposes of public higher education facilities be accompanied by the 5-year capital outlay plan of the particular university or college and include a schedule that prioritizes the seismic retrofitting needed to significantly reduce seismic hazards in buildings identified as high priority by the university or college, as specified. The bill would also authorize the expenditure of the revenues of the bonds for the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990.

(2) This bill would provide that the Public Education Facilities Bond Act of 1996 be submitted to the voters at the March 26, 1996, direct primary election in accordance with specified law.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 66 (commencing with Section 100000) is added to

the Education Code, to read:

PART 66. PUBLIC EDUCATION BONDS
CHAPTER 1. PUBLIC EDUCATION FACILITIES BOND ACT OF 1996
Article 1. General Provisions

100000. This chapter shall be known and may be cited as the Public Education Facilities Bond Act of 1996.

Article 2. School Facilities Program Provisions

100010. (a) Two billion twenty-five million dollars (\$2,025,000,000) of the proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the State School Building Lease-Purchase Fund.

100015. All moneys deposited in the State School Building Lease-Purchase Fund shall be available to provide aid to school districts of the state in accordance with the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10), and of all acts amendatory thereof and supplementary thereto, to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with Sections 100020, 100025, 100030, and 100035, to provide funds to repay any money advanced or loaned to the State School Building Lease-Purchase Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

100020. Of the proceeds from the sale of bonds pursuant to this chapter, not more than nine hundred million dollars (\$900,000,000) may be used for one or more of the following purposes:

(a) The acquisition of portable classrooms for use in accordance with Chapter 25 (commencing with Section 17785) of Part 10.

(b) The reconstruction or modernization of facilities pursuant to Chapter 22 (commencing with Section 17700) of Part 10. In addition to the current program requirements, the State Allocation Board may allocate funding pursuant to this subdivision for the reconstruction or modernization of any existing structure, including the wiring and cabling in that structure, to enable that structure to accommodate computers and other high technology equipment.

(c) The purchase and installation of air-conditioning equipment and insulation materials, and related costs, pursuant to Section 42250.1, for schools operated on a year-round multitrack schedule in a manner that increases school capacity and reduces or eliminates the school district's need for the construction of additional classroom space.

(d) Project funding for applicant districts under Chapter 22 (commencing with Section 17700) of Part 10 that have incurred or will incur enrollment increases due to the locating or expansion of state or federal prisons.

(e) The acquisition of relocatable child care and development facilities for the purpose of providing extended day care services pursuant to Article 22 (commencing with Section 8460) of Chapter 2 of Part 6.

(f) Project funding, without regard to funding priorities, for applicant county boards of education under Chapter 22 (commencing with Section 17700) of Part 10 that are eligible for that funding for classrooms for severely handicapped pupils.

(g) Project funding for applicant districts under Chapter 22 (commencing with Section 17700) of Part 10 that are eligible for that

funding, but that lack funding priority due to the size of pupil enrollment in the district.

(h) Project funding for high priority roof replacement projects.

(i) Construction projects or the purchase of furniture or equipment designed to increase school security.

(j) The identification, assessment, or abatement in school facilities of hazardous asbestos pursuant to either Chapter 22 (commencing with Section 17700) of Part 10 or Section 39619.6 and of lead.

(k) The reconstruction or modernization of facilities pursuant to Chapter 22 (commencing with Section 17700) of Part 10.

Notwithstanding Section 17721.3, the State Allocation Board may allocate funding pursuant to this subdivision for the reconstruction or modernization of an existing structure in an amount that exceeds 25 percent of the replacement cost of that structure in order to finance structural improvements needed to avert future earthquake damage.

100025. Of the proceeds from the sale of bonds pursuant to this chapter, not more than one hundred million dollars (\$100,000,000) may be used for seismic retrofit projects of existing public school facilities.

100030. Of the proceeds from the sale of bonds pursuant to this chapter, not more than forty million dollars (\$40,000,000) may be used for projects for school districts that agree to contribute 60 percent or more of the cost of those projects.

100035. Of the proceeds from the sale of bonds pursuant to this chapter, not more than twenty-five million dollars (\$25,000,000) may be used for projects that include joint use of facilities pursuant to Section 17750 or 17751.

Article 3. Higher Education Facilities Program

100110. The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, comprising nine campuses, the California State University, comprising 22 campuses, including the California Maritime Academy, a specialized institution, the California Community Colleges, consisting of 71 districts and 107 campuses, the Hastings College of the Law, and their respective off-campus centers. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, several billion dollars.

(d) The purpose of this article is to assist in meeting the capital outlay financing needs of California's public higher education system.

100115. Nine hundred seventy-five million dollars (\$975,000,000) of the proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the 1996 Higher Education Capital Outlay Bond

Fund, which is hereby created.

100120. The Higher Education Facilities Finance Committee created pursuant to Section 67353 shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California Community Colleges, and the Hastings College of the Law for the construction, including the construction of buildings and the acquisition of related fixtures; the equipping of new, renovated, or reconstructed facilities; funding for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings; renovation and reconstruction of facilities; and the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990, including the acquisition of sites upon which these facilities are to be constructed.

The addition of the Hastings College of the Law to this section is not intended to mark a change from the funding authorizations made by Section 67354, as contained in the Higher Education Facilities Bond Act of 1986, or Section 67334, as contained in the Higher Education Facilities Bond Act of 1988, but is intended to state more clearly what was intended by the Legislature in those sections as well.

100121. The Board of Governors of the California Community Colleges shall consider the historic significance of community college district buildings that are 50 years of age or older if those buildings are to be renovated, reconstructed, or demolished in connection with the construction of buildings utilizing the funds provided by this chapter.

Article 4. Fiscal Provisions

100125. (a) Bonds in the total amount of three billion dollars (\$3,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 100175, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee created pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

100130. The State School Building Finance Committee, created by Section 15909 and composed of the Governor, Controller, Treasurer, Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall be designated to chair the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their

respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide the assistance to the committee as it may require. The Attorney General of the state shall be the legal adviser of the committee.

100135. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the State School Building Lease-Purchase Fund.

(c) For purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 1996 Higher Education Capital Outlay Bond Fund is designated as the "board" for projects funded by those appropriations.

100140. (a) Upon request of the State Allocation Board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Sections 100015, 100020, 100025, 100030, and 100035, the State School Building Finance Committee created pursuant to Section 15909 shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(b) The Higher Education Facilities Finance Committee created pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in Section 100120 that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 100120 and, if so, the amount of bonds to be issued and sold.

Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100145. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

100150. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum that is necessary to carry out the provisions of

Section 100165, appropriated without regard to fiscal years.

100155. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee has, by resolution, authorized to be sold for the purpose of carrying out this chapter. The board shall execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

100160. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), if the Treasurer sells bonds that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes subject to designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and for the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds that is required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100165. (a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee or the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the State School Building Lease-Purchase Fund and the 1996 Higher Education Capital Outlay Bond Fund. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in Section 100120 by the University of California, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan of the particular university or college and shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, by the 2002-03 fiscal year, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college.

100170. All money deposited in the State School Building Lease-Purchase Fund, the Education Technology Fund, and the 1996 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100175. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds described in this chapter shall include

approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100180. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

Article 5. Miscellaneous

100185. (a) Any remaining funds resulting or derived from the sale of bonds pursuant to Chapter 9 (commencing with Section 16400), Chapter 10 (commencing with Section 16500), Chapter 11 (commencing with Section 16600), Chapter 12 (commencing with Section 16700), Chapter 13 (commencing with Section 16800), Chapter 15 (commencing with Section 17000), Chapter 16 (commencing with Section 17100), Chapter 17 (commencing with Section 17200), Chapter 18 (commencing with Section 17300), Chapter 19 (commencing with Section 17400), and Chapter 20 (commencing with Section 17500), of Part 10, shall be transferred to the State School Building Lease-Purchase Fund and may be apportioned by the State Allocation Board for the purposes of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10).

(b) Any unsold bonds, authorized for issuance under Chapter 9 (commencing with Section 16400), Chapter 10 (commencing with Section 16500), Chapter 11 (commencing with Section 16600), Chapter 12 (commencing with Section 16700), Chapter 13 (commencing with Section 16800), Chapter 15 (commencing with Section 17000), Chapter 16 (commencing with Section 17100), Chapter 17 (commencing with Section 17200), Chapter 18 (commencing with Section 17300), Chapter 19 (commencing with Section 17400), and Chapter 20 (commencing with Section 17500), of Part 10 may be sold by the Treasurer, upon authorization by the State School Building Finance Committee for the purposes of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10).

SEC. 2. Section 1 of this act shall become effective upon the approval by the voters, at the March 26, 1996, direct primary election, of the Public Education Facilities Bond Act of 1996, as set forth in Section 1 of this act.

SEC. 3. Section 1 of this act shall be submitted to the voters at the March 26, 1996, direct primary election, in accordance with provisions of the Government Code and the Elections Code governing the submission of statewide measures to the voters and, notwithstanding any other provision of law, shall appear as the first proposition on the ballot.

SEC. 4. Notwithstanding any other provision of law, all ballots of the March 26, 1996, direct primary election shall have printed thereon and in a square thereof, the words: "Public Education Facilities Bond Act of 1996" and in the same square under those words, the following in 8-point type: "This act provides for a bond issue of three billion dollars (\$3,000,000,000) to provide capital outlay for construction or improvement of public education facilities, including elementary and secondary schools, community colleges, the California State University, and the University of California, and the authorization to allocate bond funds and interest derived therefrom from the State School Building Aid Bond Law of 1952 for present-day public school construction or improvement." Opposite the square, there shall be left spaces in which the voters

may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting of the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with the provisions of this section.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the Public Education Facilities Bond Act of 1996 may be submitted for voter approval at the March 26, 1996, direct primary election to provide financing for urgently needed school, college, and university facilities, it is necessary that this act take effect immediately.

CHAPTER 277

FILED WITH SECRETARY OF STATE JULY 25, 1996

APPROVED BY GOVERNOR JULY 24, 1996

PASSED THE ASSEMBLY JULY 11, 1996

PASSED THE SENATE APRIL 25, 1996

AMENDED IN SENATE APRIL 18, 1996

INTRODUCED BY Senator Greene

FEBRUARY 15, 1996

An act to add Part 10.5 (commencing with Section 17211) and Part 23 (commencing with Section 38000) to, to repeal and add Part 10 (commencing with Section 15100) of, and to repeal Part 10.5 (commencing with Section 17900) and Part 23 (commencing with Section 39001) of, the Education Code, and to repeal Sections 53080, 53080.1, 53080.15, 53080.2, 53080.3, 53080.4, 53080.6, and 53081 of the Government Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1562, Greene. School facilities.

(1) Existing law includes various state general obligation bond acts, as approved by the voters, that provide for the issuance of bonds to raise revenues for, among other purposes, elementary and secondary school facility construction.

This bill would repeal and reenact the provisions governing state school bonds including the State School Building Aid Law of 1949, the State School Building Aid Law of 1952, the State School Construction Law of 1957, and the Urban School Construction Aid Law of 1968.

(2) Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976, provides bond funding for the construction, reconstruction, modernization, and replacement of school facilities and the performance of deferred maintenance activities on school facilities.

This bill would repeal and reenact this law and would make technical, nonsubstantive changes in those provisions.

(3) Existing law also provides for the Emergency School Classroom Law of 1979, school district revenue bonds, the Archie-Hudson and Cunneen School Technology Revenue Bond Act, and the California School Finance Authority.

This bill would repeal and reenact those bodies of law and would make technical, nonsubstantive changes in those provisions.

(4) Existing law sets forth specific requirements for the location and construction of school buildings including, among other provisions, the Field Act.

This bill would repeal and reenact those provisions and would make technical, nonsubstantive changes in those provisions.

(5) Under existing law, the governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the school district for the purpose of funding the construction or reconstruction of school facilities.

This bill would repeal and add those provisions and would make technical, nonsubstantive changes in those provisions.

(6) This bill would provide that it is to be construed as a restatement and not as a new enactment.

(7) This bill would provide that the above-referenced provisions of the bill would become operative on January 1, 1998.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 10 (commencing with Section 15100) of the Education Code is repealed.

SEC. 2. Part 10 (commencing with Section 15100) is added to the Education Code, to read:

PART 10. SCHOOL BONDS

CHAPTER 1. BONDS OF SCHOOL DISTRICTS AND COMMUNITY COLLEGE DISTRICTS

Article 1. Purposes for Authorizing Bonds

15100. Except as otherwise provided by law, the governing board of any school district or community college district may, when in its judgment it is advisable, and shall, upon a petition of the majority of the qualified electors residing in the school district or community college district, order the county superintendent of schools to call an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the following purposes:

- (a) The purchasing of school lots.
- (b) The building or purchasing of school buildings.
- (c) The making of alterations or additions to the school building or buildings other than as may be necessary for current maintenance, operation, or repairs.
- (d) The repairing, restoring, or rebuilding of any school building damaged, injured, or destroyed by fire or other public calamity.
- (e) The supplying of school buildings and grounds with furniture, equipment, or necessary apparatus of a permanent nature.
- (f) The permanent improvement of the school grounds.
- (g) The refunding of any outstanding valid indebtedness of the district, evidenced by bonds, or of state school building aid loans.

(h) The carrying out of the projects or purposes authorized in Section 17577 or 81613.

(i) The purchase of schoolbuses the useful life of which is at least 20 years.

(j) The demolition or razing of any school building with the intent to replace it with another school building, whether in the same location or in any other location.

Any one or more of the purposes enumerated, except that of refunding any outstanding valid indebtedness of the district evidenced by bonds, may, by order of the governing board entered in its minutes, be united and voted upon as one single proposition.

15101. Notwithstanding any provision of law to the contrary, no election shall be held pursuant to this chapter within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as the statewide election, subject to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code.

15102. The total amount of bonds issued shall not exceed 1.25 percent of the taxable property of the district as shown by the last

Article 10. Tax for Payment of Bonds of School District or
Community College District Located in Two or More Counties

15260. In case of a district lying in two or more counties, the assessor of each of the counties in which the district lies, shall annually as soon as the county assessments have been equalized by the State Board of Equalization, certify to the board of supervisors of each of the counties in which any portion of the district is situated, the assessed value of all taxable property in the county situated in the school district or community college district. The tax shall be levied according to the ratio which the assessed value of the property in the district in any county bears to the total assessed value of the property in the district. Each board of supervisors shall levy upon the property of the district and within its own county the rate of tax that will be sufficient to raise not less than the amount needed to pay the interest and any portion of the principal of the bonds that is to become due during the year.

15261. The tax shall be entered upon the assessment roll and collected in the same manner as other school taxes.

The tax when collected shall be paid into the county treasury of the county. The treasurer of any county, other than the one whose superintendent of schools has jurisdiction over the school, shall, upon order of the county auditor, pay the sum collected on account of the tax into the treasury of the county whose superintendent of schools has jurisdiction over the school.

15262. This article shall apply only to bonds of a school district which were approved by the electors prior to July 1, 1978, and to bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the voters on or after June 4, 1986.

CHAPTER 2. BONDS OF SCHOOL FACILITIES IMPROVEMENT DISTRICTS
Article 1. General Provisions

15300. This chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district and for the issuance of general obligation bonds by a school facilities improvement district.

15301. (a) Any school district that has a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, that has as one of its purposes the construction of school facilities within a portion of the territory of the school district, may proceed under this chapter.

(b) The boundaries of any school facilities improvement district formed pursuant to this chapter shall include all of the portion of the territory within the boundaries of the school district that is not located within the boundaries of the community facilities district as described in subdivision (a).

15302. General obligation bonds of the school facilities improvement district may be issued for the following purposes, if the purpose of the bonds is to benefit the land within the school facilities improvement district consistent with any of the following:

(a) To purchase real property upon which to construct school facilities.

(b) To build or purchase school facilities.

(c) To make alterations or additions to the school facilities other than those necessary for ordinary maintenance, operation, or

repairs.

(d) To repair, restore, or rebuild any school facilities damaged, injured, or destroyed by fire or other public calamity.

(e) To supply playgrounds with furniture, equipment, or necessary apparatus of a permanent nature.

(f) To permanently improve school grounds.

(g) To refund any valid outstanding indebtedness of the school facilities improvement district that is evidenced by bonds.

(h) To carry out the projects or purposes authorized in Section 39613.

(i) To demolish or raze any school building with the intent to replace it with another school building, whether in the same location or in any other location.

15303. This chapter shall not be operative in any county or counties until the board of supervisors of either the county in which the county superintendent of schools having jurisdiction over the school district in which the school facilities improvement district is located or, if a school facilities improvement district lies in two or more counties, the board of supervisors for those counties, by resolution adopted by a majority vote of the board of supervisors, makes this chapter applicable in the county or counties.

Article 2. Formation of District

15320. Whenever the governing board of a school district meeting the requirements set forth in Section 15301 determines that a school facilities improvement district is necessary, the governing board shall adopt a resolution of intention that states all of the following:

(a) The intention of the governing board to form the proposed school facilities improvement district.

(b) The purpose for which the proposed school facilities improvement district is to be formed, consistent with the requirements set forth in Section 15302.

(c) The estimated cost of the school facilities improvement project.

(d) That any taxes levied for the purpose of financing the general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities improvement district.

(e) That a map showing the exterior boundaries of the proposed school facilities improvement district is on file with the governing board of the school district and is available for inspection by the public. The boundaries of the school facilities improvement district shall meet the requirements set forth in subdivision (b) of Section 15301.

(f) The time and place for a hearing by the governing board on the formation of the proposed school facilities improvement district.

(h) That any interested persons, including all persons owning lands in the school district or in the proposed school facilities improvement district, may appear and be heard.

15321. Notice of the hearing shall be given by publishing a copy of the resolution of intention in a newspaper of general circulation published in each affected county, pursuant to Section 6066 of the Government Code, the first publication shall be at least 14 days prior to the time fixed for the hearing. The notice shall also be given by posting a copy of the resolution in three public places located within the proposed school facilities improvement district for at least 14 days prior to the time fixed for the hearing. No notice other than that required by this section need be given.

15322. The governing board of the school district shall hold the hearing provided for by resolution of intention at the time and place fixed by that resolution. Any interested person, including, but not limited to, all persons owning land in the school district, or in the proposed school facilities improvement district, may appear and be heard concerning any matters set forth in the resolution of intention.

15323. At the hearing, the governing board of the school district may adopt a resolution proposing modifications, consistent with Section 15302, of the purpose stated in the resolution of intention. A resolution proposing modification shall describe the proposed modifications, state the change, if any, in the estimated cost of carrying out the purpose, and shall fix a time and place for hearing by the governing board.

15324. The governing board of the school district shall publish the resolution proposing the modifications to the resolution of intention once in the same newspaper in which the resolution of intention was published at least 14 days prior to the date of hearing on the proposed modifications.

15325. The hearing on any proposed modifications may be held at the same time and place as any continued hearing on the resolution of intention and both hearings may be held and conducted concurrently.

15326. At the conclusion of the hearing on the resolution of intention and of the hearing, if any, upon proposed modifications, the governing board may by resolution order the school facilities improvement district formed for the purpose and with the boundaries described in the resolution of intention, and, if relevant, the resolution proposing modifications. The resolution ordering the school facilities improvement district formed shall state the estimated cost of carrying out the purpose described in the resolution. The resolution shall also number and designate the school facilities improvement district substantially as "School Facilities Improvement District of ____ School District."

15327. The governing board of the school district in which a school facilities improvement district has been formed shall have the same rights, powers, duties and responsibilities with respect to the formation and government of school facilities improvement district as the governing board has with respect to the school district.

Article 3. Financing the Bonds

15330. The total amount of bonds issued shall not exceed 1.25 percent of the taxable property of the school facilities improvement district as shown by the last equalized assessment of the county or counties in which the school facilities improvement district is located. For purposes of this section, the taxable property of a school facilities improvement district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property located within the school facilities improvement district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property located within the school facilities improvement district for the fiscal year by the gross assessed value of all unitary and operating nonunitary property located within the county in which the school facilities improvement district is located for the fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

15331. Notwithstanding any other law, for the purpose of

computing the limit on the amount of bonds that may be issued by a school facilities improvement district pursuant to the provisions of this chapter, the taxable property of the school facilities improvement district shall be determined upon the basis that the school facilities improvement district's assessed value has not been reduced by the exemption of the assessed value of business inventories in the school facilities improvement district or reduced by the homeowner's property tax exemption.

15332. Notwithstanding Section 15330, any school facilities improvement district that is located within the boundaries of a unified school district may issue bonds not to exceed 2.5 percent of the taxable property of the school facilities improvement district as shown by the last equalized assessment of the county or counties in which the school facilities improvement district is located.

In computing the outstanding bonded indebtedness of any school facilities improvement district that is located in any unified school district, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district to each of those purposes respectively.

For purposes of this section, the taxable property of a school facilities improvement district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property located within the school facilities improvement district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property located within the district for the fiscal year by the gross assessed value of all unitary and operating nonunitary property located within the county in which the district is located for the fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

15333. In computing the limitation of indebtedness of any school facilities improvement district, hereinafter in this section referred to as the "bonding district," the outstanding indebtedness of any previously existing district all or any part of which forms a component part of the bonding district and the outstanding indebtedness of any district for which any territory that has become a part of the bonding district is liable shall be excluded and shall not be deemed, for the purposes of computing the limitation of indebtedness under Sections 15330 and 15332, to constitute outstanding indebtedness of the bonding district, except to the extent that the outstanding indebtedness has been expressly assumed by the bonding district by vote of not less than two-thirds of the electors of the bonding district voting at an election at which the proposition of assuming the indebtedness is voted upon. Nothing in this section shall operate to release any property from liability for taxes to pay the principal and interest of indebtedness incurred by any component district or for which any territory that has become a part of the bonding district is liable and in which the taxable property is located at the time of the incurring of the indebtedness.

It is the intent of the Legislature to provide in this section a special method of computing the limitation of indebtedness of school facilities improvement districts irrespective of liability of the area embraced within the school districts for the payment of any bonded indebtedness.

15334. For the purpose of determining the limitation of

indebtedness of a school facilities improvement district under Section 15330 or 15332, that portion of the bonded indebtedness of the school facilities improvement district for which another district or territory in another district is liable shall be excluded and shall not be deemed to constitute outstanding bonded indebtedness of the school facilities improvement district.

15335. An action to determine the validity of bonds and of the ordering of the improvement or acquisition may be commenced pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. In the action, all findings, conclusions and determinations of the legislative body that conducted the proceedings shall be conclusive in the absence of actual fraud.

15336. Within 30 days after the end of each fiscal year, the governing board of the school district in which the school facilities improvement district is located shall submit a report containing the following information relating to an election held pursuant to Article 4 (commencing with Section 15340), to the county superintendent of schools who has jurisdiction over the school district:

(a) The total amount of the bond issue, bonded indebtedness, or other indebtedness involved.

(b) The percentage of qualified electors who are residents of the school facilities improvement district who voted at the election.

(c) The results of the election, with the percentage of votes cast for and against the proposition involved.

Article 4. General Provisions for Bond Elections

15340. (a) After adopting the resolution ordering the formation of the school facilities improvement district, the governing board may provide for and call a special bond election within the school facilities improvement district to, or may at the next statewide election, submit to the voters of the school facilities improvement district a proposition of whether or not an indebtedness of the district shall be incurred and bonds issued therefor in an amount not exceeding the estimate stated in the resolution ordering the school facilities improvement district formed.

(b) The indebtedness and the bonds shall be payable from taxes to be levied and collected upon lands located within the school facilities improvement district.

15341. Notwithstanding any law, no election shall be held pursuant to this chapter within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as the statewide election, subject to the provisions of Part 2.5 (commencing with Section 23300) of Division 14 of the Elections Code.

15342. Any one or more of the purposes enumerated in Section 15302, except that of refunding any outstanding valid indebtedness of the school facilities improvement district evidenced by bonds, may, by order of the governing board of the school district in which the school facilities improvement district is located, be united and voted upon in a single proposition.

15343. The election shall be conducted as provided in Chapter 3 (commencing with Section 5300) of Part 4 except as provided by each of the following:

(a) As otherwise provided in this chapter.

(b) That the formal notice of the election shall contain and specify, in addition to the items specified in Section 5361:

(1) The purposes for which the bonds are to be issued.

(2) The amount of the bonds.

(3) The maximum rate of interest, not to exceed the maximum rate of interest allowed by Article 5 (commencing with Section 15350).

(4) The maximum number of years, not to exceed 25, not to exceed which the bonds or any series thereof are to run.

(c) No election shall be held under the provisions of this section in any school facilities improvement district for a period of 90 days after an election in the same school facilities improvement district.

15344. Any election called pursuant to this chapter may be consolidated with any other election pursuant to the provisions of Part 2.5 (commencing with Section 23300) of Division 14 of the Elections Code.

15345. Any qualified elector who is a resident of the territory of the school facilities improvement district may vote on the proposition of issuing bonds of the school facilities improvement district.

15346. The words to appear upon the ballots shall be "Bonds--Yes" and "Bonds--No," or words of similar import. A brief statement of the proposition, setting forth the amount of the bonds to be voted upon, the maximum rate of interest, and the purposes for which the proceeds of the sale of the bonds are to be used, shall be printed upon the ballot. No defect in the statement other than in the statement of the amount of the bonds to be authorized shall invalidate the bonds election.

15347. Unless otherwise specified in this chapter, the form and details of all ballots at school facilities improvement elections shall comply with ballot provisions of Part 4 (commencing with Section 2400) of the Government Code.

15348. The proposition shall be deemed approved upon approval by two-thirds of the votes cast by voters voting on the proposition of issuing bonds of the school facilities improvement district.

15349. If it appears from the certificate of election results that two-thirds of the votes cast by the voters voting on the proposition of issuing bonds of the school facilities improvement district are in favor of issuing the bonds, the governing board of the school district in which the school facilities improvement district is located shall cause an entry of that fact to be made upon its minutes. The governing board of that school district shall then certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the school district, all proceedings had in the premises. The county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county.

15349.1. The proceedings relating to the authorization of bonds of a school facilities improvement district that is located within a joint school district of any type need be certified only to the board of supervisors of the county whose superintendent of schools has jurisdiction over the school district in which the school facilities improvement district exists. The board of supervisors may issue and sell the bonds and no action of the board of supervisors of any other county in which the school board is situated shall be required in connection with the issuance and sale of the bonds, and the bonds need not be signed by any officer of any other county.

15349.2. No error, irregularity, or omission that does not affect the substantial rights of the taxpayers within the school facilities improvement district or the qualified electors voting at any election at which bonds of any school facilities improvement district are authorized to be issued shall invalidate the election or any bonds authorized by that election.

Article 5. Issuance and Sale of Bonds

15350. Bonds of a school facilities improvement district shall be offered for sale by the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district in which the school facilities improvement district is located as soon as possible, when appropriate, following receipt of a resolution duly adopted by the governing board of that school district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds.

15351. When authorized by the governing board of the school district in which the school facilities improvement district is located, bonds of the school facilities improvement district may be offered for sale as a group by the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district in which the school facilities improvement district is located, at a time determined by the board of supervisors following receipt of a resolution duly adopted by the governing board of that school district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. Bidders shall be required to bid a lump-sum bid on all bonds as a group. If bids satisfactory to the governing board of each school district in which a school facilities improvement district is located are received, the bonds offered for sale shall be awarded to the bidder whose bid will result in the lowest net interest cost for the group or for the bonds of any district included within the group. Bonds shall be issued and sold in the name of each school facilities improvement district in the same manner as provided in this chapter.

15352. The bonds shall be issued in the name of the school facilities improvement district and shall be designated "Bonds of the School Facilities Improvement District of the ____ School District" and each bond and all interest coupons shall state that the tax for the payment thereof shall be limited to annual taxes to be levied upon and collected from the lands within the school facilities improvement district.

15353. The bonds shall be issued in the denomination or denominations as the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district in which the school facilities improvement district is located may prescribe.

15354. The bonds shall not bear a rate of interest greater than 8 percent per annum, payable annually or semiannually.

15355. The number of years the whole or any part of the bonds are to run shall not exceed 25 years, from the date of the bonds or the date of any series thereof.

15356. (a) The board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district in which the school facilities improvement district is located shall prescribe the form of the bonds by an order entered upon its minutes. The bonds shall be signed by the chairperson of the board of supervisors, or by any other member thereof as the board of supervisors shall, by resolution adopted by a four-fifths vote of

all its members, authorize and designate for that purpose, and also signed by the treasurer of the county, and shall be countersigned by the clerk of the board of supervisors or by a deputy of either of the officers. Unless the board of supervisors otherwise provides, all the signatures and countersignatures may be printed, lithographed, engraved, or otherwise mechanically reproduced except that one of the signatures or countersignatures to the bonds shall be manually affixed. Any signature may be affixed in accordance with the provisions of the Uniform Facsimile Signatures of Public Officials Act, Chapter 6 (commencing with Section 5500) of Title 1 of the Government Code. All expenses incurred for the preparation, sale, and delivery of the school facilities improvement bonds, including but not limited to, fees of an independent financial consultant, the publication of the official notice of sale of the bonds, the preparation, printing, and distribution of the official statement, the obtaining of a rating, the purchase of insurance insuring the prompt payment of interest and principal, the preparation of the certified copy of the transcript for the successful bidder, the printing of the bonds, and legal fees of independent bond counsel retained by the school facilities improvement district issuing the bonds are legal charges against the funds of the school facilities improvement district issuing the bonds and may be paid from the proceeds of sale of the bonds.

(b) Notwithstanding subdivision (a), the board of supervisors may, in its discretion, determine that all of the required signatures and countersignatures shall be by facsimiles, provided, however, that the bonds shall not be valid or become obligatory for any purpose until manually signed by an authenticating agent duly appointed by the board or its authorized designee.

15357. The board of supervisors shall establish within the county treasury a school facilities improvement fund for each school facilities improvement district the purpose of depositing the proceeds of the bonds issued pursuant to this chapter. The board of supervisors shall also establish within the county treasury a school facilities improvement bond interest and sinking fund for each school facilities improvement district.

15358. The bonds shall be issued by the board of supervisors, payable out of the interest and sinking fund of the school facilities improvement district. The board of supervisors, in its discretion, and without further authorization from the governing board of the school district in which the school facilities improvement district is located, may sell the bonds at a negotiated sale or by competitive bidding. The bonds may be sold at a discount not to exceed 5 percent and at an interest rate not exceeding the maximum permitted by Section 15354. If the sale is by competitive bid, the board of supervisors shall comply with the provisions of Sections 15359 and 15359.1. The bonds shall be sold by the board of supervisors no later than the date designated by the governing board of the school district in which the school facilities improvement district is located as the final date for the sale of the bonds. The proceeds of the sale of the bonds, exclusive of any premium received, shall be deposited in the county treasury to the credit of the school facilities improvement fund of the school facilities improvement district. The proceeds deposited shall be drawn out as necessary to finance the purposes approved by the voters pursuant to this chapter.

The bond proceeds withdrawn shall not be applied to any other purposes than those for which the bonds were issued. Any premium or accrued interest received from the sale of the bonds shall be deposited in the interest and sinking fund of the county treasury established for the school facilities improvement district.

15359. Before selling the bonds, or any part of them, the board of supervisors as appropriate, shall advertise for bids at least two weeks in some daily or weekly newspaper of general circulation published in the county whose county superintendent of schools has jurisdiction over the governing board of the school district in which the school facilities improvement district is located or if there is no newspaper published in the county, in a newspaper published in some other county in the state having a general circulation in the county.

15359.1. If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder or bidders, and the county clerk shall prepare and certify to all of the proceedings on file in his or her office relative to the issuance and sale of the bonds, which transcript of proceedings shall be delivered to the successful bidder or bidders without charge. If no bids are received, or if the board determines that the bids received exceed either the maximum acceptable interest rate prescribed by the governing board or the maximum rate prescribed by Section 15353, or that they are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and without further authorization from the governing board of the school district in which the school facilities improvement district is located, either readvertise or sell the bonds at private sale.

For the purpose of determining whether or not a bid exceeds the maximum acceptable interest rate, the interest rate of that bid shall be deemed to be the interest rate resulting from the total net interest cost arrived at by computing the total amount of interest that the school facilities improvement district would be required to pay from the date of the bonds to the respective maturity dates thereof at the rate or rates specified in the bid and by deducting therefrom any premium bid.

15359.2. The issuing school facilities improvement district, by action of the governing board of the school district in which the school facilities improvement district is located, may prepare, or have prepared, bond brochures to serve as a prospectus for bond buyers to assist in the satisfactory sale of the bonds, the expense of the brochures shall be payable out of the funds of the district. The brochures may be prepared only after the issuance of the bonds to be sold has been approved by the electors of the school facilities improvement district pursuant to Article 4 (commencing with Section 15340).

The issuing school facilities improvement district by action of the governing board in which the school facilities improvement district is located may expend funds of the school facilities improvement district for the purposes of advertising the availability of the bonds for purchase in any publication or newspaper that in the opinion of that governing board will give notice to prospective bond buyers that the bonds are available for purchase by bond buyers.

Article 6. Required Form of Bonds

15360. Notwithstanding any other provision of law, whenever any bonds are issued pursuant to this chapter, the bonds may be issued either in the form of coupon bonds, or in the form of registered bonds, or some in the form of coupon bonds and some in the form of registered bonds, as may be provided in the proceedings for the issuance of the bonds.

15361. If any officer whose signature, countersignature, or attestation appears on any school facilities improvement bonds or

coupons ceases to be an officer before the delivery of the bonds to the purchaser, the signature, countersignature, or attestation either on the bonds or the coupons, or on both, is valid and sufficient for all purposes as if the officer had remained in office until the delivery of the bonds, and the signature upon the coupons of the person who is auditor at the date of the bonds, is valid although the bonds themselves may be attested by a different person who is auditor at the time of delivery of the bonds.

15362. Any bonds executed in the manner provided by the board of supervisors shall be valid, notwithstanding any change in the officers who signed the bonds or the coupons, or in the seal of the board of supervisors, occurring after the execution.

Article 7. Registration of Bonds

15370. Whenever the owner of any coupon bond or of any bond payable to bearer presents the bond to the treasurer or other officer of the county in which the school facilities improvement bonds are issued is located, who by law performs the duties of treasurer, with a request for the conversion of the bond into a registered bond, the treasurer or other officer shall cut off and cancel the coupons of the coupon bond, and shall stamp, print, or write upon the coupon bond or other bond payable to the bearer, either upon its back or upon its face, as may be convenient, a statement to the effect that the bond is registered in the name of the owner and that thereafter the interest and principal of the bond are payable to the registered owner.

15371. After registration, any bond may be transferred by the registered owner in person, or by attorney duly authorized, on presentation of the bond to the treasurer or other officer performing the duties of treasurer. The bond may be again registered as before, a similar statement being stamped, printed, or written thereon.

15372. The statement stamped, printed, or written upon the bond may be substantially in the following form:

(Date, giving month, day, and year.)

This bond is registered pursuant to the statute in the cases made and provided in the name of (insert name of owner) and the interest and principal thereof are hereafter payable to the owner.

Treasurer (or other officer)

15373. After any bond has been registered as provided in this article, the principal and interest of the bond shall be payable to the registered owner.

15374. The treasurer or other officer shall keep in his or her office a book or books that shall at all times show what bonds are registered and in whose name respectively.

Article 8. Cancellation of Unsold Bonds

15380. If any bonds authorized under this chapter have not been offered for sale for one year from the date of the election at which they were authorized or remain unsold for a period of six months after having been offered for sale in the manner prescribed by the

board of supervisors, the governing board of the school district in which the school facilities improvement district is located and for which the bonds were authorized, may petition the board of supervisors that has jurisdiction of the issuance and sale of the bonds to cause the unsold bonds to be canceled.

15381. Upon receiving the petition, signed by a majority of the members of the governing board of the school district in which the school facilities improvement district is located, the board of supervisors shall fix a time for a hearing, which shall not be more than 30 days after receipt of the petition, and shall cause a notice stating the time and place of the hearing, and the object of the petition in general terms, to be published for 10 days prior to the hearing, in a newspaper published in the school facilities improvement district if there is one, and if there is no newspaper published in the school facilities improvement district, in a newspaper published at the county seat of the county.

15382. At the time and place designated in the notice, or at any subsequent time to which the hearing may be postponed, the board of supervisors shall hear any reasons that may be submitted for or against the granting of the petition.

15383. If the board of supervisors deem it for the best interests of the school facilities improvement district named in the petition that the unsold bonds be canceled, it shall make and enter an order in the minutes of its proceedings that the unsold bonds be canceled. Upon the entry of the order the bonds and the vote by which they were authorized to be issued shall cease to be of any validity.

15384. The governing board of a school district in which a school facilities improvement district is located may petition the board of supervisors to cancel the remaining authorization of that district to issue and sell bonds resulting from any particular school bond election after the sale of at least ninety percent (90%) of the bonds authorized at the election if the amount of the remaining authorization is not more than twenty-five thousand dollars (\$25,000) and in the opinion of the governing board the sale of the remaining bonds would not be economically justified. The provisions of Sections 15381 and 15382 shall be applicable and at or following the hearing therein provided for, the board of supervisors, if it determines that the public interest will be served thereby, may make and enter an order in the minutes of its proceedings that the remaining authorization be canceled. Upon the entry of the order the vote by which the remaining authorization was created shall cease to be of any validity with respect to such remaining authorization.

Article 9. Purchase of Bonds by Issuing School Districts

15390. The governing board of a school district in which a school facilities improvement district is located may purchase in the open market bonds issued by the school facilities improvement district with available funds from the school facilities improvement fund.

15391. When any bonds issued by a school facilities improvement district have been purchased by the governing board of the school district in which the school facilities improvement district is located, the bonds shall be deemed canceled and of no further validity. The governing board of the school district in which the school facilities improvement district is located shall immediately, after purchasing the bonds, notify the board of supervisors of its action, describing the bonds purchased. At its first meeting thereafter the board of supervisors shall note the purchase and cancellation of the bonds in the minutes of its proceedings.

Article 10. Method of Bond Payment

15400. The board of supervisors by an order entered upon its minutes shall fix the time when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. If the governing board of the school district in which the school facilities improvement district is located has prescribed in its resolution the time or times when the whole or any part of the bonds shall be payable, the times and amounts shall be fixed by the order of the board of supervisors.

Any bonds may be issued subject to call and redemption before maturity at the option of the governing board of the school district in which the school facilities improvement district exists. The governing board may include in its resolution a requirement that all or any part of the bonds shall be issued subject to call and redemption before maturity and the price or prices at which said bonds shall be redeemed. The board of supervisors, in its order fixing the form of the bonds and the maturities thereof, shall provide that the bonds be redeemable at the option of the governing board and at the price or prices fixed in the resolution. Bonds issued subject to call and redemption prior to maturity shall contain a recital to that effect, and no bond shall be subject to call or redemption prior to maturity unless it contains the recital. The board of supervisors in its order shall fix the method of giving notice of redemption to holders of bonds to be redeemed.

15401. The board of supervisors at the direction of the governing board of the school district in which the school facilities improvement district is located may divide the principal amount of bonds authorized at any election into two or more series and may fix different dates for the bonds of each series, in which event the maximum maturity date of the bonds shall be calculated from the date of each series respectively. When the issuance of bonds shall have been authorized pursuant to two or more propositions submitted at the same or different elections, all or any part of the bonds not theretofore issued may be combined and issued and sold as one or more series.

15402. The board of supervisors may make the principal and interest of the bonds payable at the office of the treasurer of the county, or at any other place within the United States which the board may designate, or at the office of the county treasurer, or at any other designated place at the option of the bondholder. The place of payment shall be specified in the bonds. The expense of paying the bonds elsewhere than at the office of the treasurer shall be a proper charge against the school facilities improvement district to be paid out of the tax levied and collected for the payment of the bonds.

15403. The principal and interest on the bonds shall be paid by the county treasurer of the county in which the superintendent of schools has jurisdiction of the school district in which the school facilities improvement district is located, at the place required by the terms of the bonds, upon presentation and surrender of warrants drawn by the county auditor in payment thereof, after he or she has canceled the bonds and coupons, or upon the receipt of the registered owner, if the bonds are registered, after a proper warrant has been drawn by the auditor, out of the fund provided for their payment.

15404. Any money remaining in the interest and sinking fund of any school facilities improvement district after the payment of all bonds and coupons payable from the fund, or any money in excess of an amount sufficient to pay all unpaid bonds and coupons payable from

the fund, shall be transferred to the general fund of the governing board of the school district in which the school facilities improvement district is located upon the order of the auditor.

15405. Any money paid into the county treasury of the county and credited to the interest and sinking fund of any school facilities improvement district remaining after the payment of all bonds and coupons payable from the fund, or which is in excess of an amount sufficient to pay all unpaid bonds and coupons payable from the fund, shall be transferred to the special reserve fund of the school district in which the school facilities improvement district is located and may be used only for the purpose specified in Section 42840.

Article 11. Tax for Payment of Bonds

15410. The board of supervisors of the county in which the superintendent of schools of who has jurisdiction over a school district in which a school facilities improvement district is located shall annually at the time of making the levy of taxes for county purposes levy a tax for that year upon the property in the school facilities improvement district for the interest and redemption of all outstanding bonds of the district. The tax shall not be less than sufficient to pay the interest on the bonds as it becomes due and to provide a sinking fund for the payment of the principal on or before maturity and may include an allowance for an annual reserve, established for the purpose of avoiding fluctuating tax levies. The tax shall be sufficient to provide funds for the payment of the interest on the bonds as it becomes due and also that part of the principal and interest as is to become due before the proceeds of a tax levied at the time for making the next general tax levy can be made available for the payment of the principal and interest.

15411. All taxes levied, when collected, shall be paid into the county treasury of the county whose superintendent of schools has jurisdiction over the school district in which the school facilities improvement district is located and on behalf of which the tax was levied. All collected tax revenues shall be used exclusively for the payment of the principal and interest of the bonds of the school facilities improvement district, including any sinking fund.

15412. The board of supervisors of the county whose superintendent of schools has jurisdiction over the school district in which the school facilities improvement district is located, shall annually at the time of making the levy of taxes for county purposes estimate the amount of money required to meet the payment of the principal and interest on bonds of the district authorized by the electors of the district and not sold, and that the governing board of the school district informs the board on their belief will be sold before the next tax levy, and the board of supervisors shall levy a tax sufficient to pay the principal and interest so estimated.

15413. If the bonds are declared invalid or are not issued for any reason, the tax levied and collected shall be retained in the interest and sinking fund of the school facilities improvement district to meet the interest and principal falling due on the bonds.

If the school facilities improvement district has no bonds outstanding the proceeds of the tax levy shall be transferred to the general fund of the school district in which the improvement district is located on the order of the auditor.

15414. This article shall apply only to general obligation bonds issued for one or more purposes specified in Section 15302 and approved by two-thirds of the votes cast by the voters voting on the proposition.

Article 12. Tax for Payment of Bonds of School Facilities Improvement District Located in Two or More Counties

15420. If a school facilities improvement district lies in two or more counties, the assessor of each of the counties in which the district lies, shall annually as soon as the county assessments have been equalized by the State Board of Equalization, certify to the board of supervisors of each of the counties in which any portion of the schools facilities improvement district is located, the assessed value of all taxable property in the county located within the school facilities improvement district or community college district. The tax shall be levied according to the ratio which the assessed value of the property in the district in any county bears to the total assessed value of the property in the school facilities improvement district. Each board of supervisors shall levy upon the property of the school facilities improvement district and within its own county the rate of tax that will be sufficient to raise not less than the amount needed to pay the interest and the portion of the principal of the bonds as is to become due during the year.

15421. The tax shall be entered upon the assessment roll and collected in the same manner as other on real property.

The tax when collected shall be paid into the county treasury of the county. The treasurer of any county, other than the one whose superintendent of schools has jurisdiction over the school district in which the school facilities improvement district is located, shall, upon order of the county auditor, pay the sum collected on account of the tax into the treasury of the county whose superintendent of schools has jurisdiction over the school district in which the community facilities district is located.

15422. This article shall apply only to general obligation bonds issued for one or more purposes specified in Section 15302 and approved by two-thirds of the votes cast by voters voting on the proposition.

Article 13. Maximum Tax for Payment of Bonds

15425. Notwithstanding any other provision of this chapter, it is the intent of the Legislature that the rate of taxes levied annually upon the property in a school facilities improvement district pursuant to this chapter not be greater than the rate of the annual special tax levied upon parcels in the same school district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code. A determination by the governing board of a school district, made at the time bonds are sold pursuant to this chapter, that the rate of taxes to be levied annually upon the property in the school facilities improvement district, based upon tax rate estimates prepared pursuant to Section 9401 of the Elections Code, does not exceed the rate of the annual special tax levied upon parcels in the same school district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, shall be conclusive evidence of compliance with the intent of this section.

CHAPTER 12. STATE SCHOOL BUILDING LEASE-PURCHASE LAW OF 1976
Article 1. General Provisions

17000. This chapter may be cited as the "Leroy F. Greene State School Building Lease-Purchase Law of 1976."

17001. (a) The Legislature hereby declares that it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements, and to acquire new schoolsites and buildings for the purpose of making them available to local school districts for the pupils of the public school system, that system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.

(b) In order to expedite the elimination of the use of nonconforming school buildings that are used or designed to be used for instructional purposes or intended to be entered by pupils, the State Allocation Board may establish criteria that considers special circumstances under which funds may be allocated for the reconstruction of nonconforming buildings. The funds allocated in accordance with this section shall not exceed 75 percent of the cost of facility replacement.

(c) It is the intent of the Legislature that all construction projects be designed and constructed to maximize the use of educational technology, as set forth in subdivision (b) of Section 17002.

17002. The following terms wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Board" means the State Allocation Board.

(b) "Cost of project" includes, but is not limited to, the cost of all real estate property rights, and easements acquired, and the cost of developing the site and streets and utilities immediately adjacent thereto, the cost of construction, reconstruction, or modernization of buildings and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project. For purposes of this section, "educational technology hardware" includes, but is not limited to, computers, telephones, televisions, and video cassette recorders.

(c) The term "lease" includes a lease with an option to purchase.

(d) "Project" means the facility being constructed or acquired by the state for rental to the applicant school district and may include the reconstruction or modernization of existing buildings, construction of new buildings, the grading and development of sites, acquisition of sites therefor and any easements or rights-of-way pertinent thereto or necessary for its full use including the development of streets and utilities.

(e) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(f) "Apportionment" means a reservation of funds necessary to finance the cost of any project approved by the board for lease to an applicant school district.

17002.1. As used in this chapter, construction shall include, but not be limited to, reconstruction, modernization, and replacement of

facilities, and the performance of deferred maintenance activities on facilities pursuant to rules and regulations regarding those activities as may be adopted by the board. Funding for deferred maintenance activities for a facility may be approved under this chapter without regard to whether project funding for the reconstruction, modernization, or replacement of the facility is prohibited under Section 17021.

17003. The Director of General Services shall administer this chapter and shall provide such assistance to the board as it may require.

17004. The State Allocation Board is continued in existence for the purpose of this chapter. The members of the board and the Members of the Legislature meeting with the board shall receive no compensation for their services under this chapter but shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties hereunder, to be paid as an administrative expense referred to herein.

17005. In addition to all other powers and duties as are granted the board by this chapter, other statute, or the Constitution, the board shall have power to:

(a) Establish any qualifications not in conflict with other provisions of this chapter, as it deems will best serve the purposes of this chapter, for determining the eligibility of school districts to lease projects under this chapter.

(b) Establish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(c) Adopt any rules and regulations for the administration of this chapter, requiring any procedure, forms, and information, as it may deem necessary.

(d) Construct and control any project.

(e) Fix rates, rents, or other charges for the use of any project acquired, constructed, rehabilitated, equipped, furnished, or for services rendered in connection with that project, and to alter, change, or modify the same at its pleasure, subject to any contractual obligation that may be entered into by the board with respect to the fixing of the rates, rents, or charges.

17005.1. On or before June 30, 1981, and on or before June 30 of each year thereafter, the board shall approve a plan specifying (a) the amount of funds to be allocated in the forthcoming fiscal year for the purposes of deferred maintenance activities and (b) the manner in which such funds shall be allocated to applicant districts.

17005.3. (a) Any school district with an average daily attendance of less than 2,501 pupils may apply to the board for a loan to cover the project activities of the first or second phase, as those phases were defined on July 1, 1993, of a project funded under this chapter. The loan shall not be utilized for the purchase of real property and shall be repaid by the school district either through a dedication of fees or charges levied pursuant to Section 17620 until the loan is repaid or upon receiving the project funding at the construction phase, but, in any event, the loan shall be repaid within five years from the date on which the board makes the loan. In addition to the other methods of repayment specified in this subdivision, the board may also notify the Controller if a school district is 90 days late in making loan repayments, in which case the Controller shall reduce the apportionments to which the school district is otherwise entitled under Section 42238 as necessary to recover past due payments and any current payments.

(b) The board may make loans under this section to the extent that the board determines that funds are available for that purpose. The

total annual maximum funds that may be loaned under this section is ten million dollars (\$10,000,000) per fiscal year.

(c) The board may make loans under this section only for those projects and phases that have met all of the eligibility standards of the board and receive approval for an apportionment, but for which apportionment funds are not available. In any event, the amount of the loan shall not exceed the amount that would have been eligible for apportionment.

17005.5. The board may provide a loan to any school district from the proceeds of the sale of bonds pursuant to the School Facilities Bond Act of 1992, and the 1992 School Facilities Bond Act, to provide aid for school districts in accordance with this chapter, when those proceeds are available in the State School Building Lease-Purchase Fund. In order to provide a loan, both of the following conditions shall be met:

(a) The amount of the loan shall not exceed the amount set forth in legislation enacted that specifies the loan amount.

(b) The loan shall be repaid pursuant to a schedule set forth in legislation enacted that specifies a loan repayment schedule.

17006. (a) The board shall not enter into any lease with respect to an application for replacing inadequate school facilities unless it first has investigated and made a finding, or the governing board of a self-certifying district, as applicable, first certifies that it has investigated and made a finding, consistent with guidelines adopted by the board, that one or both of the following conditions exists:

(1) It would not be economical or good practice to rehabilitate those facilities.

(2) The school facilities are inadequate due to their susceptibility to repeated flooding. The board shall develop and adopt regulations that define inadequacy of school facilities on the basis of susceptibility to repeated flooding. The building area of any facility found to be inadequate pursuant to this subdivision shall be excluded, for the purposes of any application for the replacement of any facility, from the calculation under this chapter of the area of adequate school construction existing in the applicant school district.

(b) The self-certifying district shall maintain documentation of each investigation and finding it conducts pursuant to subdivision (a) as may be required by the board, and the investigation and finding shall be subject to subsequent audit as the board may direct.

(c) For purposes of this chapter, a "self-certifying district" as to any project to be funded under this chapter, is an applicant district that provides 50 percent or more of the cost of the project from funding sources other than any state program administered by the board.

17007. The State School Building Finance Committee, created by Section 15909 and composed of the Governor, Controller, Treasurer, Director of Finance, and Director of Education, all of whom shall serve thereon without compensation and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker, shall meet with and advise the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature.

For purposes of this chapter the Members of the Legislature shall constitute an interim investigation committee on the subject of this chapter and as an interim investigating committee shall have the

powers and duties imposed upon interim investigating committees by the Joint Rules of the Senate and the Assembly. The Director of General Services shall provide any assistance to the committee that it may require. The Attorney General shall be the legal adviser of the committee.

17008. A fund is hereby created in the State Treasury to be known as the State School Building Lease-Purchase Fund. All money in the State School Building Lease-Purchase Fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated for expenditure pursuant to this chapter.

The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the State School Building Lease-Purchase Fund from any source.

17008.3. (a) The board may establish a revolving loan account within the State School Building Lease-Purchase Fund, and may allocate from the fund to that account those amounts it determines to be necessary for the purposes of this section.

(b) The board may apportion to any school district that submits to the board a statement of its intent to subsequently file a project application under this chapter, a loan for the purpose of advance planning and related administrative costs pursuant to the preparation of that application. The loan amount shall not exceed 3 percent of the estimated project cost, as determined pursuant to the building cost standards established under this chapter.

(c) If, within a period of 24 months following the receipt of any loan amounts under this section, the project for which those advance planning funds were provided has not been found by the board to be qualified for funding under this chapter, the board shall so notify the Controller, who shall reduce the apportionments to which the district is otherwise entitled under Section 42238 as necessary to repay the amount of all loans provided under this section, over such period of time as the board finds to be reasonable. The Controller shall transfer the amount of all apportionment reductions imposed under this subdivision to the revolving loan account established under this section.

(d) The repayment of loan amounts received under this section by school districts other than those described under subdivision (c) shall be accomplished by the withholding, as determined by the board, of apportionment funds that would be available to the district for purposes of the project for which the district received funding approval under this chapter.

17008.5. The board may approve projects and make apportionments in amounts not exceeding those funds on deposit in the State School Building Lease-Purchase Fund plus any amount of bonds authorized by the State School Building Finance Committee but not yet sold by the Treasurer.

Disbursements may be made under any apportionment made from any funds in the State School Building Lease-Purchase Fund, irrespective of whether there exists at the time of the disbursement a sufficient amount in the State School Building Lease-Purchase Fund to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

17009. (a) The county superintendent of schools or county office of education shall be eligible to receive any funds from the portion of the proceeds of the sale of any state bonds that are set aside for the construction, reconstruction, or modernization of, or deferred maintenance on facilities to house special education pupils who are defined as severely handicapped and eligible pursuant to Section

17047.

(b) Subdivision (a) is only applicable if the county superintendent of schools or county office of education has filed with the State Allocation Board a regionalized facility plan, as developed and approved by the State Department of Education, that covers the county or special education local planning agency area of responsibility.

Article 2. Projects

17010. The board may construct any project, and may acquire all property necessary therefor, on any terms and conditions as it may deem advisable. When any part of the work is to be done or performed by any public body or the United States jointly or in conjunction with the board, the portion of the cost of the project to be borne by the board may be turned over to the government of the United States or to any other public body, to be expended by it in the acquisition, construction or completion of the project.

17011. The board may use for the payment of the costs of acquisition, construction or completion of any project any funds made available to the board by the State of California or any other funds provided by the board from any source, to be expended for accomplishing the purposes set forth in this chapter, together with the proceeds of bonds issued and sold pursuant to the State School Building Lease-Purchase Bond Law of 1976.

17012. The board has full charge of the acquisition, construction, completion, and control of all projects authorized by them and may proceed with such work forthwith.

17013. Title to all property acquired, constructed, or improved by the board and the revenues and income therefrom, is in the State of California. All such property, and the income therefrom are exempt from all taxation by the State of California or by any county, city and county, city, district, political subdivision or public corporation thereof.

17014. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose will be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and encourage applicants to maintain all buildings under their control, the board shall require the applicant to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the district's general fund for the exclusive purpose of providing moneys for regular maintenance and routine repair of school buildings, according the highest priority to funding for the purpose set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for the term of the lease agreements of all projects constructed under this chapter, a minimum amount equal to or greater than 2 percent of the applicant's General Fund budget for that fiscal year. This paragraph is applicable only to the following districts:

(A) High school districts with average daily attendance greater than 300.

(B) Elementary school districts with average daily attendance greater than 900.

(C) Unified school districts with average daily attendance greater than 1,200.

17015. The board shall require the school district to insure against public liability or property damage in connection with any project.

17016. The board, by the adoption of rules, may establish priorities for the construction and leasing of projects to those school districts the pupils of which will benefit most. The board may make exceptions from established priorities when it determines that to do so will benefit the pupils affected.

17017. Each school district that desires to lease a project for a grade level maintained by it, shall submit through its governing board an application therefor to the board in the form and number of copies that the board may prescribe. Immediately upon receipt of an application in the prescribed form accompanied by the required estimate of cost, a copy thereof shall be transmitted by the board to the Director of General Services.

Each copy of the application shall be accompanied by a statement of the estimated cost of the project certified by an architect or structural engineer, and by layout plans showing the entire construction project.

Before the board approves an application for a construction project, it shall establish cost standards for all new construction included therein. The cost standards shall not exceed typical comparable new construction by school districts in the same area, or if there has been no new construction by school districts in the area, the cost standards shall not exceed the reasonable current cost of similar construction in the area. The board shall determine such typical current costs or such reasonable current costs. In applying cost standards the board shall take into account the size and type of the construction proposed and may make any deviations that in its judgment are justified. When a standard has been set by the board to cover any individual apportionment, no project shall be approved by the board in excess of the standard, unless the board shall find that in view of a subsequent increase in building costs an adjustment is warranted. No contract shall be let for a construction project which has been approved by the board if the cost exceeds the construction cost standards fixed by the board under this section for the new construction.

17017.1. (a) The West Contra Costa Unified School District shall be ineligible for any state school facilities funding for a period of five years from June 30, 1993, or until the date of the final payment on its entire debt to the state, including both principal and interest, whichever is later.

Notwithstanding the above, the school district may continue to receive funding for deferred maintenance activities and for those purposes specified in subdivision (b).

(b) The State Allocation Board shall approve funding for only those Richmond Unified School District State School Building Lease-Purchase Program projects which were approved for Phase II apportionments on or before April 1, 1993. All West Contra Costa Unified School District projects may be considered for funding by the State Allocation Board either in five years or after the complete repayment of the loan established under Section 41471, whichever is later.

(c) In the event that the State Allocation Board approves the replacement of the existing Belding Elementary School with funds currently allocated for the modernization of the Harry Ellis Middle School and the Samuel Gompers Middle School, that approval shall be considered allowable exemption under subdivision (b). Authority for this exemption is repealed on November 1, 1993, if approval of Phase III construction apportionment for the replacement of the existing

Belding Elementary School has not occurred.

In allowing for the possibility of this exemption, it is not the intent of the Legislature to interfere in any way with the decisionmaking authority and process of the State Allocation Board. It is the intent of the Legislature that a proposal to replace the existing Belding Elementary School with funds currently allocated to the modernization of the Harry Ellis Middle School and the Samuel Gompers Middle School be submitted to the State Allocation Board under its existing procedures and policies. The State Allocation Board's decision shall be based on the merits of the proposal, not this exemption authority. Specifically, this subdivision may not be used as justification for approval of a project to replace the Belding Elementary School.

(d) Any properties or facilities designated by the school district to be used for other than school purposes to generate capital to repay the outstanding debt shall be ineligible for deferred maintenance funding. Should any facilities receive funding for those purposes after the enactment of this legislation, and later be declared available for purposes intended to repay the debt, the value of state funding received for deferred maintenance at that facility shall be deducted from ongoing or future deferred maintenance projects in the district.

If no projects are available for offset of apportionments, the value of the deferred maintenance performed will be added to the outstanding loan balance.

17017.5. (a) The board may approve, in whole or in part, an application submitted by a school district under Section 17017 or 17020 in an amount not exceeding the amount applied for as the board may deem appropriate.

(b) The board may, upon approval of the application, in whole or in part, and subsequently from time to time, make apportionments of project funding not exceeding in the aggregate the total amount determined by the board under subdivision (a) for the portion or portions of the project for which the board determines the district is ready to proceed. Subsequent to the board's approval of a project, any requirement imposed by the board that the compliance of the project with building cost or area standards and related guidelines adopted by the board be established as a condition of the apportionment of funds under this chapter shall be satisfied, as to a project for a self-certifying district, by the certification by the district of that compliance. In addition, the board shall not require that estimates of average daily attendance be updated as to that project more often than once every 12 months subsequent to the board's approval of the project. The self-certifying district shall maintain documentation of the compliance certified pursuant to this subdivision as may be required by the board, and that compliance shall be subject to subsequent audit as the board may direct.

(c) Whenever a district files an application, the board shall require the district to submit to the board and the State Department of Education a five-year plan for construction and rehabilitation of school facilities, and to obtain the written approval of the department that the plan complies with standards that are established by the department for this purpose to ensure that the applicant district has adequately anticipated its school facilities needs and identified funding sources as necessary to meet those needs. The plan may be adjusted to reflect adjusted growth targets.

(d) The board shall not approve any application under this chapter after January 1, 1990, unless accompanied by a study examining the feasibility of implementing in the district a year-round multitrack educational program that is designed to increase pupil capacity in

the district or in overcrowded high school attendance areas by at least 20 percent.

(e) The board may waive subdivision (d) or the requirements of Section 17017.7, or both, if a school district demonstrates that these requirements will result in a particular educational or financial hardship to the district. Further, the board shall waive subdivision (d), if it finds that there is clear hardship to a district due to declining enrollment or no growth.

17017.6. Notwithstanding Section 17017.7, the definition of "substantial enrollment" set forth in that section shall apply only to elementary and unified school districts. For a high school district, "substantial enrollment in multitrack year-round schools," for the purposes of Section 17017.7, means that at least 30 percent of the pupils enrolled in the high school district are enrolled in multitrack year-round schools, or that 40 percent of the pupils enrolled in public school in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools. In addition, a high school district shall be deemed to have a substantial enrollment in multitrack year-round schools for purposes of Section 17017.7 if, at the option of the district, the entire high school to be constructed is to operate on a multitrack year-round basis.

17017.7. (a) Notwithstanding any other provision of this chapter, priority for the approval of project funding for new construction under this chapter, shall be as follows:

(1) First priority for construction funds shall be given to school districts with a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project that would be constructed to operate on a multitrack year-round basis.

(2) Second priority shall be for school districts with a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would be constructed to operate on a multitrack year-round basis.

(3) Third priority shall be for school districts without a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project to operate on a multitrack year-round basis.

(4) Fourth priority shall be for school districts without a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would be constructed to operate on a multitrack year-round basis.

(5) Fifth priority shall be for school districts with a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project that would not operate on a multitrack year-round basis.

(6) Sixth priority shall be for school districts with a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would not operate on a multitrack year-round basis.

(b) The board shall not restrict the availability of funding for construction of multitrack year-round schools, from any funding source available to the State School Building Lease-Purchase Fund, but shall make approval of project funding for those projects the first priority in accordance with this section.

(c) "Substantial enrollment," for the purposes of this section, means enrollment of at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, or 40 percent of pupils in kindergarten and grades 1 to 12, inclusive, in the high school

attendance area for which the school district is applying for new facilities. The calculation set forth in this subdivision, as to a self-certifying district, shall be made by the district, in accordance with any standards governing that calculation that are adopted by the board. The calculation shall be certified by the district to the board and used by the board for the purposes of this section. The self-certifying district shall maintain documentation of the calculation as may be required by the board, and the calculation shall be subject to subsequent audit as the board may direct. If a self-certifying district is found by the board to have materially misrepresented its pupil enrollment pursuant to this subdivision, the board may impose either or both of the penalties set forth in paragraphs (1) and (2) of subdivision (b) of Section 17041.2, in accordance with that section.

(d) "Multitrack year-round school," for purposes of this section, means a school for which the applicant district demonstrates that both of the following criteria are satisfied:

(1) The pupils are divided into three or more groups or tracks, which rotate attendance so that, for a majority of schooldays during the school year, at least one group or track is not attending the school while all other groups or tracks are in attendance.

(2) The operation of the school on a multitrack year-round basis has resulted in an increase in enrollment capacity.

(e) Notwithstanding any other provision of this section, the State Allocation Board may continue to implement any year-round school priority provisions for hardships adopted prior to September 1, 1990.

17017.9. (a) Notwithstanding any other provision of law, a project shall be accorded, subject to subdivision (b), the priority status that otherwise is accorded under Section 17017.7 to a project for which state funding is requested for only 50 percent of the cost, if both of the following conditions are met:

(1) The applicant district documents to the satisfaction of the board that it has incurred bonded indebtedness in an amount not less than 95 percent of the bonding capacity of the district.

(2) The applicant district agrees that all of the following local resources of the district existing on or after the date of the district's first application for project funding pursuant to this section shall apply toward the cost of projects for which the district requests state funding pursuant to this chapter, not to exceed 50 percent of the cost of any project:

(A) Any unexpended bonding capacity of the district.

(B) Funding that is made available to the district from local sources expressly for school facilities purposes, including, but not limited to, funding provided under Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code and developer fees or other charges imposed pursuant to Section 17620, or Title 7 (commencing with Section 65000) of the Government Code.

(b) An applicant district qualifying for the priority status described in subdivision (a) as to any project shall continue to be accorded that status for all subsequent projects under this chapter until the time that the bonding capacity of the district determined for purposes of that subdivision increases by 20 percent.

(c) The condition set forth in paragraph (2) of subdivision (a) shall apply until either the applicant district's eligibility under this section terminates pursuant to subdivision (b), or funding for the project is approved and apportioned under this chapter for a project for which 50 percent or more of the cost is provided by the district from funding sources other than any state program administered by the board, whichever occurs first.

(d) Notwithstanding any other provision of law, as to any project for which priority status is accorded pursuant to subdivision (a), the estimate of average daily attendance for the applicant district may be calculated, upon request of the district, in the manner set forth in subdivision (a) of Section 17040.3.

17018. In approving applications pursuant to this chapter, the board shall encourage the design and construction of facilities which will conserve unreplenishable energy resources by consideration of alternate design and insulation concepts as well as unconventional energy sources. In so doing, the board may increase cost allowances to reflect the difference between conventional and unconventional concepts when the board is satisfied that the life cycle cost of the project is not expected to exceed the life cycle cost of a conventionally designed project.

17018.5. (a) The Legislature intends for the board to encourage school districts to utilize alternative methods to fund school facilities.

(b) The board shall approve applications pursuant to the requirements of this section that request the board to share a portion of the cost of projects constructed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth by Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code. The board shall disregard the fact that structures have been constructed in accordance with that act, and neither consider nor approve any application for cost sharing until the time that the applicant school district would have become eligible for approval of its application during the normal process established for considering and approving applications.

(c) The board shall approve applications for cost sharing based on both of the following factors:

(1) Estimates of average daily attendance at the time the application is considered.

(2) The amount of cost sharing requested.

(d) The costs shared by the board shall be an amount equal to the cost that would have been allowed for the project had it been originally approved pursuant to this chapter less 5 percent per year depreciation, exclusive of land, for each year that the project was constructed in advance of the application approval, but no more than the lesser of an amount equal to 75 percent of the allowable cost of the project or the principal amount of any outstanding callable bonds and other debts incurred to finance the project under the Mello-Roos Community Facilities Act of 1982.

(e) If the board utilizes a point system to prioritize applications for funding, the computation of priorities for an application pursuant to this section shall be increased by 4 percent for each year from the date of construction of the project to the date of approval of the cost-sharing application.

17019. Before the board approves any project that includes the acquisition of furniture or equipment, it shall establish current cost and quality standards for furniture and equipment, including, but not limited to, educational technology hardware. The standards shall not exceed the cost and quality of furniture and equipment for comparable facilities purchased by school districts in the same area.

The standards shall consist of furniture and equipment costs for each type of classroom or pupil station having different cost criteria. The standards shall be reviewed quarterly by the board and adjustments made in accordance with actual current costs. When cost and quality standards have been adopted by the board, the standards shall not be exceeded unless a subsequent increase in actual current costs warrants an adjustment.

Before the board approves a project for the replacement, reconstruction, or alteration of, or addition to, a school building, full consideration shall be given to all usable furniture and equipment existing in the applicant district. The board may approve all or a portion of the amount applied for.

17019.3. (a) Any applicant school district may contract with a firm, as defined in Section 4525 of the Government Code, for construction project management services to assist in the development or implementation of a project for which the district has applied for funding under this chapter, subject to the requirement that a performance bond be required from all building contractors hired to construct the project in order to ensure the completion of performance under the contract.

(b) That portion of any contract, as described in subdivision (a), concerning the final phase of construction of the project, shall be submitted by the applicant district to the board for approval. If the board does not approve, reject, or recommend modifications to, that contract portion within 15 business days after receiving that contract information, that portion of the contract shall be deemed to be approved by the board.

(c) From the amount of funding approved by the board under this chapter for any project, the board shall authorize the expenditure of funds for the costs of construction project management services provided to the project, as described in subdivision (a), where the board finds that the contracting for those services was necessary and appropriate to the school district's development or implementation of that project.

17019.5. For a school district having an average daily attendance of 2,500 or less for the prior fiscal year, the board may approve, subject to the building cost standards established under this chapter, a supplemental apportionment up to five thousand five hundred dollars (\$5,500) for any new construction project, and up to one thousand three hundred twenty dollars (\$1,320) for any other project approved under this chapter, as reimbursement for administrative expenses incurred by the district in filing the application for the project. The amount of the supplemental apportionments shall be adjusted in 1990, and every two years thereafter, by the board at its January meeting, which adjustment shall be in an amount equal to the amount of the adjustment for inflation set forth in the statewide cost index for class D construction.

17020. (a) Notwithstanding other provisions of this chapter, in order to expedite a total school facility a school district may first apply for a project which includes only the advance purchase of the land and preparation of plans and specifications. The acquisition of the site and the plans preparation shall be based on the justification documents for the total school facility. The school district may apply for a subsequent project or projects to complete the total school facility.

(b) Any application filed pursuant to this section shall be subject to all provisions of this chapter generally applicable to project applications, to the extent not in conflict with this section.

(c) Any estimate of average daily attendance made by an applicant district for the purpose of justifying an application pursuant to this section may be made for up to and including two years longer than the period of time permitted by Section 17040.

(d) Beginning in the fifth fiscal year following the fiscal year in which any apportionment is made to a school district pursuant to this section, the district shall repay the apportionment, with

interest, in 10 equal annual installments, unless and until the district has qualified for an apportionment pursuant to an application for utilization of the site under this chapter. These repayments shall constitute rent, and shall be in addition to any other rents or fees for which the district is obligated under Section 17032. The board may waive any obligation of repayment under this subdivision to the extent that the board finds that the obligation will result in an extreme hardship upon the district.

(e) The school district may apply for a subsequent project or projects to complete the total school facility.

17021. No project shall be approved for the reconstruction, modernization, or replacement of any school building that was constructed or reconstructed less than 30 years, or, in the case of any portable classroom, as defined in subdivision (e) of Section 17042.5, less than 20 years, prior to the date of approval of the project applied for under this chapter.

17021.3. (a) For purposes of this chapter, "modernization" or "renovation" means any modification of an existing structure, the costs of which do not exceed 25 percent of the replacement cost of that structure.

(b) No project shall be approved for the modernization of any school facility unless and until both of the following are demonstrated to the satisfaction of the board:

(1) The project will enhance the capacity of the facility to achieve one or more educational purposes.

(2) The resulting pupil capacity of the facility, as measured in units of average daily attendance, will equal or exceed 80 percent of the facility's maximum capacity as determined under the board standards established under this chapter.

(c) No project shall be approved for the modernization of any school facility that was constructed less than 30 years prior to the date of the approval of the project applied for under this chapter.

(d) The State Allocation Board may waive the requirement in subdivision (c) if the building has been declared by the Office of the State Architect to be, or is in imminent danger of becoming, a health or safety hazard to the pupils. This determination may only be made in the case of a natural disaster, for example, fire, flood, or earthquakes, or as a result of a determination by a qualified engineer, and agreed to in writing by the Office of the State Architect.

17021.4. Notwithstanding the limitation set forth in subdivision (a) of Section 17021.3, the costs of a modernization or renovation project funded under this chapter may exceed 25 percent of the replacement cost of an existing structure where the costs in excess of that amount are funded by the district exclusively from sources other than any state program administered by the board. For each project, the total costs of the modernization or renovation project, as supplemented pursuant to this section, may not exceed 50 percent of the replacement cost of the existing structure except to the extent of those costs funded by the district, from sources other than any state program administered by the board, that are expended to conform that structure to current building standards, in which event the total costs of the project

may not exceed 75 percent of the replacement cost of the structure.

17022. Except as provided in Section 17041, the board shall not approve any new school facilities for any applicant school district or county superintendent of schools until it first has made a determination that the applicant will utilize all existing facilities and sites to the extent economically and practically feasible. The

board may also require the applicant to explore cooperative efforts with adjacent districts or, in the case of county superintendents of schools, with adjacent county superintendents of schools, in order that all existing or planned facilities in the general area of need shall be utilized.

17022.7. (a) The funding for any reconstruction project approved by the board pursuant to this chapter that meets the requirements set forth in subdivision (b) shall include all of the following, not to exceed the total cost of the reconstruction project or 75 percent of the replacement cost of the facility to be reconstructed, whichever is less:

(1) Twenty-five percent of the replacement cost of the facility.

(2) A funding entitlement to the extent that the reconstruction will result in an increased capacity of the facility to house pupils, calculated pursuant to the cost standards for new construction established by the board under Section 17017.

(3) Any costs incurred by the district as required to ensure that the facility, as reconstructed, complies with applicable structural safety standards for school buildings pursuant to Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365) of Chapter 2 of Part 10.5, and Article 7 (commencing with Section 81130) and Article 8 (commencing with Section 81160) of Chapter 1 of Part 49.

(b) In order to qualify for the funding entitlement set forth in subdivision (a), a school district reconstruction project shall be required to meet all of the following conditions:

(1) The facility to be reconstructed is at least 30 years old as of the date the application is filed.

(2) The cost of the reconstruction project exceeds 25 percent of the replacement cost of the facility.

(3) The reconstruction will result in an increased capacity of the facility to house pupils.

(c) No reconstruction project shall be approved under this chapter for which the total cost exceeds 75 percent of the replacement cost of the facility to be reconstructed.

17023. Nothing contained in this chapter shall be construed as changing the powers and duties of the Department of Education or the Department of General Services in respect to schoolsites and the construction of school buildings as contained in Chapter 1 (commencing with Section 17211) and Chapter 2 (commencing with Section 17251) of Part 10.5.

17024. (a) The board shall not authorize the selection of any schoolsite, or a contract for the construction of any new school building, or for any addition to, or alteration of, any existing building, for lease-purchase to any school district, unless the applicant district has obtained the written approval of the State Department of Education that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251.

(b) A self-certifying district shall comply with subdivision (a) by certifying to the State Department of Education and the board that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251. The self-certifying district shall maintain documentation of the determinations made pursuant to this subdivision as required by the board. Those determinations shall be subject to subsequent audit by the State Department of Education in accordance with this section.

(c) The State Department of Education shall conduct random audits

of the information certified by self-certifying districts pursuant to subdivision (b), using generally accepted auditing principles, at any time to ensure compliance with the law.

(d) If any information certified by a self-certifying district pursuant to subdivision (b) is found by the department to contain any material inaccuracy, the department shall so notify the board. The board shall thereupon impose both of the following penalties:

(1) Pursuant to a repayment schedule approved by the board of no more than five years, the district shall repay to the board, for deposit in the State School Building Lease-Purchase Fund, an amount equal to the amount of project funding allocated under this chapter to acquire any site that was selected in material violation of the standards adopted by the department pursuant to subdivision (b) of Section 17251, together with interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. The amount of any repayment owing under this paragraph for any fiscal year, which is not repaid otherwise by the district, shall be withheld by the board from any project funding that otherwise would be allocated to that district under this chapter in that fiscal year. As to any repayment obligation remaining for that fiscal year, the board shall notify the Superintendent of Public Instruction, who shall withhold the amount of that remaining obligation from the apportionments to be made to the district from the State School Fund in that fiscal year.

(2) The board shall prohibit the district from exercising the self-certifying authority under subdivision (b) under any subsequent applications for project funding for a period of up to five years following the date of the finding of a material inaccuracy, or until the district's repayment of the entire amount owing under paragraph (1), whichever occurs later.

(e) Any school district against which the board imposed the penalties under paragraphs (1) and (2) of subdivision (d) may submit for binding determination by an arbitrator the issue of whether the penalties imposed are disproportionate to the inaccuracy certified by the district. Except as otherwise provided by this chapter, the procedure governing the arbitration shall be as set forth in Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(f) It is the intent of the Legislature that audits as described in this section not interfere with the application and construction process under this chapter unless one or more violations are discovered.

17024.5. Upon request of any school district, the State Department of Education shall provide assistance in the evaluation and utilization of existing school facilities and the justification of the need for schoolsites, new facilities, and the rehabilitation or replacement of existing facilities, in accordance with board regulations.

17025. (a) The board shall not authorize a contract for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district unless the applicant district has submitted plans therefor to the Department of General Services and obtained the written approval of the department pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5.

(b) The board, or the self-certifying district, as applicable,

shall certify the compliance of a project with Sections 17212, 17212.5, and 17213, with Division 13 (commencing with Section 21000) of the Public Resources Code, and with any other law that applies to that project, but may require documentation of compliance only as to requirements that are applicable under this chapter. Notwithstanding any other law, for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, the applicant district shall be deemed to be the "lead agency" with regard to any project funded for that district under this chapter.

17029. (a) The board shall authorize the applicant school district to act as its agent in the performance of acts specifically approved by the board and all acts required pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5. That authorization shall include, but is not limited to, the selection of schoolsites, the securing of appraisals, the contracting for architectural services, the advertisement for construction bids and the entering into of contracts therefor and the purchase of furniture and equipment.

(b) If, pursuant to the authority granted under subdivision (a), a self-certifying district submits to the board two or more independent appraisals and certifies to the board that the appraisals were performed by appraisers licensed or certified in accordance with Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code and were obtained in accordance with standards and procedures imposed by the board for that purpose, the district shall not be required to document its compliance with those standards and procedures except as specified in Section 17041.2. In addition, the board shall use any of those appraisals, including an appraisal that is not the highest bid appraisal, for the purposes of this section, except that the board may substitute, for the results of those appraisals, the results of one or more independent appraisals, which may include an appraisal performed by the Department of General Services, obtained by the board for that purpose.

(c) If, pursuant to the authority granted under subdivision (a), any bid reported to the board by a self-certifying district as the lowest responsible bid for a construction contract does not exceed the cost limit established by the board for that purpose, and the district certifies to the board that the bid was obtained in accordance with standards and procedures imposed by the board for that purpose, the district shall not be required to document its compliance with those standards and procedures except as specified in Section 17041.2.

17029.5. Notwithstanding any other provisions of this chapter, the funding by the board of contracts entered into by a school district pursuant to this chapter shall not, in itself, make the board liable for any tort, breach of contract, or any other action for damages caused by a school district arising from those contracts.

These contracts include, but are not limited to, contracts between the school district and its construction contractors, construction managers, architects, or engineers. The school district shall be liable for all torts, breaches of contract, or any other actions for damages caused by the school district.

17030. (a) In expending funds for any project under this chapter, a school district acts as an agent of the state and all sites purchased and improved, all equipment purchased, and all buildings constructed, altered or added to through the expenditure of funds apportioned under this chapter, are declared to be, and are, the property of the state.

(b) The Director of General Services shall file with the county

recorder of the county in which any site purchased or improved through the expenditure of funds under this chapter is located a certificate, properly acknowledged, indicating the state's interest in real property of the district by virtue of this section, without the necessity of particularizing the real property. The recorder shall record and index the certificate in the same manner as abstracts of judgments and the certificate shall constitute constructive notice of the state's interest in the particular real property affected. The certificate shall, as to any party thereafter acquiring real property or any interest therein in the county from the school district, have the same force, effect and priority as if it had been a judgment lien imposed upon real property which was not exempt from execution. That effect shall commence upon recordation and shall continue until the certificate is discharged or released as provided herein.

(c) Upon request, the Director of General Services shall issue either of the following:

(1) A release of the state's interest in any real property or a portion thereof that the district has been authorized by the board to dispose of under Section 17039, provided that delivery of such release may be subject to such conditions as may be prescribed by the board to protect the state's interest.

(2) A disclaimer of the state's interest in any real property or a portion thereof of the district, the disposition of which the board is not required to consent to under the terms of Section 17039, provided that the delivery of such disclaimer may be subject to such conditions as the board deems appropriate to protect the interest of the state, including conditions relating to the amount of consideration to be received from the disposition where the board asserts an interest in the proceeds of such disposition under other provisions of this chapter. The release or disclaimer shall conclusively protect any third party relying upon the same and shall be acknowledged to permit recordation by the county recorder.

(d) Upon payment by the district of all amounts required to be paid by it, or on its behalf, to the state under this chapter, each of the following shall occur:

(1) The Director of General Services shall file with the county recorder a release of any certificate, which release shall be recorded and indexed in the same index as the certificate.

(2) The title to personal property purchased by the school district with funds apportioned under this chapter shall revert thereto without further action by the state.

17030.2. Notwithstanding any other provision to the contrary, all lease agreements shall terminate 40 years from the date of execution and title to the property covered therein shall revert to the district as though full payment had been made.

17030.3. Notwithstanding any other provision of this chapter, any project funded under this chapter that involves only the identification, assessment, or abatement of hazardous asbestos in school facilities shall not be subject to Section 17014 or 17032, nor shall that funding cause the transfer to the state of title or any other property interest in the subject facilities.

17030.5. Notwithstanding any provision to the contrary, no funds authorized by any act for the purpose of this chapter may be expended for any purpose without specific authorization from the board or its designated representatives.

17030.6. From any moneys in the State School Building Lease-Purchase Fund, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance, pursuant to this chapter, required by Section

15504 of the Government Code.

17031. The applicant district, acting as agent for the state, shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to school buildings.

17032. The board shall fix rents for all projects acquired and may change the rents from time to time as may be needed provided the rents shall not in any year exceed the sum of the following:

(a) One dollar (\$1).

(b) Any interest earned on funds in the county school lease-purchase fund for the district.

(c) Any unencumbered bond funds of the district, exclusive of funds that are used by the district to fund a project pursuant to Section 17040.2.

(d) The net proceeds from the sale or lease of any school buildings or land no longer needed for school purposes, exclusive of proceeds that are used for capital outlay expenditures for school construction that conforms to building area standards established under this chapter, for revenue purposes under a joint venture as authorized by Section 17032.3.

17032.3. (a) Any school district for which one or more projects has been funded under this chapter may, pursuant to written agreement with any other public or private person or entity, utilize any school buildings, land, or other real property interest that the governing board determines is not needed for school purposes, and will not be needed for school purposes within the next 30 years, in a joint venture with that person or entity to generate revenues for school facilities purposes, pursuant to the following conditions:

(1) The district has developed a school district asset utilization plan, setting forth the information required under subdivision (b), which plan has been the subject of a public hearing, and the governing board of the district has made the finding that the implementation of the plan will benefit the district.

(2) Prior to the execution by the school district governing board of any agreement regarding the utilization of the school buildings or land, or both, under a joint venture pursuant to this section, the school district asset utilization plan has been submitted for, and has received, the review and approval of the State Allocation Board. No later than 90 days after the receipt of the plan, the board shall determine whether to approve the plan, which approval shall be granted if the board finds the plan to comply with this section.

(3) Once every three years after the approval of any plan pursuant to paragraph (2), the school district shall update the plan with information regarding the disposition of the revenues received by the district from the utilization of the school buildings or land, or both, under the joint venture, including the effect of those revenues upon the school facility needs for which the district may otherwise be eligible under this chapter or under any other school facilities program administered by the board, together with such other information as the board may require, and shall resubmit the plan to the board for its review and approval. In the event that the board refuses to approve the plan on the basis that the district is no longer in substantial compliance with this section, the surplus school buildings or land, or both, utilized under the joint venture shall no longer be exempt from the rental requirements of Section 17032.

(4) Pursuant to a school district asset utilization plan approved under this section, the school district may utilize school buildings or land, or both, in a joint venture, the revenues from which shall be placed by the district in a separate fund. The principal and interest from that separate fund may be expended by the district only

for the following school facilities purposes, as authorized under the approved plan, in accordance with the pupil loading and cost standards established pursuant to this chapter: the acquisition of land, new construction, reconstruction, modernization, rehabilitation, and deferred maintenance.

(b) For purposes of this section, a school district asset utilization plan shall include, but not necessarily be limited to, all of the following:

(1) A specific description of the surplus school buildings or land, or both, to be utilized under the joint venture.

(2) The identification of the current educational uses of the surplus school buildings or land, or both, and of the educational uses proposed under the joint venture.

(3) The identification of the current noneducational uses of the surplus school buildings or land, or both, and of the noneducational uses proposed under the joint venture, and a specific assessment of the compatibility of those uses with any applicable general or specific governmental land use plans and with applicable zoning restrictions.

(4) A description of the prospective economic benefits to be derived by the district from the joint venture.

(5) A description of the prospective educational benefits to be derived by the district from the joint venture.

(6) A comprehensive description of the joint venture, including, but not limited to, a description of the intended means of financing the joint venture.

(7) A plan for the disposition of the revenues received by the district from the joint venture.

17033. Rent, charges, and fees collected in error may be refunded by the board in accordance with regulations prescribed by the board.

17034. A county school lease-purchase fund is hereby created in the county treasury within each county for each school district project in the county.

17035. The board may from time to time authorize the Controller to transfer any funds that the board may deem necessary from the State School Building Lease-Purchase Fund established for a given project to the corresponding county school lease-purchase fund in the county treasury.

17036. (a) Except as provided in subdivision (b), funds may be expended from the county school lease-purchase fund by the applicant school district only when specifically authorized by the board for either direct project costs or reimbursements.

(b) Upon specific authorization by the board, applicant school districts may be reimbursed from the county school lease-purchase fund for expenditures, or commitments therefor, made prior to the approval of a project by the board, subject to all of the following conditions:

(1) The expenditures or commitments were made in accordance with the terms of the approval of a project.

(2) The expenditures or commitments were made not more than four years prior to the approval of a project.

(3) The expenditures or commitments do not include any cost incurred for construction of a project.

17038. The board shall require school districts to insure at their own expense for the benefit of the state, all sites, equipment and buildings which are, under Section 17030, the property of the state, against such risks and in such amounts as the board may deem necessary to protect the interests of the state. No project funds shall be used to pay the premiums on such insurance. All payments

resulting from claims made against said insurance shall be made payable to and retained by the board. Funds so received shall be utilized by the board for repair or replacement of the facilities for which claim was made. In no event may the amounts expended from such funds for such repair or replacement exceed the payments received.

17039. (a) Not more than one hundred fifty million dollars (\$150,000,000) of the moneys authorized by the State School Building Lease-Purchase Bond Law of 1982 (Sec. 34, Ch. 552, Stats. 1995) shall be reserved for the reconstruction or modernization of facilities within the meaning of this chapter.

(b) For purposes of this section, the State Allocation Board shall establish a separate priority system which shall be based on the following factors and any other factors which the board determines are appropriate:

(1) Structural condition and age of the building.

(2) Percentage of pupils affected in the district or attendance area.

(3) Degree of utilization of eligible buildings.

(4) Other building code deficiencies, such as health, safety, or electrical problems.

17039.1. Not more than two hundred million dollars (\$200,000,000) of the moneys authorized by the State School Building Lease-Purchase Bond Law of 1982 (Sec. 34, Ch. 552, Stats. 1995) shall be reserved for the reconstruction or modernization of facilities within the meaning of this chapter.

17039.2. Of the moneys reserved for the rehabilitation or modernization of facilities pursuant to Section 17039.1, the board may reserve not more than twenty-five million dollars (\$25,000,000) for apportionments to school districts that the board has determined to be in severe need of the apportionment. In addition, of the moneys reserved for the reconstruction or modernization of facilities pursuant to Section 17696.96 of the Greene-Hughes School Building Lease-Purchase Bond Law of 1986 (Sec. 34, Ch. 552, Stats. 1995), the board may reserve up to and including 10 percent for this purpose. In either event, the apportionment shall be for purposes of site acquisition and the construction of school facilities for schoolsites that meet one or more of the conditions established by the board, which shall include, but are not limited to, the following:

(a) The schoolsite is not less than 30 years of age.

(b) The schoolsite has accommodated a significant increase in enrollment during the last 10-year period.

(c) Enrollment increases have been accommodated by placing relocatable structures on the schoolsite without expanding the schoolsite.

(d) The schoolsite has inadequate playground space for its enrollment.

(e) The schoolsite has inadequate meal facilities, and those facilities are used for more than three times the number of pupils for which the facilities were originally designed.

Article 3. Allowances

17040. Except as provided in Section 17041, no project shall be approved, the building area of which, when added to the area of adequate school construction existing in the applicant school district at the time of application, will provide a total area of school building construction per unit of estimated average daily attendance in excess of that computed in accordance with Sections 17043, 17044, 17045, and 17046.

As used in Sections 17041.5, 17043, 17044, 17045, and 17046, "maximum area" means maximum area of school building construction and "attendance unit" means unit of estimated average daily attendance.

As used in this section and Sections 17045 and 17046, "attendance center" means a school maintained or to be maintained at a given location within a district. Enrollment projections shall be made for the third fiscal year beyond the fiscal year in which the application is made for a project for kindergarten or any of grades 1 to 6, inclusive, and for the fourth fiscal year beyond the fiscal year in which the application is made for a junior high school or high school project. Except as otherwise provided by the board, the estimates of average daily attendance shall be based upon the number of family dwellings and mobilehome parks, as defined in Section 18214 of the Health and Safety Code, under construction or newly constructed and never occupied in the district and the number of children residing in the district. In no case shall an estimate be given effect unless approved by the board.

For the purposes of this chapter, pupils attending grades 7 and 8 in an elementary district, but residing in a high school district that maintains one or more junior high schools,

shall not be considered in determining or estimating the average daily attendance of the elementary district, unless one of the following conditions is met:

(a) The elementary district is maintaining and has continuously maintained grades 7 and 8 since a date prior to January 1, 1975.

(b) The elementary district, by a vote of the electorate at an election held on June 2, 1981, withdrew its 7th and 8th grade pupils from the high school district.

(c) The elementary district, by a vote of the electorate at an election held on November 4, 1980, withdrew its 7th and 8th grade pupils from the high school district and the high school district continues to qualify for a project, other than a project pursuant to Section 17041, on the basis of the remaining 7th and 8th grade pupils. In no event shall a facility be constructed for the withdrawn 7th and 8th grade pupils at a distance less than one and one-half miles from the nearest proposed or existing junior high facility.

When these pupils are so considered in determining or estimating the average daily attendance of the elementary district, they shall not be considered in determining or estimating average daily attendance of the high school district for junior high school purposes.

17040.1. (a) The allowable building area of any project, as calculated under this article, may be increased by any applicant school district, where the increase is funded exclusively from sources other than any state programs administered by the State Allocation Board. Any increase in building area pursuant to this section in a project for which construction commenced on or after January 1, 1987, not to exceed 110 percent of the area that would be allowed under applicable state standards, shall be excluded from the calculation of the area of adequate school construction for the purposes of all subsequent project applications by the district under this chapter.

(b) The maximum building cost permitted for any project under this article may be increased, by not more than 10 percent, by any applicant school district, where the increase is funded by the district exclusively from the proceeds of a general obligation bond measure approved by the voters of the district or of a special tax pursuant to the formation of a community facilities district under

Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, or both. In order to qualify for this purpose, any tax or other charge authorized pursuant to that approval or formation, respectively, shall apply uniformly to all taxpayers or all real property within the school district, rather than to a particular class of property or taxpayers, and shall require that the amount of the school facilities fee or other requirement that may be levied by the school district pursuant to Section 17620, in addition to that tax or other charge, not exceed the amount deemed by the governing board to be necessary for the interim school facilities needs of the district.

17040.2. Where 75 percent or more of the total cost of a project approved under this chapter is to be funded by the applicant district from sources other than any state program administered by the board, the area of the allowable new building construction for that project, and the amount of the building cost allowed for that project under this chapter, shall each be increased by 5 percent, plus 1 percent for each 1 percent by which that local contribution exceeds 75 percent.

17040.3. (a) Notwithstanding any other provision of this part, the estimate of average daily attendance for an applicant school district shall be calculated for up to and including two years longer than the period of time permitted by Section 17040, as requested by the district, where 50 percent or more of the cost of the project is provided by the district from funding sources other than any state program administered by the board. For the purposes of any subsequent project application from that district based upon additional growth in pupil enrollment, the estimate of average daily attendance shall be based on enrollment projections for any period of time, as requested by the district, up to and including that permitted by Section 17040.

(b) The project shall be "fast tracked." For purposes of this section, "fast tracking" means that the total amount of project funding eligibility shall be established upon the board's approval of the project, which shall be subsequently disbursed as necessary for the development and construction of the project without the prerequisite of any additional state certification or other state-conducted review of project eligibility. Based upon the results of an audit to be conducted upon completion of the project, the board or the applicant district, as appropriate, shall pay to the other any amount that is necessary to conform to the allocation of project costs determined upon the board's approval of the project.

In the event that the applicant district has not executed all contractual agreements necessary for the complete construction of the project within a period of 18 months following the board's approval of the project, this subdivision shall cease to apply to the project with regard to any state funding of the project not yet disbursed. Upon request of the applicant district and approval by the board, this 18-month period may be extended for an additional period of up to six months to account for one or more delays resulting from circumstances beyond the district's control.

17040.4. Notwithstanding any other provision of this part, the board may use, for purposes of determining the estimate of average daily attendance for an applicant school district, a master plan that has been prepared by a district that includes the additional pupils due to increases in housing units within the boundaries of the district or attendance area. Before a master plan may be used, both of the following conditions shall be satisfied:

(a) The city, county, or city and county has obtained approval of a local general obligation bond or has obtained funds pursuant to the

Mello-Roos Community Facilities Act of 1982, as set forth by Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, to provide local matching funds for school facility projects for which approval is being sought pursuant to this section.

(b) At least 60 percent of the total cost of the project for which approval is being sought shall be provided by funding sources other than any state program administered by the board.

17040.5. Notwithstanding any other provision of this article, the board shall exclude the area of enclosed stairs and appropriate landings for each floor level served from the computation of the allowable building area of multistory buildings for any applicant school district.

17040.6. (a) For any school of two or more stories, the project funding provided under this chapter shall include, at the request of the applicant district, the costs of any or all of the following:

(1) Compliance with applicable requirements of law for fire safety, and for handicapped access, as a result of the multistory design.

(2) Playground apparatus.

(3) Duct shafts, utility tunnels, and pipe conduit chases.

(4) Security items required as a result of the multistory design.

(b) In calculating the maximum project funding that may be allocated for parking, landscaping, and other general schoolsite improvements, which calculation is determined in proportion to the total building cost or area approved for funding under the project, the total building cost or area approved for funding under the project shall be computed by the board to include any increase in project building area, as authorized under Section 17041.8. The applicant district shall provide the board information on how the supplemental project funding will be allocated to relieve the effects resulting from less than the specified land area for the schoolsite.

(c) This section shall apply to any application for project funding under this chapter for which the final apportionment for construction of the project had not been made on or prior to December 1, 1987.

(d) For any project approved under this chapter, the amount of project funding granted by the board shall include the actual and reasonable costs incurred by any applicant district for the revision of its project application for the purpose of qualifying for supplemental project funding as authorized by this section.

17040.7. Notwithstanding any other provision of this article, the board shall provide that building area for enclosed hallways in the second or higher story of any building shall be counted as two-thirds of the actual area. For purposes of this section "enclosed hallways" includes, but is not limited to, all of the following:

(a) Covered passages, arcades, shelters, porches, and planting areas.

(b) Enclosed covered areas that provide shelter between buildings that are 20 feet or more apart.

(c) Sun control devices designed and located to function in lieu of covered walks or other shelters.

(d) Mezzanines used for storage purposes.

17040.8. Where an applicant district that is eligible under this chapter for project funding of new construction of school facilities on an existing schoolsite, which site has less than 50 percent of the land recommended under State Department of Education guidelines, as published in the School Site Analysis and Development Handbook in

effect on January 1, 1987, the area of allowable new building construction for that project shall be increased by the square footage of any existing one-story school facility or facilities to be replaced under the project by one or more multistory school facilities.

17040.9. (a) (1) The board shall allocate the amount calculated under subdivision (b), in addition to any other project funding authorized under this chapter, to each project funded under this chapter for which the resulting pupil density will exceed the following:

(A) For a project for kindergarten or any of the grades 1 to 6, inclusive, 90 pupils per acre.

(B) For a project for a junior high school project, 80 pupils per acre.

(C) For a project for a senior high school project, 70 pupils per acre.

(2) For any new construction project, pupil density shall be computed, for purposes of paragraph (1), by dividing the number of units of estimated average daily attendance for the project, including those to be served by relocatable structures, by the acreage of the project site.

(3) For any project for the construction of additional facility space on an existing schoolsite or on land acquired that is adjacent to an existing schoolsite, pupil density shall be computed, for purposes of paragraph (1), by adding the number of units of estimated average daily attendance for the project to the number of units of average daily attendance for the existing school facilities, and dividing that sum by the total site acreage for the project and the existing school facilities.

(b) The supplemental project funding authorized under this section shall be calculated by dividing the actual pupil density for the project, as calculated under subdivision (a), by the threshold pupil density for the project as set forth in that subdivision, and multiplying the resulting fraction by an amount equal to the average cost per acre of the land approved for acquisition by the board under this chapter for the project, or that would have been approved for acquisition if the applicant school district had not had an existing schoolsite available for the project.

17041. Whenever the area of adequate school construction existing in any attendance area is such as to prevent another attendance area from receiving the maximum area of school construction for each unit of attendance as specified for the district as a whole, the allowable building area may be computed separately for each attendance area. For the purposes of this section and Section 17041.5, an "attendance area" is defined as the geographical area serving an existing or proposed high school and those junior high schools and elementary schools included therein.

17041.1. (a) Notwithstanding any other provision of this chapter, the following determinations shall be made by a self-certifying district, in the manner specified in this chapter and in accordance with the standards governing those determinations that are adopted by the board, for the purpose of calculating the district's eligibility for project funding under this chapter:

(1) The total allowable building area for which the district is eligible for project funding under this chapter.

(2) The district's area of existing adequate school construction, including, but not limited to, the conducting of field inspections for this purpose.

If requested by the applicant district, the board shall provide assistance to the district in preparing the necessary documents for

self-certification pursuant to this chapter.

(b) The area determinations made by a self-certifying district pursuant to subdivision (a) shall be certified by the district in its application for project funding and shall be used by the board as the basis for project funding eligibility, except to the extent of any information that the board finds is demonstrated, pursuant to the information certified and any other documentation available to the board from prior project funding applications for that district, to be materially inaccurate, regardless of whether the inaccuracy was intended. No later than 30 calendar days after receipt of the determinations certified pursuant to subdivision (a), the board shall notify the district of any inaccuracies identified under this subdivision.

(c) Each self-certifying district shall maintain documentation of the determinations described in subdivision (a) as required by the board. Those determinations shall be subject to subsequent audit as the board may direct.

(d) All estimates of average daily attendance for a self-certifying district for the purposes of this article shall be made by the district in accordance with the standards governing those estimates that are adopted by the board. Each determination made by a self-certifying district pursuant to this subdivision shall be reviewed for accuracy by the board or by the county office of education in the county in which the district is located. In the event that the review is performed by the board, that review shall be completed no later than 45 calendar days subsequent to the board's receipt from the district of all documentation necessary for that purpose.

17041.2. (a) The State Allocation Board shall conduct random audits of the information certified by self-certifying districts pursuant to this chapter, except as to any determinations that are made under subdivision (d) of Section 17041.1 or that are subject to audit by the State Department of Education pursuant to Section 17024, using generally accepted auditing principles, at any time to ensure compliance with the law.

(b) If any information submitted by a self-certifying district in its certification of funding eligibility for any project is found by the board to contain any material inaccuracy, any building area constructed as a result, in excess of the building area to which the district was entitled for purposes of that project, shall be included in the calculation of the area of adequate school construction for the purposes of all subsequent project applications by the district under this chapter. In addition, the board shall impose both of the following penalties:

(1) Pursuant to a repayment schedule approved by the board, the district shall repay to the board of no more than five years, for deposit in the State School Building Lease-Purchase Fund, an amount equal to the amount of project funding allocated under this chapter to construct that excess building area, together with interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. The amount of any repayment owing under this paragraph for any fiscal year, which is not repaid otherwise by the district, shall be withheld by the board from any project funding that otherwise would be allocated to that district under this chapter in that fiscal year. As to any repayment obligation remaining for that fiscal year, the board shall notify the Superintendent of Public Instruction, who shall withhold the amount

of that remaining obligation from the apportionments to be made to the district from the State School Fund in that fiscal year.

(2) The information that otherwise may be certified under this chapter by a self-certifying district shall be made by the board under any subsequent applications for project funding, rather than by the applicant district, for a period of up to five years following the date of the finding of a material inaccuracy, or until the district's repayment of the entire amount owing under paragraph (1), whichever occurs later.

(c) Any school district against which the board imposes the penalties under paragraphs (1) and (2) of subdivision (b) may submit for binding determination by an arbitrator the issue of whether the penalties imposed are disproportionate to the inaccuracy certified by the district. Except as otherwise provided by this chapter, the procedure governing the arbitration shall be as set forth in Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(d) It is the intent of the Legislature that audits as described in this section not interfere with the application and construction process under this chapter unless one or more violations are discovered.

17041.3. For the purposes of Sections 17041 and 17041.5, allowable building area may be computed, in the alternative to the methods prescribed by Section 17041, for any combination of two or more adjacent high school attendance areas pursuant to the following conditions:

(a) The project to be funded is for the construction of a high school, junior high school, or elementary school located or to be located in any of those high school attendance areas.

(b) The high school, junior high school, or elementary school to be constructed is to serve pupils residing in each of those high school attendance areas.

(c) The combined computation of allowable building area reflects the allowable building area to which each of the high school attendance areas would otherwise be entitled, reflecting the proportion of projected pupil enrollment in the school to be constructed, as calculated under this chapter, from each of those attendance areas.

17041.5. (a) Whenever the area of adequate school construction existing in an attendance area is less than the maximum area computed for that attendance area, any portion of the remaining computed allowable building area may be used for the construction of district administration and maintenance facilities.

(b) If the allowable building area is computed separately by attendance area, the board shall include within the computation of the maximum area for that attendance area the proposed building area of a project for the construction of district administration and maintenance facilities.

17041.6. The board shall, in allocating funds for school facilities construction pursuant to this chapter, give first priority to applicant districts proposing additional classrooms within their maximum allowable building area before allocating funds to applicant districts proposing administration and maintenance facilities.

17041.8. (a) Notwithstanding any other provision of law, any applicant school district that receives supplemental project funding under Sections 17040.6, 17040.7, 17040.8, and 17041.8 shall apply that funding to the purposes of the project funded, in compliance with any requirements set forth in those sections, but need not comply in that regard with the allowable building area of that project as otherwise calculated under this chapter. The expenditure

of the supplemental project funds authorized under those sections is exempt from the total building cost standards applicable to the project. In addition, the increase in building area authorized under this subdivision is exempt, for purposes of any subsequent application for project funding under this chapter, from the calculation of existing adequate school construction of the district.

(b) Notwithstanding any other provision of law, the total amount of supplemental project funding that an applicant district is entitled to receive under Sections 17040.6, 17040.7, 17040.8, and 17040.9 may not exceed the lesser of the following:

(1) An amount equal to that calculated under subdivision (b) of Section 17040.9.

(2) An amount equal to the sum of four thousand dollars (\$4,000) for each of the first 500 units of estimated average daily attendance for the project, and two thousand dollars (\$2,000) for each additional unit of estimated average daily attendance. The monetary rates set forth in this paragraph shall be increased annually for inflation for the prior calendar year on the basis of the cost index for class B construction as determined in the January meeting of the board.

17042. (a) The board, by the adoption of rules, shall provide for the manner of determining the area of adequate school construction existing in an applicant school district at the time of application. Those rules shall define and provide for the method of determining building areas that are to be included in, in whole or in part, or to be excluded from, the area of existing adequate school construction.

Any building to which Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5 does not apply shall not be considered adequate school construction for the purpose of determining the maximum total building area per attendance unit.

The board may make exceptions to the provisions of this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

(b) For the purposes of this chapter, the area of adequate school construction existing in an applicant school district does not include any of the following:

(1) Any portable classroom made available to the district under Chapter 14 (commencing with Section 17085).

(2) In any school operated on a year-round schedule, any building area that has been in continuous use during the preceding five-year period primarily for the operation of any preschool program or programs.

(3) Any building area, not to exceed the area that is equivalent to one classroom per schoolsite, used to provide support services pursuant to Chapter 5 (commencing with Section 8800) of Part 6 or to provide integrated children's services pursuant to Section 18986.40 of the Welfare and Institutions Code. A school shall meet the definition of a "qualifying school" under paragraph (1) of subdivision (h) of Section 8802 to qualify for this exemption from the area of adequate school construction.

(c) The board may make exceptions to this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

17042.5. (a) For purposes of determining the area of adequate school construction existing in an applicant school district pursuant to Section 17042.7, all portable classrooms, whether owned or leased, shall be included, except as otherwise provided in paragraphs (1) to (3), inclusive.

(1) Leased portable classrooms acquired by a school district shall

not be included in the area of existing adequate school construction until January 1, 1991.

(2) Portable classrooms leased pursuant to Chapter 14 (commencing with Section 17085) shall be excluded from the area of adequate school construction. Portable classrooms obtained by an applicant district pursuant to subdivision (b) of Section 17088.5 also shall be excluded from the area of adequate school construction, except as to any portable classroom or classrooms for which the district rejected the board's offer to purchase pursuant to that subdivision.

(3) Portable classrooms that have been leased or owned by the district for 20 years or more shall be excluded from the area of adequate school construction.

(4) Leased portable classrooms shall not be included in the area of adequate school construction for a period of five years from the date first leased by the district. That exclusion shall be extended by the board for one additional five-year period where the board finds that the continued use of the leased portable classrooms for classroom purposes is justified by additional growth in average daily attendance pursuant to the standards established by this part. If the board finds continued use to be no longer justified, it may extend the exclusion for a period of up to two years as necessary to maintain the eligibility of the applicant district for project funding pursuant to this chapter if the board finds that the district has made a good faith effort to obtain that funding in a timely manner. The additional five-year exclusion shall not apply to any portable classroom for which, under the lease agreement, the district is to take title, or the total consideration paid by the district for the lease and an option to purchase is determined by the board to be substantially equivalent to the cost of acquiring title.

(b) For purposes of this section, "portable classroom" means a classroom building of modular design and construction that meets all of the following criteria:

(1) Is designed and constructed to be relocatable and transportable over public streets.

(2) Is designed and constructed for relocation without the separation of the roof or floor from the building.

(3) When measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

17042.7. (a) For any project application filed or amended on or after January 1, 1993, the area of adequate school construction existing in the applicant school district or, where appropriate, in the attendance area, at the time of application shall be calculated pursuant to the following formula:

(1) Identify by grade level all teaching stations existing in the school district or, where appropriate, the attendance area, as of January 1, 1993. For the purposes of this section, "teaching station" means any space that was constructed or reconstructed to serve as an area in which to provide pupil instruction.

(2) Determine the maximum pupil loading figure for each grade level pursuant to the district pupil loading standards in effect on January 1, 1993. For the purposes of this section, the "district pupil loading standards" are those pupil loading standards in effect in a school district on July 1, 1992, as a result of actions including, but not necessarily limited to, the execution of a collective bargaining agreement or the adoption of a district policy by the governing board of the school district. In no event may this figure be more than the maximum pupil loading standards established by the board, or less than three pupil units lower than those maximum pupil loading standards.

(3) Multiply the figure determined under paragraph (2) for each grade level by the number of teaching stations for the particular grade level, as determined under paragraph (1).

(4) Multiply the product determined under paragraph (3) by the maximum area allowance established for that grade level under this article.

(5) The sum of these computations for each grade level, as determined under paragraphs (1) to (4), inclusive, shall be the total area of adequate school construction existing in the district or attendance area pursuant to this formula.

(b) For purposes of this section, a school district that is participating in a class size reduction program set forth in this code shall use the pupil loading standard established pursuant to that program.

Any separate school construction calculated under this section shall not include, in any school operated on a year-round schedule, any teaching station that has been in continuous use during the preceding five-year period primarily for the operation of a preschool program or programs.

17043. (a) There shall be allowed to each district with attendance units of 300 or more in kindergarten and grades 1 to 6, inclusive, a maximum area of 55 square feet for each attendance unit of the district in kindergarten and grades 1 to 6, inclusive.

(b) The maximum total building area per attendance unit allowed to applicant districts with attendance units of less than 300 in kindergarten and grades 1 to 6, inclusive, for such attendance units shall be determined by the board, and shall be building area to provide comparable facilities to those provided by subdivision (a) of this section, and shall be the least building area required to house adequately the estimated average daily attendance and the normal instructional and other services.

17044. There shall be allowed to each district a maximum area of 75 square feet for each attendance unit of the district in grades 7 and 8.

17045. The maximum area allowed to a district for attendance units in junior high schools composed of grades 7 to 9, inclusive, or 7 to 10, inclusive, as the case may be, shall be determined pursuant to this section, rather than Sections 17044 and 17046. This section shall not apply to junior high schools composed of grades 7 and 8 only.

The maximum area allowed for attendance units in junior high schools shall be determined by computing, in accordance with this section, the number of square feet for the attendance units at each junior high school attendance center of the district, and totaling the number of square feet so determined for all attendance units in all such junior high school attendance centers of the district. There shall be allowed a maximum area of 75 square feet for each attendance unit of the junior high school attendance center in grades 7 and 8. For each attendance unit in grade 9, or grades 9 and 10, as the case may be, at each junior high school attendance center, there shall be allowed a maximum area equal to the number of square feet which would be allowed under Section 17046 for each attendance unit of an attendance center having a total number of attendance units equal to the total number of attendance units in grades 7 to 9, inclusive, or 7 to 10, inclusive, as the case may be, at such junior high school attendance center. The number of square feet which would be allowed under Section 17046 for each attendance unit of an attendance center shall be computed by determining in accordance with that section the total number of square feet which would be allowed at an attendance center and dividing such total number of square feet

by the total number of attendance units at such attendance center.

17046. There shall be allowed to each district a maximum area for the attendance units of the district in grades 9 to 12, inclusive, determined by computing, for the attendance units in grades 9 to 12, inclusive, at each attendance center of the district, a number of square feet for the number of attendance units in such grades at each attendance center, in accordance with the following table, and totaling the number of square feet so determined for all attendance units in such grades of all attendance centers of the district:

Attendance units of attendance center	Maximum number of square feet of building area
1- 50	18,000
51-100	18,000 plus 162 for each attendance unit over 50
101-200	26,100 plus 99 for each attendance unit over 100
201-300	36,000 plus 60 for each attendance unit over 200
301-600	42,000 plus 54 for each attendance unit over 300
601-1,800	58,200 plus 80 for each attendance unit over 600
Over 1,800	154,200 plus 85 for each attendance unit over 1,800

17046.7. Notwithstanding any other provision of law, the determination of the area of allowable new building construction for any project for an applicant school district for which original construction commenced on or after January 1, 1987, shall be made on the basis of 107 percent of the area that would otherwise be determined for that purpose under this chapter, calculated to the nearest whole number.

17046.8. Notwithstanding any other provisions of law, the maximum allowable building area for each applicant district shall be reduced by the product of the maximum area per attendance unit calculated for each appropriate grade level and the number of pupils reported by the Superintendent of Public Instruction for that grade level pursuant to Section 42268. This reduction shall be calculated on the basis, at the district's option, of either the district as a whole or the appropriate attendance area, as defined in Section 17041.

17047. (a) The allowable new building area for the purpose of providing special day class and Resource Specialist Program facilities for special education pupils shall be negotiated and approved by the State Allocation Board, with any necessary assistance to be provided by the Special Education Division of the State Department of Education. The square footage allowances shall be computed within the maximum square footage set forth in the following schedule:

Special Day Class Basic Need	Grade Levels	Load- ing*	Square Footage
Nonsevere Disability			
--Specific Learning Disability	All	12	1080

--Mildly Mentally Retarded	All	12	1080
--Severe Disorder of Language	All	10	1080
Severe Disability			
--Deaf and Hard of Hearing	All	10	1080
--Visually Impaired	All	10	1330
			(1080 + 250
storage)			
--Orthopedically and Other Health Impaired	All	12	2000
			(1080 + 400
toilets			+ 250 storage +
270			daily living
skills			+ 3000 therapy +
75			therapy per
additional			classroom)
--Autistic	All	6	1160
			(1080 + 80
toilets)			
--Severely Emotionally Disturbed	All	6	1160
			(1080 + 80
toilets)			
--Severely Mentally Retarded	Elem.	12	1750
			(1080 + 400
toilets +			270 daily living
skills)			
	Secun.		2150
			(1080 + 400
toilets +			270 daily living
skills			+ 400
vocational)			
--Developmentally Disabled	All	10	2000
			(1080 + 400
toilets +			250 storage +
270 daily			living skills +
3000			therapy** + 750
therapy			per additional
CR)			
--Deaf-Blind/Multi	All	5	1400
			(1080 + 200
storage +			150 toilets)

Square

Feet			Pupils
Resource Specialist Program	All	Maximum case-	1-8
240			
for those pupils with		load for RS	9-28
480			
disabling conditions whose		is 28, not	29-37
720			
needs have been identified by		all served	38-56
960			
the Individualized Education		at same	57-65
1200			
Program (IEP) Team, who re-		time.	66-85
1440			
quire special education for			86-94
1680			
a portion of the day, and who			95-112
1920			
are assigned to a regular			
classroom for a majority of			
the schoolday.***			

* Special pupils may usually be grouped without accordance to type, especially in smaller districts or where attendance zones may indicate, to maximize loadings per classroom where there are children with similar educational need (Sec. 56364).

** Therapy add-ons not to be provided if on same site as orthopedically impaired.

*** To a maximum of 4 percent of the unhoused average daily attendance of the district, per new school or addition, to a maximum of 1920 square feet.

(b) The allowable new building area shall be computed by dividing the number of eligible pupils by the minimum required loading per classroom for special day classes for the type of pupils to be enrolled. No new or additional facility shall be provided for special day classes unless the number of additional eligible pupils equals one-third or more of the minimum required loading.

17047.5. (a) All school facilities purchased or newly constructed pursuant to this chapter for use, in whole or in part, by pupils who are individuals with exceptional needs, as defined in Section 56026, shall be designed and located on the schoolsite so as to maximize interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both.

(b) School district governing boards and county offices of education shall ensure that school facilities for pupils who are individuals with exceptional needs are integrated with other school facilities in applying for the purchase or new construction of school facilities pursuant to this chapter.

(c) The State Allocation Board, after consultation with the State Department of Education and representatives from county offices of education, special education services regions, and school districts,

shall develop and adopt any regulations necessary to implement this section.

(d) Notwithstanding any other law, the requirement set forth in subdivision (a) may be waived, by the Superintendent of Public Instruction, only upon compliance with the following procedure:

(1) The applicant school district or county superintendent of schools shall file a written request for waiver that documents the reasons for its inability to comply with the requirement.

(2) The State Department of Education shall verify the reasons set forth pursuant to paragraph (1), including the documentation submitted, which verification shall be completed no later than 30 days after the filing of the request for waiver with the Superintendent of Public Instruction.

(3) The Advisory Commission on Special Education, as established under Section 33590, at its first scheduled meeting following the verification conducted pursuant to paragraph (2), shall review the request for waiver, accompanying documentation, and the verification findings of the State Department of Education. No later than 15 days following the date of that meeting, the commission shall submit its written comments and recommendations regarding the request for waiver to the Superintendent of Public Instruction.

(4) The Superintendent of Public Instruction shall review the comments and recommendations submitted by the Advisory Commission on Special Education prior to approving or rejecting the request for waiver.

(5) Any request for waiver, submitted in accordance with this section, that is not rejected within 60 days of its receipt by the State Department of Education, shall be deemed approved.

(e) This section does not apply to any application for project funding under this chapter that meets one of the following conditions:

(1) The application was submitted to the board prior to January 1, 1987, and all of the facilities under the project for use, in whole or in part, by pupils who are individuals with exceptional needs are located on a schoolsite on which facilities for use by other pupils are also located.

(2) The application is for any other project, for which, prior to January 1, 1987, the board approved the drawing of final plans and the preparation of final specifications.

17048. Whenever an existing building is to be reconstructed, rather than replaced, under an application pursuant to this chapter, there shall be allowed, for those attendance units to be housed in such reconstructed building, an additional five square feet of building area beyond the amounts set forth in Section 17043, 17044, 17045, or 17046.

17049. (a) The board shall require, as a condition of providing funding for any project under this chapter, that, for any facilities for kindergarten or any of grades 1 to 12, inclusive, or for any facilities for special education or continuation high school purposes, at least 30 percent of allowable new building construction for classrooms under the project be utilized for relocatable structures.

(b) The board may reduce the percentage requirement set forth in subdivision (a), as to any applicant, in the event that the quantity of relocatable structures necessary to comply with those requirements is unavailable from the manufacturers of those structures.

(c) The board may reduce or eliminate the percentage requirements set forth in subdivision (a), as to any applicant, under either of the following circumstances:

(1) Where the board finds that special conditions of terrain,

climate, or unavailability of space within the attendance area make the use of relocatable structures impractical or inappropriate.

(2) Under the condition that, as the result of a future project for which the district receives funding under this chapter, located on the same schoolsite on which the current project is located, at least 30 percent of total building construction for classrooms on that schoolsite will be utilized for relocatable structures.

(d) Relocatable structures acquired by an applicant school district up to two years preceding the final approval by the board of the project application submitted by the district shall apply to the percentage requirements set forth in subdivision (a).

(e) Notwithstanding subdivision (d), relocatable structures acquired by an applicant school district up to 10 years preceding the final approval by the board of the project application submitted by the district shall apply to the percentage requirements set forth in subdivision (a) if the relocatable structures are to be situated on the site of a new school to be constructed under the project and all of the following conditions are met:

(1) The relocatable structures were not previously used to satisfy the 30 percent requirement set forth in subdivision (a) under any other project constructed pursuant to this chapter.

(2) The board determines that the relocatable structures are in satisfactory condition upon being moved to the new schoolsite, and are usable for classroom purposes without requiring major repair or renovation for a period of not less than 20 years subsequent to that relocation.

(3) Subsequent to moving the relocatable structures to the new schoolsite, at least 30 percent of the classroom space at the schoolsite where the structures were previously located consists of relocatable structures.

The cost of moving the relocatable structures to the new schoolsite shall be at the school district's sole expense.

(f) Whenever at least 10 percent of the allowable new building construction contained in an application is to be utilized for relocatable structures, an additional three square feet of building area for each pupil to be housed under the approved project shall be allowed.

17050. (a) A district may enter into a contract with the county, or other appropriate entity having responsibility for the provision of public library services, in which the district is located for the purpose of operating a joint-use library facility at a schoolsite owned by the district.

(b) The district may apply for the lease-purchase of a project which includes a library facility, pursuant to Section 17017, which facility, if constructed, would be of sufficient size to accommodate the requirements of a joint-use library for which the district has entered into a contract, pursuant to subdivision (a).

(c) Should the board receive an application for a project which includes space for a joint-use library, the board shall evaluate the application disregarding any space in the proposed library facility which is beyond the needs of the district, provided the application contains a copy of the contract specified in subdivision (a), and provided that the contract contains at least the following:

(1) Agreement that the county or other appropriate entity shall deposit in the county school lease-purchase fund, created pursuant to Section 17034, an amount equal to the total cost of any space in the proposed library facility which is beyond the needs of the district, prior to the signing of the construction contract for the project. The deposit shall not be refundable, except to the extent that it may prove subsequently to be in excess of the actual total cost of the

space which is beyond the needs of the district.

(2) Agreement between the district and the county or other appropriate entity regarding staffing, maintenance, materials acquisition, and other matters related to the administration and operating costs of the joint-use facility.

(3) Agreement between the district and the county or other appropriate entity regarding the procedure for amendment or termination of the contract, including the disposition of materials housed in the joint-use facility should termination of the contract occur.

(d) Any space in a joint-use library which is beyond the needs of the district shall not be included by the board in any calculations made for any other purposes provided for in this article for the period of time that the contract for that joint-use facility remains in effect. Should the contract be terminated, the board shall include the additional space in any calculations made after the termination for any other purposes provided for in this article.

17051. (a) A district may enter into an agreement with another governmental entity that includes some or all of the territory of the district for the purpose of the joint use of park and recreation facilities, including an auditorium, or commercial or industrial facilities.

(b) If the board receives an application for a project that includes some or all of the territory of the district for the purpose of the joint use of park and recreation facilities or commercial or industrial facilities, the board shall evaluate the application disregarding any space in the proposed joint-use facility that is beyond the needs of the district if the application contains a copy of the agreement specified in subdivision (a) and if the contract contains at least the following:

(1) An agreement that the county or other appropriate entity shall deposit in the county school lease-purchase fund, created pursuant to Section 17034, an amount equal to the total cost of any space in the proposed joint-use facility that is beyond the needs of the district, prior to the signing of the construction contract for the project. The deposit shall not be refundable, except to the extent that it may prove subsequently to be in excess of the actual total cost of the space that is beyond the needs of the district.

(2) An agreement between the district and the county or other appropriate entity regarding staffing, maintenance, materials acquisition, and other matters related to the administration and operating costs of the joint-use facility.

(3) An agreement between the district and the county or other appropriate entity regarding the procedure for amendment or termination of the contract, including the disposition of materials housed in the joint-use facility should termination of the contract occur.

(c) Any space in a joint-use facility that is beyond the needs of the district shall not be included by the board in any calculations made for any other purposes provided for in this article for the period of time that the contract for that joint-use facility remains in effect. If the contract is terminated, the board shall include the additional space in any calculations made after the termination for any other purposes provided for in this article.

Article 4. Space-Saver Schools

17055. (a) The board shall authorize project funding under this chapter for the construction, in urban areas in which the construction of schools would ordinarily require the removal of

residential, commercial, or industrial structures, of four elementary or junior high schools, or any combination thereof, none of which serve any of the grades 10 to 12, inclusive.

(b) The construction funded pursuant to subdivision (a) shall be designed to minimize the need for the relocation of inhabitants of residential, commercial, or industrial structures. The design features of the schools may include, but should not be limited to, the use of below-ground facility construction, multistory construction, multiuse construction where single-use construction currently exists, the joint use of facilities that otherwise involve such uses as a shopping center, office complex, or apartment building, the joint or dual use of land that otherwise involves park or other uses, overhead or underground parking, or the use of areas above or below streets or freeways.

17056. Any school district that is a project applicant under this chapter may apply for the funding of a school specifically under this article, pursuant to which it may be approved by the board for funding only to the extent of its project eligibility under this chapter. The governing board of each district for which that funding is approved by the board shall do all of the following, in the order specified:

(a) Identify an area within the district that it determines to be appropriate for the construction of a school that meets the purposes of this article.

(b) Establish criteria for the purpose of identifying the school design that will most effectively accomplish the purposes of this article and the needs of the district. The district shall thereupon issue, in a manner approved by the board, a request for architectural design proposals incorporating those criteria.

17058. The cost of any project funded under this article shall not exceed the maximum cost that would otherwise be allowable for a project funded under this chapter.

Article 4.1. Alternative Use of Apportionments

17059. The Legislature finds and declares as follows:

(a) In many areas of the state, overcrowding in the schools has created a need for new school facilities in neighborhoods where little or no vacant land exists. School districts are compelled, therefore, to acquire property that already has been developed with structures, then demolish these structures and construct classroom space.

(b) With an estimated statewide need for school facilities within the next five years that exceeds fourteen billion dollars (\$14,000,000,000), neither state nor local funds reasonably can be anticipated to meet this need.

(c) In many of the areas having overcrowded schools, a significant supply exists of vacant space in structures meeting current building codes.

(d) Use of this vacant space by schools can be a cost-effective means of providing classroom space for the students of California.

(e) This chapter and Section 4-306 of Part 1 of Title 24 of the California Code of Regulations authorize the reconstruction of existing commercial buildings for school facility purposes.

(f) No existing commercial building shall be considered for reconstruction for school facility classroom purposes unless it was designed and constructed according to the standards established in the 1976 Uniform Building Code or subsequent editions of that code.

17059.1. In a manner that is consistent with this chapter and the

California Code of Regulations, a school district that is eligible for an apportionment for project funding for new construction under this chapter may use that apportionment for the acquisition and conversion of an existing commercial building to school facility purposes.

17059.2. The State Allocation Board in conjunction with the office of the State Architect shall advise all school districts in the state of the existence of the procedure for reconstructing existing commercial buildings for school facility purposes and shall upon request assist in the interpretation and successful implementation of the pertinent regulations in the California Code of Regulations.

Article 5. Joint Venture School Facilities Construction Projects

17060. (a) A school district may enter into a joint venture relationship for the purposes of school facilities construction. Notwithstanding any other provision of this chapter, a school district entering into a joint venture relationship does so as an independent entity and not as an agent of the State Allocation Board.

(b) For the purposes of this article, "joint venture" means a collaborative undertaking by two or more persons or organizations for a specific project or projects, having the legal characteristics of a partnership.

(c) The joint venture relationship may, but is not required to, include any of the following:

(1) Joint use of the property of, or facilities on, the project site.

(2) Ground leases, alternative financing arrangements, or similar financing arrangements.

(3) A construction arrangement in which a school district enters into an agreement with a developer pursuant to which the school district initially stipulates the basic performance and programmatic criteria for the facility and the developer provides input into the design work and building construction services by entering into a contract with a single source team to administer the project in a manner consistent with state law, and construct the project to, under most circumstances, a maximum price.

(d) The price for the portion of the project that is funded by the state shall be established through a bidding process as approved by the State Allocation Board. All subcontract trade groups that are included within the project, shall be determined based upon competitive bidding for each contract group. All subcontracts shall be awarded to the lowest responsible bidder.

(e) The proposed uses of any facilities constructed under the joint venture project shall not be inconsistent with educational purposes and activities.

(f) The cost of any project funded under this article shall not exceed the maximum cost that would otherwise be allowable for a project funded under this chapter.

17061. (a) A school district may apply to the State Allocation Board for funding for the costs of property acquisition and the cost of construction, as specified in this chapter, of the school facilities portion of a joint venture project. The school district shall publicly solicit proposals for the joint venture project pursuant to the procedures set forth in this section and Sections 17062, 17521, 17522, and 17523.

(b) Upon review of the application for funding, the State

Allocation Board shall establish the maximum allowances for construction of the school facilities portion of the joint venture project. For the purpose of calculating allowances pursuant to Article 3 (commencing with Section 17040), the State Allocation Board shall use the information used to determine the allowances for the school district at the time the district received approval of funds under this chapter to acquire property on which the school facilities will be constructed, or at the time an application is made pursuant to subdivision (a), whichever is earlier.

(c) The State Allocation Board may approve, in whole or in part, an application submitted by a school district pursuant to this section in an amount the State Allocation Board may deem appropriate, not to exceed the amount applied for, subject to final approval of the joint venture agreement pursuant to Section 17063.

(d) For purposes of this section, and the process referred to in subdivision (a), a school district joint venture request for proposals shall include, but not necessarily be limited to, all of the following:

(1) A specific description of the school buildings or land, or both, to be constructed or utilized under the joint venture and a description of how the costs of the project have been determined.

(2) The identification of the current educational uses of the school buildings or land, or both, and of the educational uses proposed under the joint venture.

(3) The identification of the current noneducational uses of the proposed school buildings or land, or both, and of the noneducational uses proposed under the joint venture, and a specific assessment of the compatibility of those uses with any applicable general or specific governmental land use plan and with applicable zoning restrictions.

(4) A description of the prospective economic benefits to be derived by the school district from the joint venture.

(5) A description of the prospective educational benefits to be derived by the school district from the joint venture.

(6) A request that each request for proposal response include a comprehensive description of the joint venture, including, but not limited to, a description of the intended means of financing the joint venture.

17062. (a) Notwithstanding Sections 20111 and 20118.4 of the Public Contract Code, or any other law, upon approval of funding pursuant to Section 17061, a school district may utilize a request for qualifications and proposal process described in subdivision (a) of Section 17061 to select and enter into a joint venture agreement with a developer to construct school facilities. The agreement may utilize Section 17406.

(b) The joint venture agreement shall include, but not be limited to, all of the following terms:

(1) The cost of the project approved by the State Allocation Board pursuant to Section 17061 as the amount that the district will pay to the developer pursuant to the joint venture agreement upon completion of the project, if applicable.

(2) A detailed description of the project, including, but not limited to, the school facilities and any other facilities that may be included in the project and any other information necessary to meet the requirements of this chapter.

(3) The timeframe for completion of the project.

(4) A requirement that there shall be no state liability if funds are not made available within the four-year period specified in subdivision (a) of Section 17063.

(c) The joint venture agreement may also include a requirement

that if the actual cost of constructing the school facility project designated in the agreement exceeds the amount set forth in that agreement, the developer shall be responsible for the additional expense.

(d) The lien placed on a schoolsite pursuant to this chapter shall only attach to that portion of the project for which state funds are actually expended. In addition, the lien shall expressly recognize any subordinate property interest created by the joint venture, and the state lien shall not be foreclosed or otherwise used to terminate the property interest, or any subordinate financing liens incidental thereto, created by the joint venture. The document creating that lien on a schoolsite shall be written in a manner to clearly prohibit assumption of any state liability resulting from the lien.

(e) Notwithstanding subdivision (d), the nondisturbance of subordinate property interests permitted in subdivision (d) shall not permit the foreclosure or other private taking of actual school facilities or property paid for with state funds in a manner that would restrict, terminate, or impair the school facilities portion of the joint venture or the school district's use thereof.

17063. Upon completion of the joint venture agreement pursuant to Section 17062, the school district shall transmit the agreement to the State Allocation Board for final review to determine whether the agreement is consistent with the project approval pursuant to Section 17061. The State Allocation Board shall act to approve or disapprove the complete agreement within 60 days following submission of the complete proposal to the State Allocation Board. The approval or disapproval relates to only the decision by the State Allocation Board to fund the school portion of the joint venture project and is not to be construed as an approval or disapproval of the terms and conditions of the joint venture agreement nor as authority for the school district to act as the agent of the State Allocation Board. The State Allocation Board is not made a party to the joint venture agreement and shall not incur liability under the joint venture agreement through its approval or disapproval of the agreement. The joint venture shall indemnify and hold harmless the State Allocation Board and its officers, agents, and employees from any loss or liability, including reasonable attorneys fees and costs, caused by the joint venture arising out of, or in relation to, any contract entered into by the joint venture in furtherance of the joint venture project. The date of approval by the State Allocation Board of the project shall be the date of funding eligibility for the project. The apportionment of funds for the eligible project shall be made at any point up to four years following the date of funding eligibility subject to the availability of funds for this purpose. If the state funds are not available within that four-year period, the school district may at its option remain in the funding cycle, subject to other provisions of this chapter, until the school district receives all of the funds it is eligible to receive pursuant to this article as of the date of funding eligibility. The district's eligibility for reimbursement of authorized costs and the district's position in the processing schedule for the reimbursement shall be established as the date of project approval by the State Allocation Board. The exact amount of the reimbursement shall be determined at the conclusion of the project and shall be based upon the actual subcontract trade bids and other costs allowable pursuant to Section 17019.3.

17064. The selection of any design professional pursuant to this article shall be made in accordance with Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

17065. The design and construction of school facilities pursuant

to this article shall comply with Article 3 (commencing with Section 17280) of Chapter 2 of Part 10.5.

17066. This article does not affect any requirement of a school district to comply with the prevailing wage requirements of Article 2 (commencing with Section 1770) of Chapter 2 of Part 7 of Division 2 of the Labor Code with respect to the school facilities portion of a joint venture project under this article.

CHAPTER 13. TRANSFER OF EXCESS FUNDS

17080. (a) Notwithstanding any other provision of law, whenever moneys transferred to the General Fund each year from (1) moneys deposited in the Public School Building Loan Fund pursuant to Section 15735, and (2) moneys deposited in the State School Building Aid Fund pursuant to Section 16080, are in excess of the amounts required to reimburse the General Fund on account of principal and interest due and payable for that fiscal year on all school building aid bonds outstanding against the state, an amount equal to such excess is appropriated from the General Fund for purposes of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000)) and Section 17584. The Controller shall transfer, as directed by the State Allocation Board, such appropriated amount to the State School Building Lease-Purchase Fund and to the State School Deferred Maintenance Fund, which is hereby established.

(b) In addition to the amount transferred pursuant to subdivision (a), the Controller shall transfer annually from the General Fund to the State School Deferred Maintenance Fund an amount equal to any amount transferred to or deposited in the General Fund as a result of repayment of any loan made by the board pursuant to Section 17005.15.

(c) Notwithstanding Section 13340 of the Government Code, the State School Deferred Maintenance Fund is continuously appropriated for the purposes for which it is established.

CHAPTER 14. EMERGENCY SCHOOL CLASSROOM LAW OF 1979 Article 1. General Provisions

17085. This chapter may be cited as the State Relocatable Classroom Law of 1979.

17086. In adopting this chapter, the Legislature recognizes that the ad valorem tax is no longer available as a source of revenue for the construction of necessary school facilities. The Legislature considers that the greatest need in school construction is for classrooms for the education of public school pupils. It is the intent of the Legislature to satisfy this primary need to the greatest extent possible before providing any additional educational facilities, regardless of how desirable such additional facilities may be.

17087. As used in this chapter:

(a) "Board" means the State Allocation Board.

(b) "State School Building Aid Fund" means that fund established pursuant to Section 16096.

(c) "Lessee" means a school district or county superintendent of schools to whom the board has leased a portable classroom pursuant to this chapter.

17088. In addition to any other powers and duties as are granted the board by this chapter, other statutes, or the State Constitution, the board has the power to do each of the following:

(a) Establish any qualifications not in conflict with other

provisions of this chapter, as it deems will best serve the purposes of this chapter, for determining the eligibility of school districts and county superintendents of schools to lease portable classrooms under this chapter.

(b) Establish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(c) Adopt any rules and regulations for the administration of this chapter requiring such procedure, forms, and information, as it may deem necessary.

(d) Have constructed, furnished, equipped, or otherwise require whatever work is necessary to place, portable classrooms on schoolsites where needed.

(e) Own, have maintained, and lease portable classrooms to qualifying school districts and county superintendents of schools.

(f) From any moneys in the State School Building Aid Fund available for purposes of this chapter, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance, pursuant to this chapter, required by Section 15504 of the Government Code.

(g) Notwithstanding any other provision of law, from any funds available to the board, the board may, no later than January 15 of any year, make available to the Director of General Services up to thirty-five million dollars (\$35,000,000) for expenditure in the subsequent school year. It is the intent of the Legislature that this allocation be annually funded from an appropriation made for this purpose by the Legislature in the Budget Act for the fiscal year in which the board is to act to make that funding available. These funds shall be utilized to purchase portable classrooms for the purposes of this section.

17088.3. (a) No school district shall qualify for the lease under this chapter, after January 1, 1990, of one or more portable classrooms except upon submitting a study examining the feasibility of implementing in the district a year-round multitrack educational program that is designed to increase pupil capacity in the district by at least 20 percent.

(b) Emergency or urgency conditions within a school district shall constitute grounds for approval by the board, pending submission of the report.

(c) Subdivision (a) does not apply to facilities that are designated as uninhabitable after July 1, 1989, due to fire or other health or safety conditions.

(d) Subdivision (a) does not apply to a school district for leases or subleases under this chapter for the purpose of providing facilities, pursuant to subdivision (c) of Section 17091, for licensed child day care programs or recreation or enrichment activities or programs for schoolage children.

17088.5. (a) The board may empower any lessee to act as its agent in the performance of acts authorized under this chapter with regard to portable classrooms to be made available to that lessee, including, but not necessarily limited to, contracting for architectural and construction services and purchasing furniture and equipment.

(b) In addition, where any qualifying school district or county superintendent of schools is deemed by the board to be eligible under this chapter for the lease of portable classrooms, but adequate funds are not at that time available to the board for the purchase of those classrooms, the board may authorize the school district or county superintendent of schools to purchase portable classrooms, to the extent of that eligibility, pursuant to the following conditions:

(1) The portable classrooms are purchased under a procedure determined by the board, pursuant to either a bidding process implemented by the school district or county superintendent of schools or by the State Office of Procurement.

(2) To the extent that funding for purposes of this chapter is subsequently made available to the board, the board shall purchase the portable classroom or classrooms from the school district or county superintendent of schools, for lease to that entity under this chapter, for an amount, not to exceed the purchase price the board determines it would have paid for the classroom or classrooms at the time they were acquired pursuant to paragraph (1), as necessary to reimburse the school district or county superintendent of schools for the purchase price, less the amount that would have been charged to the school district or county superintendent of schools for the lease of the classroom or classrooms under Section 17089 from the date of purchase. The sale of the portable classroom or classrooms under this paragraph shall be at the discretion of the school district or county superintendent of schools.

17088.7. (a) Any school district, or, under a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, any combination of one or more school districts or county superintendents of schools, may, to the extent of the eligibility of the school district or of the parties to the joint powers agreement to lease portable classrooms under this chapter, purchase portable classrooms as provided in this section.

(b) The number of portable classrooms which may be purchased pursuant to this section, on a statewide basis, shall not exceed 200 in any given year, and shall not exceed 600 in total. Portable classrooms purchased prior to September 22, 1989, are exempt from the yearly limit of 200, but shall be counted towards the total limit of 600.

(c) The purchase costs of the portable classrooms, which include costs of site preparation, furniture and equipment, toilet facilities as described in Section 65980 of the Government Code, and the transportation of classrooms, may be funded from revenues received by the school district or districts pursuant to Section 17620. The purchase shall comply with any procedures and policies established by the board under this chapter for the purchase of portable classrooms. All portable classrooms purchased pursuant to this section are the property of the state.

(d) The board shall lease the portable classrooms purchased pursuant to the authority granted in this section to the purchaser, as described in subdivision (a), in accordance with this chapter, including applicable eligibility standards, and the purchase costs paid shall be credited toward the rent the purchaser would otherwise be required to pay under this chapter as a lessee.

(e) In the event that the purchase of portable classrooms under this section occurs pursuant to a joint powers agreement, as described in subdivision (a), the agreement shall identify the school district or districts and county superintendent or superintendents of schools that are party to the agreement, identify the district or districts providing the revenues, specify the manner in which the revenues are to be expended, and specify the distribution of portable classrooms subsequent to purchase, which distribution shall be in accordance with the eligibility requirements of this chapter. The agreement shall be subject to approval of the board, pursuant to subdivision (b) and any applicable procedures and policies established by the board under this chapter.

17089. (a) The board shall lease portable classrooms to

qualifying school districts and county superintendents of schools for not less than one dollar (\$1) per year, nor more than four thousand dollars (\$4,000) per year, for each portable classroom, which amount shall be annually increased according to the adjustment for inflation set forth in the statewide cost index for classroom construction, as determined by the board at its January meeting.

(b) The board shall require each lessee to undertake all necessary maintenance, repairs, renewal, and replacement to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee.

17089.2. Any portable classroom that is leased from the board by a school district or county superintendent of schools under this chapter on July 1, 1991, may be purchased by that district or county superintendent of schools for an amount equal to the purchase price paid by the board, including the purchase costs specified in subdivision (c) of Section 17088.7, less the amount of any rent already paid to the board by the district or county superintendent of schools for that classroom. Payment for purchases made pursuant to this section shall be in equal annual installments for an agreed upon term not to exceed nine years.

17089.5. The board may lease portable classrooms to any school district or county superintendent of schools which serves infant or preschool individuals with exceptional needs, as defined in Section 56026, and which operates programs pursuant to Part 30 (commencing with Section 56000). These portable classrooms shall be adequately equipped to meet the educational needs of these students, including, but not limited to, sinks and restroom facilities.

17090. The board shall require lessees to insure at their own expense for the benefit of the state, any leased portable classroom which is the property of the state, against such risks, including liability from the use thereof, in such amounts as the board may deem necessary to protect the interest of the state. All payments resulting from claims made against the insurance shall be made payable to and retained by the board for deposit in the State School Building Aid Fund.

17091. (a) The board shall have authority to adopt rules establishing priorities for the acquisition and leasing of classrooms to those school districts and county superintendents of schools whose pupils will benefit most. The board may make exceptions from the established priorities if it determines that the pupils affected will benefit.

(b) If at any time the number of portable classrooms available exceeds the number of those required by applicant districts, as determined by basic loading standards and eligibility requirements, the board may authorize additional portable classrooms to be placed in any school district that agrees to hire an additional teacher for each additional portable classroom placed in the district pursuant to this subdivision.

(c) If at any time the number of portable classrooms available exceeds the number of those required by applicant districts, as determined by basic loading standards and eligibility requirements, the board shall authorize additional portable classrooms to be placed in any school district, upon request of the school district, for the purpose of providing licensed child day care programs or recreation or enrichment activities or programs for schoolage children on a schoolsite, unless the surplus classrooms are needed for emergency purposes.

17092. (a) No portable classrooms shall be made available to any school district unless the district furnishes evidence, satisfactory

to the board, that the district has no available bond proceeds that could be used for the purchase of classroom facilities.

(b) Notwithstanding any other provision of law, a school district or county superintendent of schools that has received approval for a project that includes a justified number of new teaching stations pursuant to Chapter 12 (commencing with Section 17000) shall be eligible for at least the same number of emergency portable classrooms as approved new teaching stations.

(c) Subdivision (a) does not apply to leases or subleases under this chapter for the purpose of providing facilities, pursuant to subdivision (c) of Section 17091, for licensed child day care programs or any recreation or enrichment activities or programs for schoolage children.

17092.3. A school district may sublease any portable classroom obtained by the district pursuant to subdivision (c) of Section 17091 to a private provider that has entered into a contract with the district to provide any child care and development program or programs or any recreation or enrichment activities or programs for schoolage children on a schoolsite. The terms of the sublease for rental payments and other related costs shall not exceed the costs of the portable classroom to the district.

17093. The board shall have prepared for its use, performance specifications for portable classrooms complying with Sections 17280 to 17314, inclusive, which are capable of being economically moved, and bids for the construction of which can be solicited from more than one responsible bidder. The board may from time to time solicit bids from, and award to, the lowest responsible competitive bidder, contracts

for the construction or purchase of the number of portable classrooms it deems will be required by eligible school districts and county superintendents of schools during the next 12 months.

17094. If at any time the board determines that a lessee's need for particular portable classrooms which were made available to the lessee pursuant to this chapter has ceased, the board may take possession of the portable classrooms and may lease them to other eligible districts or county superintendents of schools, or if there is no longer a need for any portable classrooms, the board may dispose of them to public or private parties in any manner that it deems to be in the best interests of the state.

Any revenue which is derived from a lease or other disposition of the portable classrooms pursuant to this section shall be deposited in the State School Building Aid Fund.

17095. The State Board of Education may waive application of the penalty provisions of Section 41376 for school districts which during the school year used portable classrooms leased pursuant to this chapter.

CHAPTER 15. SCHOOL DISTRICT REVENUE BONDS

Article 1. General Provisions

17100. The Legislature hereby finds and declares that the State School Building Lease-Purchase Fund, pursuant to Section 17008, and the proceeds from the sale or lease of surplus school property are the two sources available to school districts to finance the construction of school facilities to relieve overcrowding. However, these sources are still insufficient to meet the construction needs statewide of school districts.

Article 2. Revenue Bonds

17110. The governing board of a school district may issue for sale revenue bonds to finance the construction of joint occupancy facilities as prescribed in Article 8 (commencing with Section 17515) of Chapter 4 of Part 10.5, which facilities are necessary to relieve overcrowded schools. Proceeds from the rental and lease of the facilities shall be used by the governing board to repay the revenue bonds.

As used in this chapter:

(a) "To finance the construction of joint occupancy facilities" means to offset either the cost of constructing the joint occupancy facilities or the cost of financing the construction of joint occupancy facilities, or both.

(b) "Joint occupancy facilities" means any building constructed pursuant to this chapter which is occupied jointly by a school district and a private entity specified in Section 17811 or one or more buildings which are constructed pursuant to this chapter on the same property used by the district and the private entity, but are not occupied jointly. Facilities to be acquired by purchase pursuant to this article for occupancy by pupils shall meet the requirements of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365) of Chapter 3 of Part 10.5.

(c) "Construction" includes acquisition by purchase.

17111. The governing board may contract with any person, firm, partnership, joint venture, or other private entity for the purpose of issuing revenue bonds pursuant to Section 17810 and for the purpose of renting or leasing the facilities constructed pursuant to this chapter.

17112. No revenue bonds may be issued for sale by the governing board unless the facilities are to be constructed on district-owned property, except as to facilities to be acquired by purchase.

CHAPTER 16. PUBLIC DISCLOSURE OF NON-VOTER-APPROVED DEBT

17150. (a) Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation revenue bonds, the school district shall notify the county superintendent of schools and the county auditor. The superintendent of the school district shall provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools and the county auditor may comment publicly to the governing board of the school district regarding the capability of the school district to repay that debt obligation.

(b) Upon the approval by the county board of education to proceed with the issuance of certificates of participation or revenue bonds, the county superintendent of schools or superintendent of a school district for which the county board serves as governing board shall notify the Superintendent of Public Instruction. The county superintendent of schools or the superintendent of a school district for which the county board serves as the governing board shall provide the repayment schedules for that debt obligation and evidence of the ability of the county office of education or school district to repay that obligation, to the Superintendent of Public Instruction, the governing board, and the public. Within 15 days of the receipt of the information the Superintendent of Public Instruction may comment publicly to the county board of education regarding the capability of the county office of education or school district to repay that debt obligation.

CHAPTER 17. THE ARCHIE-HUDSON AND CUNNEEN SCHOOL TECHNOLOGY
REVENUE BOND ACT

17160. It is the intent of the Legislature in enacting this act to provide a source of financing for the development of California public schools' educational technology infrastructure for the use of technology in instruction through the use of state revenue bonds repaid from a dedicated portion of funds allocated to school districts from the California State Lottery Education Fund pursuant to Section 8880.5 of the Government Code. It is further the intent of the Legislature in enacting this act to further the purposes of the California State Lottery Act of 1984 as approved by the voters on November 6, 1984.

17161. For the purpose of this article the following terms have the following meanings:

(a) "Act" means the Archie-Hudson and Cunneen School Technology Revenue Bond Act.

(b) "Authority" means the California School Financing Authority established pursuant to Section 17172.

(c) "Bond" means bonds, notes, bond anticipation notes, commercial paper, and any other evidences of indebtedness.

(d) "Fund" means the School Technology Pooled Revenue Bond Fund established pursuant to subdivision (c) of Section 17162.

(e) "School district" means school district or county office of education.

17162. (a) Notwithstanding Section 17199.3, the authority may issue bonds exclusively for the purposes of this act, provided that the total amount of bonds issued and outstanding at any time under this act shall not exceed four hundred million dollars (\$400,000,000). Authorization for the issuance of bonds under this act shall become operative after July 1, 1997, upon receipt by the authority of repayment pledges made by school districts, pursuant to Section 17163, which, when the pledges from all school districts are combined, are equal to or greater than five million dollars (\$5,000,000). The authority shall not issue bonds for any project that cannot be supported by the repayment pledges of school districts.

(b) In administering this act, the authority shall meet all of the requirements established by law for the issuance, holding, and repayment of revenue bonds by the authority, including those set forth in Chapter 17 (commencing with Section 17170), unless otherwise provided for in this act.

(c) Revenues from the sale of bonds issued pursuant to this act shall be deposited in the School Technology Pooled Revenue Bond Fund, which fund is hereby established in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated without regard to fiscal year for the purposes of this chapter. The authority shall allocate moneys to each participating school district from the fund.

(d) Allocations from the fund shall be used by school districts only for the purpose of establishing computer-based networks and telecommunications systems for instructional purposes, including the procurement and installation of computer hardware and software, multimedia audio, video, and data transfer equipment, and wiring, cabling, and other equipment necessary to establish network connectivity, and any planning and installation costs associated with establishing and installing the networks.

(e) The length of terms of the bonds issued pursuant to this act shall be less than the useful life of the equipment to be purchased

as set forth in subdivision (d).

17163. (a) Notwithstanding any other provision of law, a school district may participate in this act, if the governing board of the school district adopts a resolution approving that participation. A participating school district shall pledge a portion of the lottery revenues allocated annually to the school district from the California State Lottery Education Fund as a dedicated revenue source to repay bonds issued by the authority under the act.

(b) A school district may pledge an amount up to the equivalent of 25 percent, but not more than 25 percent, of the allocation to the school district for the 1996-97 fiscal year from the California State Lottery Education Fund.

(c) A participating school district shall guarantee the repayment of bonds issued under this chapter by providing instructions to the Controller as follows:

(1) Informs the Controller of its election to participate in this act.

(2) Authorizes the Controller to pay the portion of the school district's annual allocation of funds from the California State Lottery Education Fund to the bond trustee identified by the school district for the repayment of the school district's share of the bonds issued under this chapter.

(3) Contains a transfer schedule that sets forth the amounts of funds, which shall be equal to the amount of funds pledged pursuant to subdivisions (a) and (b) of this section, to be transferred by the Controller to the trustee from the funds to be allocated to that school district from the California State Lottery Education Fund.

17163.5. The Controller shall pay bond trustees in accordance with the instructions received pursuant to Section 17863. The Controller shall make that payment only from moneys in the California State Lottery Education Fund allocated to that school district. The Controller is not authorized to pay a bond trustee any amount in excess of a district's allocation from the California State Lottery Education Fund.

17164. Nothing contained in this chapter shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit of the state.

Notwithstanding any other provision of law, should lottery funds pledged to repay bonds issued pursuant to this act be insufficient to repay the revenue bonds, negotiable notes, or negotiable bond anticipation notes sold to finance projects and related interest and expenses, moneys in the General Fund shall not be available as an alternative source of repayment.

17165. The State Department of Education shall include in its annual survey of schools on the use of lottery funds, the amount of lottery revenues expended to repay bonds issued pursuant to this act.

CHAPTER 18. CALIFORNIA SCHOOL FINANCE AUTHORITY

17170. This chapter shall be known and may be cited as the California School Finance Authority Act.

17171. The Legislature hereby finds and declares that it is in the interest of the state and its people for the state to do all of the following:

(a) Reconstruct, remodel, or replace existing school buildings which are educationally inadequate or which do not meet current structural safety requirements.

(b) Acquire new schoolsites and buildings to be made available to school districts and community college districts for the pupils of

the public education system, which is a matter of general concern inasmuch as the education of the state's children is an obligation and function of the state.

(c) Assist school districts and community college districts by providing access to financing for working capital and capital improvements.

17172. There is in the state government the California School Finance Authority. The authority is a public instrumentality, and the exercise by the authority of the powers conferred by this chapter is an essential public function.

17173. As used in this chapter, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) "Act" means the California School Finance Authority Act.

(b) "Agent" means a county or city board of education or superintendent of schools acting with its consent on behalf of one or more school districts for any purpose of this chapter, and the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges acting with its consent on behalf of one or more community college districts for any purpose of this chapter.

(c) "Authority" means the California School Finance Authority, or any board, body, commission, department, or officer succeeding to the principal functions of the authority, or to which the powers conferred upon the authority by this chapter shall be given by law.

(d) "Bonds" means bonds, notes, bond anticipation notes, commercial paper, and any other evidences of indebtedness.

(e) "Cost," as applied to all or part of a project financed pursuant to this chapter, means and includes all or any part of the cost of any of the following:

(1) Construction.

(2) Acquisition or improvement of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project.

(3) Demolition or removal of any buildings or structures on land acquired for a project, including the acquisition of any lands to which the buildings or structures may be moved.

(4) All machinery and equipment.

(5) Financing charges.

(6) Interest prior to, during, and for a period following, the completion of such construction or improvement as determined by the authority.

(7) Provisions for working capital.

(8) Reserves for principal and interest, and for extensions, enlargements, additions, replacements, renovations, and improvements.

(9) Engineering, architectural, financial, and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incident to the construction, acquisition, or improvement of any project or any financing under this chapter.

(f) "Educational facility" means any property, facility, structure, equipment, or furnishings used or operated in conjunction with one or more public schools or community colleges, including, but not limited to, all of the following:

(1) Classrooms.

(2) Auditoriums.

(3) Student centers.

(4) Administrative offices.

(5) Sports facilities.

(6) Maintenance, storage, or utility facilities.

(7) All necessary or usual attendant and related facilities and equipment, including streets, parking, and supportive service facilities or structures required or useful for the effective operation of the educational facility.

(g) "Participating district" means a school district or community college district which undertakes, itself or through an agent, the financing or refinancing of a project or of working capital pursuant to this chapter. "Participating district" shall also be deemed to refer to the agent to the extent the agent is acting on behalf of the school district or community college district for any purpose of this chapter.

(h) "Project" means the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an educational facility to be financed or refinanced pursuant to this chapter. "Project" may include any combination of the foregoing undertaken jointly by any participating district with one or more other participating districts.

(i) "Working capital" means funds to be used by, or on behalf of, a participating district to pay maintenance or operating expenses, or any other costs which would be treated as an expense item under generally accepted accounting principles in connection with the ownership or operation of an educational facility, including, but not limited to, all of the following:

(1) Reserves for maintenance or operating expenses.

(2) Interest for a period not to exceed one year on any loan for working capital made pursuant to this chapter.

(3) Reserves for debt service, and any other costs necessary or incidental to, financing pursuant to this chapter.

(j) "Certificate of participation" means an undivided interest in one or more bonds, leases, loans, installment sales, or other agreements of a participating district or districts.

17174. (a) The authority shall be comprised of the following members:

(1) The Treasurer, who shall serve as chairperson.

(2) The Director of the State Department of Finance.

(3) The Superintendent of Public Instruction.

(b) Each member of the authority may designate an individual from the member's department or agency to act for the member and represent the member at all meetings.

(c) Members of the authority or their designees shall serve without compensation, but may be reimbursed by the authority for necessary and reasonable expenses incurred in the discharge of their duties.

17175. (a) Upon the first appointment of its members, and thereafter on or after March 31 of each year, the authority shall elect from its members a vice chairperson and a secretary-treasurer, who shall hold office until the following March 31, and shall continue to serve until their successors have been elected.

(b) On behalf of the authority, the chairperson shall appoint an executive director, who shall not be a member of the authority, and who shall serve at the pleasure of the authority. The executive director shall receive the compensation fixed for that purpose by the authority.

The authority may delegate to the executive director the power to enter contracts on behalf of the authority.

17176. (a) Except as otherwise provided by subdivision (b), the Attorney General shall be the legal counsel for the authority.

(b) Upon the approval of the Attorney General, which shall not be unreasonably withheld, the authority may employ legal counsel as, in

its judgment, is necessary or advisable to enable it to carry out the duties and functions of the authority pursuant to this chapter, including, but not limited to, the employment of bond counsel in connection with the issuance of bonds.

17177. The executive director or other person designated by resolution of the authority shall maintain a record of the proceedings of the authority, and shall be custodian of all books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal. The executive director or the designee may cause copies to be made of all minutes and other records and documents of the authority, and may certify under the official seal of the authority that the copies are true copies, and all persons dealing with the authority may rely upon that certification.

17178. Two members of the authority shall constitute a quorum. The affirmative vote of a majority of a quorum shall be necessary for any action taken by the authority. A vacancy in the membership of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Each meeting of the authority shall be open to the public and shall be held in accordance with Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code. Resolutions of the authority need not be published or posted. The authority may delegate by resolution to one or more of its members or its executive director any powers and duties as it may deem proper.

17179. The provisions of this chapter shall be administered by the authority, which shall have and is hereby vested with all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed under this chapter.

17180. The authority is hereby authorized to do all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal.

(c) Sue and be sued in its own name.

(d) Receive and accept gifts, grants, or donations of money for any of the purposes of this chapter from any of the following:

(1) A federal agency.

(2) A state agency.

(3) A municipality, county, or other political subdivision of the state.

(4) An individual, association, or corporation.

(e) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this chapter.

(f) (1) Determine the location and character of any project to be financed under this chapter, and acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, or regulate the same.

(2) Designate a participating district as its agent, with authority to enter into contracts, for any of the purposes specified in paragraph (1).

(3) Enter into contracts for any of the purposes specified in paragraph (1).

(4) Enter into contracts for the management and operation of a project owned by the authority.

(g) Acquire, directly or by and through a participating district as its agent, by purchase solely from funds provided pursuant to this

chapter, or by gift or devise, and sell, by installment or otherwise, property, rights, rights-of-way, franchises, easements, and other interests in lands, including, but not limited to, lands lying under water, and riparian rights, located within the state which the authority deems necessary or convenient for the acquisition, construction, financing, or operation of a project. The authority may do so upon the terms, and at the prices, it considers reasonable and upon which it can agree with the owner, and may take the title to the interest in the name of the authority or in the name of a participating district as its agent.

(h) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of all or part of a project, in the form of money, property, labor, or other things of value.

(i) Pursuant to an agreement between the authority and the participating district, make, directly or through a lending institution, secured or unsecured loans to, or purchase secured or unsecured loans from, a participating district for any of the following purposes:

(1) To finance a project or provide working capital. No loan to finance a project shall exceed the total cost of the project, as determined by the participating district and approved by the authority.

(2) To refinance indebtedness incurred by the participating district in connection with projects undertaken, educational facilities acquired, or working capital financed.

(j) Upon the terms and conditions the authority deems proper, lease a project being financed pursuant to this chapter to a participating district, and charge and collect rent therefor. The authority may terminate a lease pursuant to this subdivision upon the lessee's failure to comply with any of its obligations under the lease. The lease may include any of the following provisions:

(1) That the lessee shall have the option to renew the term of the lease for the period or periods, and at the rent, determined by the authority, or to purchase any or all of the project.

(2) That upon payment by the participating district of all of the indebtedness incurred by the authority for the financing of the project or for the refinancing of the district's outstanding indebtedness, the authority may convey any or all of the project to the lessee or lessees, with or without further consideration.

(k) Charge and equitably apportion among participating districts its administrative costs and expenses incurred pursuant to this chapter.

(1) (1) Obtain, or aid in obtaining, from any state or federal agency or any private company, any insurance, guarantee, letter, or line of credit regarding, or of, or for, the payment or repayment of all or part of the interest, principal, or both, on any loan, lease, or obligation, or any instrument evidencing or securing the same, made or entered into pursuant to this chapter, or on any bonds issued pursuant to this chapter.

(2) Notwithstanding any other provision of this chapter, enter into any agreement, contract, or any other instrument regarding any insurance, guarantee, letter, or line of credit specified in paragraph (1), and accept payment in the manner and form provided therein in the event of default by a participating district.

(3) Assign any insurance, guarantee, letter, or line of credit specified in paragraph (1) as security for bonds issued by the authority.

(m) Enter into any agreements or contracts, including, but not limited to, agreements for liquidity or credit enhancement, execute

any instruments, and any other act or thing necessary, convenient, or desirable for the purposes of the authority or to carry out any express power granted the authority pursuant to this chapter.

(n) At the discretion of the authority, invest any moneys held in reserve or in sinking funds, or any moneys not required for immediate use or disbursement, in obligations authorized by the resolution authorizing the bonds secured by the investment, or by law governing the investment of trust funds in the custody of the Treasurer.

17181. (a) The California School Finance Authority Fund is hereby created in the State Treasury, to be administered by the authority. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated without regard to fiscal year for the purposes of this chapter. The authority may pledge any or all of the moneys in the fund as security for payment of the principal of, and interest on, any particular issuance of bonds pursuant to this chapter. For that purpose, or as necessary or convenient to the accomplishment of any other purpose of this chapter, the authority may divide the fund into separate accounts. All moneys accruing to

the authority pursuant to this chapter from any source shall be deposited in the fund.

(b) Subject to any priorities created by the pledge of particular moneys in the fund to secure any issuance of bonds of the authority, and to reasonable administrative costs incurred by the authority in implementing this chapter, all moneys in the fund, regardless of the source, shall be held in trust for the security and payment of bonds of the authority, and shall not be used or pledged for any other purpose while any bonds are outstanding and unpaid. Nothing in this subdivision shall be construed to limit the power of the authority to make loans with bond proceeds in accordance with the terms of the resolution authorizing the issuance of those bonds.

(c) Pursuant to any agreements with the holders of particular bonds pledging any particular assets, revenues, or moneys, the authority may create separate accounts in the fund to manage the assets, revenues, or moneys in the manner prescribed by the agreements.

(d) From time to time, the authority may direct the Treasurer to do any of the following:

(1) Invest moneys in the fund which are not required for its current needs, including, but not limited to, proceeds from the sale of any bonds in eligible securities specified in Section 16430 of the Government Code and designated by the authority, or in any other securities or obligations designated by the authority, in the resolution authorizing the issuance of the bonds payable or secured by the moneys.

(2) Deposit moneys in the fund in interest bearing accounts in state or national banks or other financial institutions having principal offices in the state.

(3) Transfer moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 4 of Division 4 of Title 2 of the Government Code.

Notwithstanding Section 16305.7 of the Government Code, all interest or other earnings resulting from an investment or deposit pursuant to this subdivision shall be deposited in the fund.

(e) Except as otherwise provided in paragraph (3) of subdivision (d), no moneys in the fund shall be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code.

17182. (a) Except as otherwise provided in subdivision (b), all

expenses incurred by the authority in implementing this chapter shall be payable solely from funds appropriated for purposes of this chapter, and the authority shall not incur liabilities in excess of the amount of those funds.

(b) For purposes of meeting the necessary expenses of initial organization and operation of the authority until it derives money from funds provided to it pursuant to this chapter, the authority may borrow such moneys as it may require. Moneys borrowed pursuant to this subdivision shall subsequently be charged to, and apportioned among, participating school districts in an equitable manner, and repaid with appropriate interest over a reasonable period of time.

17183. (a) From time to time, the authority may, by resolution, issue its revenue bonds in order to provide funds for any of the purposes of this chapter. Bonds may be issued to finance any of the following:

(1) A single project or financing of working capital for a single participating district.

(2) A series of projects or financings of working capital for a single participating district.

(3) A single project or financing of working capital for several participating districts.

(4) Several projects or financing of working capital for several participating districts.

(b) Except as otherwise expressly provided by the authority, all revenue bonds shall be payable from any available revenues or moneys of the authority not otherwise pledged, subject only to any agreements with holders of particular bonds or notes pledging any particular revenue or moneys. Notwithstanding that revenue bonds issued pursuant to this section may be payable from a special fund, the revenue bonds shall be, and shall be deemed to be for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds for registration.

(c) The revenue bonds of the authority may be issued as serial bonds, term bonds, or the authority, in its discretion, may issue bonds of both types. The issuance shall be in accordance with the indenture, trust agreement, or resolution relating to the revenue bonds, which shall provide all of the following:

(1) The date or dates of the bonds.

(2) The date or dates upon which the bonds will mature, not to exceed 40 years from their respective dates.

(3) The interest rate or rates, or methods of determining the interest rate or rates, of the bonds.

(4) When the bonds are payable.

(5) The denominations of the bonds.

(6) The form of the bonds, which shall be either bearer or registered.

(7) The registration privileges of the bonds.

(8) The manner in which the bonds are to be executed.

(9) The place or places at which the bonds shall be payable in lawful money of the United States of America.

(10) The terms of redemption of the bonds.

(d) After giving due consideration to the recommendations of the participating district or districts, the revenue bonds of the authority shall be sold by the Treasurer at either a public or private sale at a price or prices, and upon the terms and conditions prescribed by the authority. The revenue bonds of the authority may be sold at, above, or below the par value of the bonds.

(e) Pending the preparation of the definitive bonds, the authority may issue interim receipts or certificates or temporary bonds which shall be exchanged for the definitive bonds.

(f) Any resolution authorizing the issuance of any bonds of the authority, or any issue of revenue bonds of the authority, may include any of the following provisions:

(1) Provisions pledging all or any part of the proceeds of the bonds or revenue of a project or loan.

(2) Provisions concerning the replacement of mutilated, destroyed, stolen, or lost bonds.

(3) Provisions specifying insurance to be maintained on the project and the authorized uses of the proceeds of the insurance.

(4) Covenants against the mortgaging or otherwise encumbering, selling, leasing, pledging, placing a charge upon, or otherwise disposing of the project prior to the payment of the bonds issued to finance the project.

(5) Provisions specifying the events of default, terms upon which the bonds may be declared due before maturity, and the terms upon which the declaration and its consequences may be waived.

(6) The rights, liabilities, powers, and duties arising upon the breach of any covenants, conditions, or obligations.

(7) Vesting of the right to enforce covenants in a trustee.

(8) The terms upon which all or any percentage of the bondholders may enforce covenants or duties.

(9) Procedures for amending the terms of the resolution, with or without the consent of the holders of a specified number of bonds.

(10) Provision for any other acts or things deemed necessary, convenient, or desirable by the authority to secure the bonds or improve their marketability.

(g) The validity of the authorization and issuance of any bond issue shall not be affected by proceedings for the acquisition, construction, or improvement of any project, or by contracts relating to those proceedings. Any resolution authorizing the issuance of any bonds of the authority may provide authorization for the bonds to bear a statement certifying that they are issued pursuant to this chapter. Bonds bearing such a statement shall be conclusively deemed valid and issued in conformity with this chapter. Reference on the face of the bonds to the resolution by its date of adoption shall incorporate the provisions of the resolution and of this chapter into the terms of the bonds.

(h) Members of the authority, or any person executing the revenue bonds of the authority, shall not incur personal liability on the bonds, nor shall these persons incur personal liability or accountability by reason of the issuance of the revenue bonds of the authority.

(i) The authority is authorized, out of any funds available for that purpose, to purchase revenue bonds of the authority. The authority may hold, pledge, cancel, or resell any bonds purchased under the authority of this subdivision, subject to, and in accordance with, agreements with bondholders.

(j) The financing or refinancing of projects or working capital may be provided pursuant to this chapter by means other than revenue bonds, at the discretion of the authority, including financing or refinancing through certificates of participation, or other interests, in bonds, loans, leases, installment sales, or other agreements of the participating district or districts. In this connection, the authority may do all things and execute and deliver all documents and instruments as may be necessary or desirable with regard to issuance of the certificates of participation or other means of financing or refinancing.

17183.5. In enacting this chapter, it is the intent of the Legislature to provide financing only for projects demonstrated by the participating district to be financially feasible. In

demonstrating financial feasibility, the participating district may take into account all district funds, and may base future projections upon historical experience or reasonable expectations, or a combination thereof. Nothing in this section shall be construed to imply that any project is required to produce revenue in order to be financed under this chapter.

17184. (a) In the discretion of the authority, any revenue bonds of the authority issued under this chapter may be secured by a trust agreement, or by indenture by and between the authority and a corporate trustee or trustees, including the Treasurer or any trust company or bank having the powers of a trust company within or outside the state.

(b) Any trust agreement, indenture, or any resolution providing for the issuance of bonds of the authority, may pledge or assign the proceeds of the bonds, and the revenues to be received by, a participating district or districts.

(c) Any trust agreement, indenture, or resolution providing for the issuance of revenue bonds of the authority may include any provisions for the protection of, and the enforcement of the rights and remedies of, bondholders as may be reasonable and proper and not in violation of any law, including provisions included in any resolution or resolutions of the authority provided under subdivision (a) or (b).

(d) Any trust agreement or indenture may prescribe the rights and remedies of the bondholders, and of the trustee or trustees, and may restrict the individual right of action of the bondholders.

(e) Any trust agreement, indenture, or resolution may include any other provisions deemed by the authority to be reasonable and proper for the security of the bondholders.

(f) Notwithstanding any other provision of law, the Treasurer shall not be deemed to have a conflict of interest by reason of his or her capacity as trustee pursuant to this chapter.

17185. (a) Revenue bonds issued under this chapter are not and shall not be deemed to constitute a debt or liability of the state, or any political subdivision thereof, and are not and shall not be deemed to be a pledge of the faith and credit of the state, or any political subdivision thereof, other than the authority. Revenue bonds of the authority shall be payable solely from funds provided under this chapter.

(b) Each revenue bond of the authority shall include a statement on the face of the bond that neither the State of California nor the authority is obligated to pay the principal or interest thereon, except from revenues of the authority, and shall also include a statement that neither the faith or credit, nor the taxing power of the State of California, or any political subdivision, is pledged to the payment of the principal or interest of the bonds.

(c) The issuance of revenue bonds under this chapter shall not directly, indirectly, or contingently obligate the state, or any political subdivision thereof, to levy or pledge any form of taxation, or make any appropriation for their payment.

17186. (a) Any holder of revenue bonds issued under this chapter, or any coupons appertaining thereto, or the trustee or trustees under any trust agreement, indenture, or resolution, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any rights conferred under state law, by this chapter, or under the terms of any trust agreement, indenture, or resolution, except to the extent that these rights may be otherwise restricted by any resolution authorizing the issuance of these bonds, or by any trust agreement or indenture securing these bonds.

(b) Any holder of revenue bonds issued under this chapter, or any

coupons appertaining thereto, or the trustee or trustees under any trust agreement, indenture, or resolution, may enforce and compel the performance of all duties required under this chapter, or by any trust agreement, indenture, or resolution, to be performed by the authority, or by any officer, employee, or agent of the authority.

17187. All moneys received under this chapter, whether received as proceeds from the sale of revenue bonds or as revenues, are trust funds to be held and applied solely as provided in this chapter. Any officer, bank, or trust company with whom those moneys have been deposited, shall act as trustee of those moneys and shall hold and apply them for those purposes, subject to the requirements of this chapter and the resolution authorizing the bonds of any issue, or the trust agreement or indenture securing those bonds, may provide.

17188. (a) The authority may provide for the issuance of the revenue bonds of the authority for the purpose of refunding any bonds, or any series or issue of the revenue bonds of the authority then outstanding, and may include the payment of any redemption premium for those bonds and any interest accrued or to accrue to the date of redemption and purchase or maturity of those bonds.

(b) The proceeds of any bonds issued for the purpose of refunding of outstanding bonds may, in the discretion of the authority, be applied to the purchase or redemption prior to maturity or retirement at maturity of the outstanding bonds on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof, or paid to a third person to assume the authority's obligation to make those payments, and may, pending that application, be placed in escrow to be applied to the purchase or retirement at maturity or redemption on any date or dates as may be determined by the authority.

(c) Any escrowed proceeds, pending such use may be invested and reinvested in obligations or securities authorized by resolution of the authority, maturing at any time or times as shall be appropriate to assure the prompt payment, as to principal, interest, and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income and profits, if any, earned or realized on any investment may also be applied to the payment of the outstanding bonds to be so refunded or of interest in the refunding bonds. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest, income profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner.

(d) All refunding bonds are subject to the provisions of this chapter, in the same manner and to the same extent, as other bonds issued pursuant to this chapter.

17189. (a) Revenue bonds issued by the authority under this chapter shall be designated as securities in which all banks, bankers, savings banks, trust companies, and other persons engaged in a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; any administrators, executors, guardians, trustees, and other fiduciaries; and any other persons who are now or who may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control.

(b) Revenue bonds issued by the authority under this chapter, other notes or securities, or obligations are hereby made securities which may properly and legally be deposited with, and received by, any state or municipal officer, or agency of the state for any purpose for which the deposit of bonds or other obligations of the state are, or may hereafter be, authorized by law.

17190. (a) Any bonds issued under this chapter, their transfer, and income therefrom shall at all times be free from taxation of every kind by the state and by all political subdivisions of the state.

(b) The authority is not required to pay any taxes or assessments upon, or with respect to, any project or property acquired by or for the authority under this chapter, or upon any income therefrom, or on or from any other assets or operations of the authority.

17191. (a) The State of California pledges and agrees with the holders of the bonds issued pursuant to this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter, that the state will not limit, alter, or restrict the rights hereby vested in the authority to finance educational facilities. The State of California pledges and agrees to fulfill the terms of any agreements made with the holders of bonds authorized by this chapter, and with the parties who may enter into contracts with the authority pursuant to this chapter, and pledges and agrees not to impair the rights or remedies of the holders of any revenue bonds or any parties until the bonds, together with interest, are fully paid and discharged and any contracts are fully performed on the part of the authority.

(b) The authority shall have the right to include the pledges made pursuant to this section in its revenue bonds and contracts.

17192. (a) Pledges by or to the authority of revenues, moneys, accounts, accounts receivable, contract rights, or other rights to payment of any other kind made by or to the authority pursuant to this chapter shall be valid and binding from the time the pledge is made for the benefit of the pledges, and the successors thereto.

(b) The revenues, moneys, accounts, accounts receivable, and other rights to payment of any other kind pledged by or to the authority or its assignees, shall immediately be subject to the lien of the pledge without physical delivery, or any further act. The lien of any pledge shall be valid and binding against all parties, irrespective of whether the parties have notice of the claim. The trust agreement, indenture, resolution, or other instrument by which any pledge is created need not be recorded.

17193. (a) The authority shall fix, revise, charge, and collect rents for the use of each project owned by the authority, and may contract with any person, partnership, association, corporation, or other body, whether public or private, for that purpose. Any lease entered into by the authority with a participating district, and each agreement, note, or other instrument evidencing the obligations of a participating district to the authority, shall provide that the rents or principal, interest, and other charges payable by the participating district shall be sufficient to provide for all of the following:

(1) To pay the principal, sinking fund payments, if any, premiums, if any, and the interest on outstanding bonds of the authority issued in respect of the project when due and payable.

(2) To create and maintain reserves which may, but need not necessarily be required or provided for, in the resolution relating to the revenue bonds of the authority.

(3) To pay its share of the administrative costs and expenses of the authority.

(b) The authority shall pledge the revenues derived and to be derived from a project or from a participating district for the purposes specified in paragraphs (1), (2), and (3) of subdivision (a). The authority may issue additional revenue bonds which may be ranked on a parity with other bonds relating to the project to the extent, and under the terms and conditions provided, in the bond

resolution.

(c) The authority and a participating district may include in any lease or agreement between them or with a credit provider any terms and conditions relating to insurance, liquidity, or credit enhancement of the bonds, or any other lawful terms and conditions the authority deems necessary or desirable to facilitate the purposes of this chapter.

17194. The authority may authorize any participating district to act as its agent in the performance of acts specifically approved by the authority, and all acts required under Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5. The authorizations may include, but are not necessarily limited to, all of the following:

(a) The selection of school or college sites.

(b) The securing of appraisals.

(c) Contracts for architectural services.

(d) The advertisement for construction bids and the entry into contracts for construction.

(e) The purchase of furniture and equipment.

17195. Whenever the principal and interest on bonds issued by the authority to finance the cost of a project, or to refinance the outstanding indebtedness of one or more participating districts, including any refunding bonds issued to refund and refinance those bonds, have been fully paid or retired, or whenever adequate provision has been made to fully pay and retire the bonds, and all other conditions of the resolution, lease, trust indenture and any security interest, or any other instrument or instruments authorizing and securing the bonds have been satisfied and the lien of security interest has been released in accordance with those provisions, the authority shall promptly provide for and execute any releases, release deeds, reassignments, deeds, and conveyances as are necessary and required to convey or release its rights, title, and interest in the project financed, to the participating districts.

17196. (a) This chapter shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized in this chapter, and shall be deemed as being supplemental and additional to the powers conferred by other applicable laws, except that the issuance of revenue bonds and refunding bonds and the undertaking or projects or financings under this chapter need not comply with the requirements of any other laws applicable to the issuance of bonds, including, without limitation, Division 13 (commencing with Section 21000) of the Public Resources Code.

(b) Except as provided in subdivision (a), the financing of a project under this chapter shall not exempt a project from any of the requirements of law which are otherwise applicable to the project.

17197. To the extent that the provisions of this chapter are inconsistent with any other provisions of any general statute, or a special act or parts thereof, the provisions of this chapter shall be deemed controlling.

17198. Any net earnings of the authority beyond that necessary for the retirement of any obligations issued by the authority, or to implement the purposes of this chapter, may inure only to the benefit of the State of California or the authority.

17199. Upon the dissolution of the authority, title to all property owned by the authority shall vest in the successor authority created by the Legislature, if any, if the successor authority meets the requirements of Section 103 of the federal Internal Revenue Code of 1954, as amended, and its implementing regulations, as an authority entitled to issue obligations on behalf of the State of California, the interest from which is exempted from federal income taxation.

In the event that a successor authority is not created, title to all property owned by the authority shall vest in the State of California.

17199.1. (a) Any participating district, exclusively for the purpose of securing financing or refinancing of projects or working capital pursuant to this chapter through the issuance of revenue bonds, certificates of participation, or other means, and notwithstanding any other provision of law, may issue bonds to the authority or borrow money or purchase or lease educational facilities from the authority, and in connection therewith, sell or lease property to the authority, at any interest rate or rates, rental provisions, with any maturity date or dates or term, and with any other payment, security, default, remedy, and other terms or provisions as may be specified in the bonds of the participating district or a loan, loan purchase, installment sale, lease, or other agreement between the authority and the participating district, subject to the following conditions:

(1) The sum of the amount borrowed to finance working capital and the interest payable thereon at the initial interest rate if interest is variable, shall not exceed 85 percent of the estimated amount of uncollected taxes, income, revenue, cash receipts, and other district funds which will be available in any fiscal year for the repayment of the loan and the interest thereon. For purposes of this paragraph, "revenue" includes, but is not limited to, federal and state funds received by the district.

(2) In computing the maximum amount which may be borrowed in any fiscal year pursuant to paragraph (1), the district may exclude the amount of any principal or interest which is secured by a pledge of the amount in any inactive or term deposit of the district which has a term scheduled to terminate during that fiscal year.

(3) A participating district that borrows money to finance working capital pursuant to this subdivision shall be required to repay and discharge the loan within 15 months of the loan date.

(4) In enacting this chapter, it is the intent of the Legislature to provide financing of working capital needed to cover temporary or cash-flow deficits and needs for working capital and not long-term budget deficits or shortfalls in funding. The participating school district must demonstrate to the satisfaction of the authority that, during the term of any working capital loan received pursuant to this chapter, the

participating district will receive or otherwise have (without additional borrowing) sufficient funds to repay and discharge the loan. The participating district may take into account all district funds and may base future projections upon historical experience or reasonable expectations, or a combination thereof.

(b) Any participating district may enter into any agreement for liquidity or credit enhancement, with any reimbursement, payment, interest, security, default, remedy, and other terms it may deem necessary or appropriate in connection with the issuance of bonds, the borrowing of money or the lease or purchase of educational facilities, whichever is applicable. Any participating district or districts may also do all things and execute all documents as may be necessary or desirable in connection with the issuance of certificates of participation, or other interests, in any bond, loan, installment sale, lease, or other agreement of the district.

(c) A school district may by resolution authorize any county or city board of education or superintendent of schools, and a community college district may by resolution authorize the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges, to act as its agent in the performance

of any of the matters permitted by this section or any other provision of this chapter. Notwithstanding any other provision of law, the agent shall have the powers granted by the resolution for purposes of this chapter. The resolution shall be deemed to bind the school district or community college district, as the case may be, to any contract, agreement, instrument, or other document executed by the agent on behalf of the school district or community college district, and all duties, obligations, or responsibilities contained therein on the part of the school district or community college district, to the same extent as if duly authorized, executed, and delivered by the school district or community college district.

(d) This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this section, and the issuance of bonds to, borrowing of money from, or sale or purchase or lease of educational facilities from or to, the authority. Any agreement entered into in connection with the issuance of bonds, the borrowing of money or the sale, purchase, or lease of educational facilities, including, without limitation, any agreement for liquidity or credit enhancement under this section, need not comply with the requirements of any other law applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge, encumbrance, or credit, as the case may be, by a school district or community college district, or by a county or city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges.

17199.2. An action may be commenced under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any issuance or proposed issuance of revenue bonds, the loan of the proceeds thereof, the sale, purchase, or lease of facilities under this chapter, or the legality and validity of any proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of the bonds, for the use of the proceeds thereof, or for the payment of the principal and interest thereon.

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time under this chapter shall not exceed four hundred million dollars (\$400,000,000).

(b) For purposes of subdivision (a), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17188.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 3. Part 10.5 (commencing with Section 17211) is added to the Education Code, to read:

PART 10.5. SCHOOL FACILITIES
CHAPTER 1. SCHOOLSITES
Article 1. General Provisions

17211. Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the

SEC. 15. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

SEC. 16. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

SEC. 17. Any section of any act enacted by the Legislature during the 1996 calendar year prior to the enactment of this act, that amends, amends and renumbers, adds, repeals and adds, or repeals a section, article, chapter, or part, that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act until January 1, 1998, at which time Sections 1 to 16 of this act shall become operative.

SEC. 18. The provisions of this act are severable. If any provisions of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 513
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 1997
APPROVED BY GOVERNOR SEPTEMBER 28, 1997
PASSED THE SENATE SEPTEMBER 2, 1997
PASSED THE ASSEMBLY JUNE 3, 1997
AMENDED IN ASSEMBLY MAY 1, 1997
AMENDED IN ASSEMBLY APRIL 16, 1997

INTRODUCED BY Assembly Member Leach
(Coauthors: Assembly Members House, Margett, Richter, and Thomson)

FEBRUARY 25, 1997

An act to amend Section 17014 of the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 553, Leach. School facilities.

Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976, provides for state funding to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements. Existing law requires the State Allocation Board to require school districts as a condition of obtaining state funding for a project to make, at the school district's expense, all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. Existing law also requires, as specified, prior to the State Allocation Board approving a project, that an applicant school district establish a restricted account within the district's general fund for the purpose of providing moneys for regular maintenance and routine repair of school buildings, as specified.

This bill would require the State Allocation Board to require school districts whose projects are funded on or after July 1, 1998, to annually certify that the school plan has been prepared and implemented, as specified, a plan for major maintenance, repair, and replacement needs for the project. The bill would require that the plan include specified provisions, be available for public inspection, and be updated each fiscal year as part of the school district's annual budget process. The bill would also require the school district's annual budget to specify the total funding available in reserve for the major maintenance, repair, and replacement needs specified in the plan, and that the budget include an explanation if the amount of the reserves is less than that specified in the plan, as updated.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17014 of the Education Code, as added by Chapter 277 of the Statutes of 1996, is amended to read:

17014. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a

project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and encourage applicants to maintain all buildings under their control, the board shall require the applicant to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the district's general fund for the exclusive purpose of providing moneys for regular maintenance and routine repair of school buildings, according the highest priority to funding for the purpose set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for the term of the lease agreements of all projects constructed under this chapter, a minimum amount equal to or greater than 2 percent of the applicant's General Fund budget for that fiscal year. This paragraph is applicable only to the following districts:

(A) High school districts with average daily attendance greater than 300.

(B) Elementary school districts with average daily attendance greater than 900.

(C) Unified school districts with average daily attendance greater than 1,200.

(c) For each project funded after July 1, 1998, the board shall require the applicant school district governing board to certify, as part of the school district's annual budget process and beginning in the fiscal year in which the project is funded by the state, that a plan has been prepared for completing major maintenance, repair, and replacement requirements for the project. For purposes of this subdivision, the term "major maintenance, repair, and replacement" means roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and other items designated by the governing board of the school district. The board shall require the school district's governing board to certify that the plan includes and is being implemented as follows:

(1) Identification of the major maintenance, repair, and replacement needs for the project.

(2) Specification of a schedule for completing the major maintenance, repair, and replacement needs.

(3) Specification of a current cost estimate for the scheduled major maintenance, repair, and replacement needs.

(4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance, repair, and replacement needs.

(5) Review of the plan annually, as a part of the school district's annual budget process, and update, as needed, the major maintenance, repair, and replacement needs, the estimates of expected costs, and any adjustments in funding the reserve.

(6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district.

(7) Provision in the school district's annual budget of a provision that states the total funding available in reserve for scheduled major maintenance, repair and replacement needs as specified in the updated plan, and an explanation if this amount is less than that specified in the updated plan. The reserve shall be maintained in the restricted account established pursuant to

subdivision (b).

BILL NUMBER: SB 161 CHAPTERED 10/12/97

CHAPTER 893
 FILED WITH SECRETARY OF STATE OCTOBER 12, 1997
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 PASSED THE SENATE SEPTEMBER 11, 1997
 PASSED THE ASSEMBLY SEPTEMBER 9, 1997
 AMENDED IN ASSEMBLY SEPTEMBER 5, 1997

INTRODUCED BY Senator Greene

JANUARY 15, 1997

An act to add Sections 17016, 17017.2, 17032.5, 17042, 17042.9, 17047.6, 17150, 17182, 17183, 17199.3, 17215, and 38060 to, to add and repeal Section 17199.4 of, to repeal Sections 17716, 17717.2, 17732.5, 17742, 17742.9, 17747.6, 17850, 17882, 17883, 17899.3, and 17899.4 of, and to add and repeal Sections 15100.5, 15122.5, 15300, 15301, 15303, 15320, 15322, 15323, 15324, 15326, 15327, 15334.5, 15336, 15342, 15349, 15350, 15351, 15352, 15353, 15356, 15357, 15358, 15359, 15359.1, 15359.2, 15380, 15381, 15384, 15390, 15391, 15400, 15401, 15403, 15404, 15405, 15410, 15411, 15412, 15421, 15425, 17001.5, 17042.7, 17224, and 39005 of, the Education Code, relating to schools.

LEGISLATIVE COUNSEL'S DIGEST

SB 161, Greene. Schools.

(1) Existing law makes it a crime to enter a schoolbus or school pupil activity bus without prior authorization of the driver or other school official with intent to commit any crime and then refusing to disembark after being ordered to do so by the driver or other school official. Existing law will be repealed on January 1, 1998, as part of a technical Education Code reorganization statute.

Existing law operative January 1, 1998, reorganizes portions of the Education Code by repealing various parts of the Education Code and reenacting them in new parts, chapters, and articles.

This bill would reenact the existing law with no changes and renumber it consistent with the technical Education Code reorganization statute. This bill would also repeal and add various sections of the Education Code with no substantive changes to complete the reorganization of the Education Code that is operative on January 1, 1998.

(2) This bill would provide that it is to be construed as a restatement and not as a new enactment.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 15100.5 of the Education Code, as added by Chapter 729 of the Statutes of 1996, is repealed.

SEC. 2. Section 15100.5 is added to Article 1 (commencing with Section 15100) of Chapter 1 of Part 10 of the Education Code, to read:

15100.5. Except as otherwise provided by law, the governing board of the Peralta Community College District may, when in its judgment

it is advisable, order the county superintendent of schools to call an election to be conducted pursuant to this chapter and submit to the electors of the district the question of whether the proceeds of previously authorized but unissued bonds of the district may be used for a purpose or purposes in addition to the purposes for which the previously approved bonds were authorized by the electors.

The governing board may, by order entered into its minutes, call for an election to expand the purposes of prior authorized but unissued bonds either as a single proposition on the ballot or combined with the question of issuing new bonds of the district for any purpose or purposes permitted by law.

If two-thirds of the votes cast on the question of expanding the purposes for which the proceeds of previously authorized but unissued bonds of the district may be used, or the combined question of expanding the purposes for which the proceeds of previously authorized but unissued bonds of the district and issuing newly authorized bonds of the district, are in favor of the proposition, the district may use the proceeds of the previously authorized but unissued bonds for the expanded purposes and may issue newly authorized bonds, as the case may be.

SEC. 3. Section 15122.5 of the Education Code, as added by Chapter 548 of the Statutes of 1996, is repealed.

SEC. 4. Section 15122.5 is added to Article 2 (commencing with Section 15120) of Chapter 2 of Part 10 of the Education Code, to read:

15122.5. (a) Whenever an election is called on the question of whether bonds of a school district shall be issued and sold for the purposes specified in Section 15100 and the project to be funded by the bonds will require state matching funds for any phase of the project, the sample ballot shall contain a statement, as provided in subdivision (b), advising the voters that the project is subject to the approval of state matching funds and, therefore, passage of the bond measure is not a guarantee that the project will be completed.

(b) The words to appear in the sample ballot in satisfaction of the requirements of subdivision (a) are as follows:
"Approval of Measure ____ does not guarantee that the proposed project or projects in the ____ School District that are the subject of bonds under Measure ____ will be funded beyond the local revenues generated by Measure ____ . The school district's proposal for the project or projects may assume the receipt of matching state funds, which could be subject to appropriation by the Legislature or approval of a statewide bond measure."

(c) This section does not apply to any election to incur bonded indebtedness pursuant to the Mello-Roos Community Facilities Act of 1982 contained in Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

SEC. 5. Section 15300 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 6. Section 15300 is added to Article 1 (commencing with Section 15300) of Chapter 2 of Part 10 of the Education Code, to read:

15300. This chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district and for the issuance of general obligation bonds by a school facilities improvement district.

SEC. 7. Section 15301 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 8. Section 15301 is added to Article 1 (commencing with

Section 15300) of Chapter 2 of Part 10 of the Education Code, to read:

15301. (a) Any school district or community college district that has a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, that has as one of its purposes the construction of school facilities within a portion of the territory of the school district or community college district, may proceed under this chapter.

(b) The boundaries of any school facilities improvement district formed pursuant to this chapter shall include all of the portion of the territory within the boundaries of the school district or community college district that is not located within the boundaries of the community facilities district as described in subdivision (a).

(c) A school district or community college district may proceed under this chapter without meeting the requirements of subdivisions (a) and (b) if the governing board of the school district or community college district determines that it is necessary and in the best interest of the school district or community college district, respectively, to form a school facilities improvement district pursuant to this chapter to finance any or all of the improvements set forth in Section 15302. As a part of that determination, the governing board of the school district or community college district shall make a finding that the overall cost of financing the bonds issued pursuant to this chapter would be less than the overall cost of other school facilities financing options available to the school district or community college district, including, but not limited to, issuing bonds pursuant to the Mello-Roos Communities Facilities Act of 1982 (Ch. 2.5 (commencing with Sec. 53311), Pt. 1, Div. 2, Title 5, Gov. C.). The governing board of the school district or community college district proceeding under this subdivision shall define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the school district or community college district, except that the boundaries may not include all or a portion of the territory of the community facilities district described in subdivision (a).

SEC. 8.5. Section 15301 is added to Article 1 (commencing with Section 15300) of Chapter 2 of Part 10 of the Education Code, to read:

15301. (a) Any school district or community college district that has a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, that has as one of its purposes the construction of school facilities within a portion of the territory of the school district or community college district, may proceed under this chapter.

(b) The boundaries of any school facilities improvement district formed pursuant to this chapter shall include all of the portion of the territory within the boundaries of the school district or community college district that is not located within the boundaries of the community facilities district as described in subdivision (a).

(c) A school district or community college district may proceed under this chapter without meeting the requirements of subdivisions (a) and (b) if the governing board of the school district or community college district determines that it is necessary and in the best interest of the school district or community college district,

respectively, to form a school facilities improvement district pursuant to this chapter to finance any or all of the improvements set forth in Section 15302. As a part of that determination, the governing board of the school district or community college district shall make a finding that the overall cost of financing the bonds issued pursuant to this chapter would be less than the overall cost of other school facilities financing options available to the school district or community college district, including, but not limited to, issuing bonds pursuant to the Mello-Roos Communities Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code). The governing board of the school district or community college district proceeding under this subdivision shall define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the school district or community college district, except that the boundaries may not include all or a portion of the territory of the community facilities district described in subdivision (a).

(d) The governing body of a school district or community college district that proceeds under this chapter shall comply with the filing requirements established by Section 54902 of the Government Code. Any plat or map that is filed pursuant to this subdivision shall specifically identify any property located within the school district or community college district that is not located within the improvement district established by the school district or community college district pursuant to this chapter.

SEC. 9. Section 15303 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 10. Section 15303 is added to Article 1 (commencing with Section 15300) of Chapter 2 of Part 10 of the Education Code, to read:

15303. This chapter shall not be operative in any county or counties until the board of supervisors of either the county in which the county superintendent of schools having jurisdiction over the school district or community college district in which the school facilities improvement district is located or, if a school facilities improvement district lies in two or more counties, the board of supervisors for those counties, by resolution adopted by a majority vote of the board of supervisors, makes this chapter applicable in the county or counties.

SEC. 11. Section 15320 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 12. Section 15320 is added to Article 2 (commencing with Section 15320) of Chapter 2 of Part 10 of the Education Code, to read:

15320. Whenever the governing board of a school district or community college district meeting the requirements set forth in Section 15301 determines that a school facilities improvement district is necessary, the governing board shall adopt a resolution of intention that states all of the following:

(a) The intention of the governing board to form the proposed school facilities improvement district.

(b) The purpose for which the proposed school facilities improvement district is to be formed, consistent with the requirements set forth in Section 15302.

(c) The estimated cost of the school facilities improvement project.

(d) That any taxes levied for the purpose of financing the general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities

improvement district.

(e) That a map showing the exterior boundaries of the proposed school facilities improvement district is on file with the governing board of the school district or community college district and is available for inspection by the public. The boundaries of the school facilities improvement district shall meet the requirements set forth in subdivision (b) of Section 15301.

(f) The time and place for a hearing by the governing board on the formation of the proposed school facilities improvement district.

(h) That any interested persons, including all persons owning lands in the school district or community college district, or in the proposed school facilities improvement district, may appear and be heard.

SEC. 13. Section 15322 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 14. Section 15322 is added to Article 2 (commencing with Section 15320) of Chapter 2 of Part 10 of the Education Code, to read:

15322. The governing board of the school district or community college district shall hold the hearing provided for by resolution of intention at the time and place fixed by that resolution. Any interested person, including, but not limited to, all persons owning land in the school district, or in the proposed school facilities improvement district or community college district, may appear and be heard concerning any matters set forth in the resolution of intention.

SEC. 15. Section 15323 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 16. Section 15323 is added to Article 2 (commencing with Section 15320) of Chapter 2 of Part 10 of the Education Code, to read:

15323. At the hearing, the governing board of the school district or community college district may adopt a resolution proposing modifications, consistent with Section 15302, of the purpose stated in the resolution of intention. A resolution proposing modification shall describe the proposed modifications, state the change, if any, in the estimated cost of carrying out the purpose, and shall fix a time and place for hearing by the governing board.

SEC. 17. Section 15324 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 18. Section 15324 is added to Article 2 (commencing with Section 15320) of Chapter 2 of Part 10 of the Education Code, to read:

15324. The governing board of the school district or community college district shall publish the resolution proposing the modifications to the resolution of intention once in the same newspaper in which the resolution of intention was published at least 14 days prior to the date of hearing on the proposed modifications.

SEC. 19. Section 15326 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 20. Section 15326 is added to Article 2 (commencing with Section 15320) of Chapter 2 of Part 10 of the Education Code, to read:

15326. At the conclusion of the hearing on the resolution of intention and of the hearing, if any, upon proposed modifications, the governing board may by resolution order the school facilities improvement district formed for the purpose and with the boundaries described in the resolution of intention, and, if relevant, the resolution proposing modifications. The resolution ordering the

school facilities improvement district formed shall state the estimated cost of carrying out the purpose described in the resolution. The resolution shall also number and designate the school facilities improvement district substantially as "School Facilities Improvement District of the _____ School District" or "School Facilities Improvement District of the _____ Community College District."

SEC. 21. Section 15327 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 22. Section 15327 is added to Article 2 (commencing with Section 15320) of Chapter 2 of Part 10 of the Education Code, to read:

15327. The governing board of the school district or community college district in which a school facilities improvement district has been formed shall have the same rights, powers, duties and responsibilities with respect to the formation and government of school facilities improvement district as the governing board has with respect to the school district or community college district.

SEC. 23. Section 15334.5 of the Education Code, as added by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 24. Section 15334.5 is added to Article 3 (commencing with Section 15330) of Chapter 2 of Part 10 of the Education Code, to read:

15334.5. Notwithstanding any other provision of law, no bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106. No bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school facilities improvement district to exceed the limitation of indebtedness specified in Sections 15330 and 15332.

SEC. 25. Section 15336 of the Education Code, as added by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 26. Section 15336 is added to Article 3 (commencing with Section 15330) of Chapter 2 of Part 10 of the Education Code, to read:

15336. Within 30 days after the end of each fiscal year, the governing board of the school district or community college district in which the school facilities improvement district is located shall submit a report containing the information to an election held pursuant to Article 4 (commencing with Section 15340), to the county superintendent of schools who has jurisdiction over the school district or community college district:

(a) The total amount of the bond issue, bonded indebtedness, or other indebtedness involved.

(b) The percentage of qualified electors who are residents of the school facilities improvement district who voted at the election.

(c) The results of the election, with the percentage of votes cast for and against the proposition involved.

SEC. 27. Section 15342 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 28. Section 15342 is added to Article 4 (commencing with Section 15340) of Chapter 2 of Part 10 of the Education Code, to read:

15342. Any one or more of the purposes enumerated in Section 15302, except that of refunding any outstanding valid indebtedness of the school facilities improvement district evidenced by bonds, may, by order of the governing board of the school district or community

college district in which the school facilities improvement district is located, be united and voted upon in a single proposition.

SEC. 29. Section 15349 of the Education Code, as amended by Chapter 1072 of the Statutes of 1996, is repealed.

SEC. 30. Section 15349 is added to Article 4 (commencing with Section 15340) of Chapter 2 of Part 10 of the Education Code, to read:

15349. If it appears from the certificate of election results that two-thirds of the votes cast by the voters voting on the proposition of issuing bonds of the school facilities improvement district are in favor of issuing the bonds, the governing board of the school district or community college district in which the school facilities improvement district is located shall cause an entry of that fact to be made upon its minutes. The governing board of the school district or community college district shall then certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the school district or community college district, all proceedings had in the premises. The county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county.

SEC. 31. Section 15350 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 32. Section 15350 is added to Article 5 (commencing with Section 15350) of Chapter 2 of Part 10 of the Education Code, to read:

15350. Bonds of a school facilities improvement district shall be offered for sale by the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located as soon as possible, when appropriate, following receipt of a resolution duly adopted by the governing board of that school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds.

SEC. 33. Section 15351 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 34. Section 15351 is added to Article 5 (commencing with Section 15350) of Chapter 2 of Part 10 of the Education Code, to read:

15351. When authorized by the governing board of the school district or community college district in which the school facilities improvement district is located, bonds of the school facilities improvement district may be offered for sale as a group by the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located, at a time determined by the board of supervisors following receipt of a resolution duly adopted by the governing board of that school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. Bidders shall be required to bid a lump-sum bid on all bonds as a group. If bids satisfactory to the governing board of each school district or community college district in which a school facilities improvement

district is located are received, the bonds offered for sale shall be awarded to the bidder whose bid will result in the lowest net interest cost for the group or for the bonds of any district included within the group. Bonds shall be issued and sold in the name of each school facilities improvement district in the same manner as provided in this chapter.

SEC. 35. Section 15352 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 36. Section 15352 is added to Article 5 (commencing with Section 15350) of Chapter 2 of Part 10 of the Education Code, to read:

15352. The bonds shall be issued in the name of the school facilities improvement district and shall be designated "Bonds of the School Facilities Improvement District of the _____ School District" or "Bonds of the School Facilities Improvement District of the _____ Community College District" and each bond and all interest coupons shall state that the tax for the payment thereof shall be limited to annual taxes to be levied upon and collected from the lands within the school facilities improvement district.

SEC. 37. Section 15353 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 38. Section 15353 is added to Article 5 (commencing with Section 15350) of Chapter 2 of Part 10 of the Education Code, to read:

15353. The bonds shall be issued in the denomination or denominations as the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located may prescribe.

SEC. 39. Section 15356 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 40. Section 15356 is added to Article 5 (commencing with Section 15350) of Chapter 2 of Part 10 of the Education Code, to read:

15356. (a) (1) The board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located shall prescribe the form of the bonds by an order entered upon its minutes.

(2) The bonds shall be signed by the chairperson of the board of supervisors, or by any other member thereof as the board of supervisors shall, by resolution adopted by a four-fifths vote of all its members, authorize and designate for that purpose, and also signed by the treasurer of the county, and shall be countersigned by the clerk of the board of supervisors or by a deputy of either of the officers. Unless the board of supervisors otherwise provides, all the signatures and countersignatures may be printed, lithographed, engraved, or otherwise mechanically reproduced except that one of the signatures or countersignatures to the bonds shall be manually affixed. Any signature may be affixed in accordance with the provisions of the Uniform Facsimile Signatures of Public Officials Act, Chapter 6 (commencing with Section 5500) of Title 1 of the Government Code.

(3) All expenses incurred for the preparation, sale, and delivery of the school facilities improvement bonds, including but not limited to, fees of an independent financial consultant, the publication of the official notice of sale of the bonds, the preparation, printing, and distribution of the official statement, the obtaining of a rating, the purchase of insurance insuring the prompt payment of interest and principal, the preparation of the certified copy of the

transcript for the successful bidder, the printing of the bonds, and legal fees of independent bond counsel retained by the school facilities improvement district issuing the bonds are legal charges against the funds of the school facilities improvement district issuing the bonds and may be paid from the proceeds of sale of the bonds.

(b) Notwithstanding subdivision (a), the board of supervisors may, in its discretion, determine that all of the required signatures and countersignatures shall be by facsimiles, provided, however, that the bonds shall not be valid or become obligatory for any purpose until manually signed by an authenticating agent duly appointed by the board or its authorized designee.

SEC. 41. Section 15357 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 42. Section 15357 is added to Article 5 (commencing with Section 15350) of Chapter 2 of Part 10 of the Education Code, to read:

15357. The board of supervisors shall establish within the county treasury a school facilities improvement fund for each school facilities improvement district the purpose of depositing the proceeds of the bonds issued pursuant to this chapter. The board of supervisors shall also establish within the county treasury a school facilities improvement bond interest

and sinking fund for each school facilities improvement district.

SEC. 43. Section 15358 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 44. Section 15358 is added to Article 5 (commencing with Section 15350) of Chapter 2 of Part 10 of the Education Code, to read:

15358. (a) The bonds shall be issued by the board of supervisors, payable out of the interest and sinking fund of the school facilities improvement district. The board of supervisors, in its discretion, and without further authorization from the governing board of the school district or community college district in which the school facilities improvement district is located, may sell the bonds at a negotiated sale or by competitive bidding. The bonds may be sold at a discount not to exceed 5 percent and at an interest rate not exceeding the maximum permitted by Section 15354. If the sale is by competitive bid, the board of supervisors shall comply with the provisions of Sections 15359 and 15359.1. The bonds shall be sold by the board of supervisors no later than the date designated by the governing board of the school district or community college district in which the school facilities improvement district is located as the final date for the sale of the bonds.

(b) The proceeds of the sale of the bonds, exclusive of any premium received, shall be deposited in the county treasury to the credit of the school facilities improvement fund of the school facilities improvement district. The proceeds deposited shall be drawn out as necessary to finance the purposes approved by the voters pursuant to this chapter. The bond proceeds withdrawn shall not be applied to any other purposes than those for which the bonds were issued. Any premium or accrued interest received from the sale of the bonds shall be deposited in the interest and sinking fund of the county treasury established for the school facilities improvement district.

SEC. 45. Section 15359 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 46. Section 15359 is added to Article 5 (commencing with Section 15350) of Chapter 2 of Part 10 of the Education Code, to

read:

15359. Before selling the bonds, or any part of them, the board of supervisors as appropriate, shall advertise for bids at least two weeks in some daily or weekly newspaper of general circulation published in the county whose county superintendent of schools has jurisdiction over the governing board of the school district or community college district in which the school facilities improvement district is located or if there is no newspaper published in the county, in a newspaper published in some other county in the state having a general circulation in the county.

SEC. 47. Section 15359.1 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 48. Section 15359.1 is added to Article 5 (commencing with Section 15350) of Chapter 2 of Part 10 of the Education Code, to read:

15359.1. (a) If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder or bidders, and the county clerk shall prepare and certify to all of the proceedings on file in his or her office relative to the issuance and sale of the bonds, which transcript of proceedings shall be delivered to the successful bidder or bidders without charge. If no bids are received, or if the board determines that the bids received exceed either the maximum acceptable interest rate prescribed by the governing board or the maximum rate prescribed by Section 15353, or that they are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and without further authorization from the governing board of the school district or community college district in which the school facilities improvement district is located, either readvertise or sell the bonds at private sale.

(b) For the purpose of determining whether or not a bid exceeds the maximum acceptable interest rate, the interest rate of that bid shall be deemed to be the interest rate resulting from the total net interest cost arrived at by computing the total amount of interest that the school facilities improvement district would be required to pay from the date of the bonds to the respective maturity dates thereof at the rate or rates specified in the bid and by deducting therefrom any premium bid.

SEC. 49. Section 15359.2 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 50. Section 15359.2 is added to Article 5 (commencing with Section 15350) of Chapter 2 of Part 10 of the Education Code, to read:

15359.2. (a) The issuing school facilities improvement district, by action of the governing board of the school district or community college district in which the school facilities improvement district is located, may prepare, or have prepared, bond brochures to serve as a prospectus for bond buyers to assist in the satisfactory sale of the bonds, the expense of the brochures shall be payable out of the funds of the district. The brochures may be prepared only after the issuance of the bonds to be sold has been approved by the electors of the school facilities improvement district pursuant to Article 4 (commencing with Section 15340).

(b) The issuing school facilities improvement district by action of the governing board in which the school facilities improvement district is located may expend funds of the school facilities improvement district for the purposes of advertising the availability of the bonds for purchase in any publication or newspaper that in the opinion of that governing board will give notice to prospective bond buyers that the bonds are available for purchase by bond buyers.

SEC. 51. Section 15380 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 52. Section 15380 is added to Article 8 (commencing with Section 15380) of Chapter 2 of Part 10 of the Education Code, to read:

15380. If any bonds authorized under this chapter have not been offered for sale for one year from the date of the election at which they were authorized or remain unsold for a period of six months after having been offered for sale in the manner prescribed by the board of supervisors, the governing board of the school district or community college district in which the school facilities improvement district is located and for which the bonds were authorized, may petition the board of supervisors that has jurisdiction of the issuance and sale of the bonds to cause the unsold bonds to be canceled.

SEC. 53. Section 15381 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 54. Section 15381 is added to Article 8 (commencing with Section 15380) of Chapter 2 of Part 10 of the Education Code, to read:

15381. Upon receiving the petition, signed by a majority of the members of the governing board of the school district or community college district in which the school facilities improvement district is located, the board of supervisors shall fix a time for a hearing, which shall not be more than 30 days after receipt of the petition, and shall cause a notice stating the time and place of the hearing, and the object of the petition in general terms, to be published for 10 days prior to the hearing, in a newspaper published in the school facilities improvement district if there is one, and if there is no newspaper published in the school facilities improvement district, in a newspaper published at the county seat of the county.

SEC. 55. Section 15384 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 56. Section 15384 is added to Article 8 (commencing with Section 15380) of Chapter 2 of Part 10 of the Education Code, to read:

15384. The governing board of a school district or community college district in which a school facilities improvement district is located may petition the board of supervisors to cancel the remaining authorization of that district to issue and sell bonds resulting from any particular school bond election after the sale of at least 90 percent of the bonds authorized at the election if the amount of the remaining authorization is not more than twenty-five thousand dollars (\$25,000) and in the opinion of the governing board the sale of the remaining bonds would not be economically justified. Sections 15381 and 15382 shall be applicable and at or following the hearing therein provided for, the board of supervisors, if it determines that the public interest will be served thereby, may make and enter an order in the minutes of its proceedings that the remaining authorization be canceled. Upon the entry of the order, the vote by which the remaining authorization was created shall cease to be of any validity with respect to the remaining authorization.

SEC. 57. Section 15390 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 58. Section 15390 is added to Article 9 (commencing with Section 15390) of Chapter 2 of Part 10 of the Education Code, to read:

15390. The governing board of a school district or community

college district in which a school facilities improvement district is located may purchase in the open market bonds issued by the school facilities improvement district with available funds from the school facilities improvement fund.

SEC. 59. Section 15391 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 60. Section 15391 is added to Article 9 (commencing with Section 15390) of Chapter 2 of Part 10 of the Education Code, to read:

15391. When any bonds issued by a school facilities improvement district have been purchased by the governing board of the school district or community college district in which the school facilities improvement district is located, the bonds shall be deemed canceled and of no further validity. The governing board of the school district or community college district in which the school facilities improvement district is located shall immediately, after purchasing the bonds, notify the board of supervisors of its action, describing the bonds purchased. At its first meeting thereafter, the board of supervisors shall note the purchase and cancellation of the bonds in the minutes of its proceedings.

SEC. 61. Section 15400 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 62. Section 15400 is added to Article 10 (commencing with Section 15400) of Chapter 2 of Part 10 of the Education Code, to read:

15400. (a) The board of supervisors, by an order entered upon its minutes, shall fix the time when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. If the governing board of the school district or community college district in which the school facilities improvement district is located has prescribed in its resolution the time or times when the whole or any part of the bonds shall be payable, the times and amounts shall be fixed by the order of the board of supervisors.

(b) Any bonds may be issued subject to call and redemption before maturity at the option of the governing board of the school district or community college district in which the school facilities improvement district exists. The governing board may include in its resolution a requirement that all or any part of the bonds shall be issued subject to call and redemption before maturity and the price or prices at which said bonds shall be redeemed. The board of supervisors, in its order fixing the form of the bonds and the maturities thereof, shall provide that the bonds be redeemable at the option of the governing board and at the price or prices fixed in the resolution. Bonds issued subject to call and redemption prior to maturity shall contain a recital to that effect, and no bond shall be subject to call or redemption prior to maturity unless it contains the recital. The board of supervisors in its order shall fix the method of giving notice of redemption to holders of bonds to be redeemed.

SEC. 63. Section 15401 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 64. Section 15401 is added to Article 10 (commencing with Section 15400) of Chapter 2 of Part 10 of the Education Code, to read:

15401. The board of supervisors, at the direction of the governing board of the school district or community college district in which the school facilities improvement district is located, may divide the principal amount of bonds authorized at any election into two or more series and may fix different dates for the bonds of each

series, in which event the maximum maturity date of the bonds shall be calculated from the date of each series respectively. When the issuance of bonds shall have been authorized pursuant to two or more propositions submitted at the same or different elections, all or any part of the bonds not theretofore issued may be combined and issued and sold as one or more series.

SEC. 65. Section 15403 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 66. Section 15403 is added to Article 10 (commencing with Section 15400) of Chapter 2 of Part 10 of the Education Code, to read:

15403. The principal and interest on the bonds shall be paid by the county treasurer of the county in which the superintendent of schools has jurisdiction of the school district or community college district in which the school facilities improvement district is located, at the place required by the terms of the bonds, upon presentation and surrender of warrants drawn by the county auditor in payment thereof, after he or she has canceled the bonds and coupons, or upon the receipt of the registered owner, if the bonds are registered, after a proper warrant has been drawn by the auditor, out of the fund provided for their payment.

SEC. 67. Section 15404 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 68. Section 15404 is added to Article 10 (commencing with Section 15400) of Chapter 2 of Part 10 of the Education Code, to read:

15404. Upon the order of the auditor, any money remaining in the interest and sinking fund of any school facilities improvement district after the payment of all bonds and coupons payable from the fund, or any money in excess of an amount sufficient to pay all unpaid bonds and coupons payable from the fund, shall be transferred to the general fund of the governing board of the school district or community college district in which the school facilities improvement district is located.

SEC. 69. Section 15405 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 70. Section 15405 is added to Article 10 (commencing with Section 15400) of Chapter 2 of Part 10 of the Education Code, to read:

15405. Any money paid into the county treasury of the county and credited to the interest and sinking fund of any school facilities improvement district remaining after the payment of all bonds and coupons payable from the fund, or which is in excess of an amount sufficient to pay all unpaid bonds and coupons payable from the fund, shall be transferred to the special reserve fund of the school district or community college district in which the school facilities improvement district is located and may be used only for the purpose specified in Section 42840.

SEC. 71. Section 15410 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 72. Section 15410 is added to Article 11 (commencing with Section 15410) of Chapter 2 of Part 10 of the Education Code, to read:

15410. The board of supervisors of the county in which the county superintendent of schools has jurisdiction over a school district or community college district in which a school facilities improvement district is located shall annually at the time of making the levy of taxes for county purposes levy a tax for that year upon the property in the school facilities improvement district for the interest and redemption of all outstanding bonds of the district. The tax shall

not be less than sufficient to pay the interest on the bonds as it becomes due and to provide a sinking fund for the payment of the principal on or before maturity and may include an allowance for an annual reserve, established for the purpose of avoiding fluctuating tax levies. The tax shall be sufficient to provide funds for the payment of the interest on the bonds as it becomes due and also that part of the principal and interest as is to become due before the proceeds of a tax levied at the time for making the next general tax levy can be made available for the payment of the principal and interest.

SEC. 73. Section 15411 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 74. Section 15411 is added to Article 11 (commencing with Section 15410) of Chapter 2 of Part 10 of the Education Code, to read:

15411. All taxes levied, when collected, shall be paid into the county treasury of the county whose superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located and on behalf of which the tax was levied. All collected tax revenues shall be used exclusively for the payment of the principal and interest of the bonds of the school facilities improvement district, including any sinking fund.

SEC. 75. Section 15412 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 76. Section 15412 is added to Article 11 (commencing with Section 15410) of Chapter 2 of Part 10 of the Education Code, to read:

15412. The board of supervisors of the county whose superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located, shall annually at the time of making the levy of taxes for county purposes estimate the amount of money required to meet the payment of the principal and interest on bonds of the district authorized by the electors of the district and not sold, and that the governing board of the school district or community college district informs the board on their belief will be sold before the next tax levy, and the board of supervisors shall levy a tax sufficient to pay the principal and interest so estimated.

SEC. 77. Section 15421 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 78. Section 15421 is added to Article 12 (commencing with Section 15420) of Chapter 2 of Part 10 of the Education Code, to read:

15421. (a) The tax shall be entered upon the assessment roll and collected in the same manner as other on real property.

(b) The tax when collected shall be paid into the county treasury of the county. The treasurer of any county, other than the one whose superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located, shall, upon order of the county auditor, pay the sum collected on account of the tax into the treasury of the county whose superintendent of schools has jurisdiction over the school district or community college district in which the community facilities district is located.

SEC. 79. Section 15425 of the Education Code, as amended by Chapter 1072 of the Statutes of 1972, is repealed.

SEC. 80. Section 15425 is added to Article 13 (commencing with Section 15425) of Chapter 2 of Part 10 of the Education Code, to

read:

15425. Notwithstanding any other provision of this chapter, it is the intent of the Legislature that the rate of taxes levied annually upon the property in a school facilities improvement district formed pursuant to subdivision (a) of Section 15301 not be greater than the rate of the annual special tax levied upon parcels in the same school district or community college district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code. A determination by the governing board of a school district or community college district, made at the time bonds are sold pursuant to this chapter, that the rate of taxes to be levied annually upon the property in the school facilities improvement district, based upon tax rate estimates prepared pursuant to Section 9401 of the Elections Code, does not exceed the rate of the annual special tax levied upon parcels in the same school district or community college district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, shall be conclusive evidence of compliance with the intent of this section.

SEC. 81. Section 17701.5 of the Education Code, as added by Chapter 478 of the Statutes of 1996, is repealed.

SEC. 82. Section 17001.5 is added to the Education Code, to read:

17001.5. (a) The Legislature hereby finds and declares the following:

(1) Some believe that the school facilities construction requirements set forth in this chapter have become lengthy, complex, and heavily controlled by the various state agencies involved in the review and approval process. As a result, some believe that school facilities are often overcrowded and construction costs are higher than necessary.

(2) Some believe that a streamlining of the approval process set forth in this chapter is necessary to efficiently provide the children of the state with needed classrooms in the most expeditious and cost-effective manner. Some expect that other savings can be achieved by increased standardization of plans for school design and construction and the appropriate use of portable classrooms.

(b) Not later than July 1, 1997, the Joint Committee on School Facilities shall complete and submit a report to the Governor and the Legislature containing recommendations for doing the following:

(1) Increasing privatization and standardization, and other measures for streamlining the approval process set forth in this chapter.

(2) Reducing the costs of school construction.

(3) Increasing the local authority over the approval of site acquisition and of plans and specifications for school facilities construction.

SEC. 83. Section 17016 is added to the Education Code, to read:

17016. (a) The board, by the adoption of rules, may establish priorities for the construction and leasing of projects to those school districts the pupils of which will benefit most. The board may make exceptions from established priorities when it determines that to do so will benefit the pupils affected.

(b) The board may adopt rules establishing priorities for the acquisition and leasing of portable classrooms to county superintendents of schools that will most benefit pupils needing a county community school. The board shall require each county superintendent of schools who leases portable classrooms pursuant to

Section 17717.2 to demonstrate that the portable classrooms are utilized solely for operation of a county community school.

SEC. 84. Section 17017.2 is added to the Education Code, to read:

17017.2. (a) The board may own, have maintained, and lease portable classrooms to any county superintendent of schools who provides a county community school program, as defined in Section 1986. These portable classrooms shall be adequately equipped to meet the educational needs of these pupils, including, but not limited to, sinks and restroom facilities.

(b) The board, with the advice of the Superintendent of Public Instruction, may have portable classrooms constructed, furnished, or equipped, and may otherwise require whatever work is necessary to place portable classrooms for county community schools where needed, including the acquisition and preparation of sites. The board shall, in consultation with the Superintendent of Public Instruction, establish standards for the acquisition of land, with land acquisition limited to no more than 10,000 square feet per portable classroom, waivable by the board only as needed to meet local zoning and land use requirements or health and safety considerations.

(c) A county superintendent of schools who desires to lease portable classrooms shall have prepared for the board's use performance specifications for portable classrooms and bids for their construction that can be solicited from more than one responsible bidder.

(d) No portable classroom shall be made available to a county superintendent of schools unless the county superintendent of schools furnishes evidence, satisfactory to the board, that the county superintendent of schools has no other facility available for rental, lease, or purchase in the geographic service area that is economically or otherwise feasible.

(e) If at any time the board determines that a lessee's need for particular portable classrooms that were made available to the lessee pursuant to this chapter has ceased, the board may take possession of the portable classrooms and may lease them to other county superintendents of schools or, if there is no longer a need for portable classrooms, the board may dispose of them to public or private parties in the manner it deems to be in the best interest of the state.

(f) This section does not limit the authority of a county superintendent of schools to provide facilities without assistance from the board for pupils who are enrolled in a county community school.

SEC. 85. Section 17032.5 is added to the Education Code, to read:

17032.5. The board shall establish the annual rent and conditions to be met by the lessee of a portable classroom leased pursuant to Section 17717.2 and shall require lessees to undertake all necessary maintenance, repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee.

SEC. 86. Section 17042 is added to the Education Code, to read:

17042. (a) The board, by the adoption of rules, shall provide for the manner of determining the area of adequate school construction existing in an applicant school district at the time of application. Those rules shall define and provide for the method of determining building areas that are to be included in, in whole or in part, or to be excluded from, the area of existing adequate school construction.

Any building to which Article 3 (commencing with Section 39140) of Chapter 1 of Part 23 of Division 3 of Title 2 does not apply shall not be considered adequate school construction for the purpose of determining the maximum total building area per attendance unit.

The board may make exceptions to the provisions of this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

(b) For the purposes of this chapter, the area of adequate school construction existing in an applicant school district does not include any of the following:

(1) Any portable classroom made available to the district under Chapter 25 (commencing with Section 17785).

(2) In any school operated on a year-round schedule, any building area that has been in continuous use during the preceding five-year period primarily for the operation of any preschool program or programs.

(3) Any building area, not to exceed the area that is equivalent to one classroom per schoolsite, used to provide support services pursuant to Chapter 5 (commencing with Section 8800) of Part 6 or to provide integrated children's services pursuant to Section 18986.40 of the Welfare and Institutions Code. A school shall meet the definition of a "qualifying school" under paragraph (1) of subdivision (h) of Section 8802 to qualify for this exemption from the area of adequate school construction.

(4) Any classroom acquired or constructed and continuously used by the school district primarily for the purpose of reducing class size in kindergarten or in any of grades 1 to 3, inclusive, pursuant to the school district's participation in the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28.

(5) Any classroom acquired or constructed for the purpose of operating a community day school pursuant to Section 48660, if the classroom is not located on a regular elementary, middle, junior high, or senior high school site.

(c) The board may make exceptions to this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

SEC. 87. Section 17042.7 of the Education Code, as added by Chapter 277 of the Statutes of 1996, is repealed.

SEC. 88. Section 17042.7 is added to the Education Code, to read:

17042.7. (a) For any project application filed or amended on or after January 1, 1993, the area of adequate school construction existing in the applicant school district or, where appropriate, in the attendance area, at the time of application shall be calculated pursuant to the following formula:

(1) Identify by grade level all teaching stations existing in the school district or, where appropriate, the attendance area, as of January 1, 1993. For the purposes of this section, "teaching station" means any space that was constructed or reconstructed to serve as an area in which to provide pupil instruction.

(2) Determine the maximum pupil loading figure for each grade level pursuant to the district pupil loading standards in effect on January 1, 1993. For the purposes of this section, the "district pupil loading standards" are those pupil loading standards in effect in a school district on July 1, 1992, as a result of actions including, but not necessarily limited to, the execution of a collective bargaining agreement or the adoption of a district policy by the governing board of the school district. In no event may this figure be more than the maximum pupil loading standards established

by the board, or less than three pupil units lower than those maximum pupil loading standards.

(3) Multiply the figure determined under paragraph (2) for each grade level by the number of teaching stations for the particular grade level, as determined under paragraph (1).

(4) Multiply the product determined under paragraph (3) by the maximum area allowance established for that grade level under this article.

(5) The sum of these computations for each grade level, as determined under paragraphs (1) to (4), inclusive, shall be the total area of adequate school construction existing in the district or attendance area pursuant to this formula.

(b) For purposes of this section, a school district that is participating in a class size reduction program set forth in this code, other than the Class Size Reduction Program (Ch. 6.10 (commencing with Section 52120) of Part 28), shall use the pupil loading standard established pursuant to that program.

(c) The area of existing adequate school construction calculated under this section shall not include, in any school operated on a year-round schedule, any teaching station that has been in continuous use during the preceding five-year period primarily for the operation of a preschool program or programs.

SEC. 89. Section 17042.9 is added to the Education Code, to read:

17042.9. (a) Notwithstanding any other provision of law, a school district that complies with the requirements of subdivision (b) may replace a portable classroom, as defined in Section 17742.5, that has been leased or owned by the district for 20 years or more, with a permanent building if the resulting area of new building construction is no greater than the area that would be authorized under this chapter for the lease or purchase of a portable classroom.

(b) A school district that utilizes subdivision (a) shall fund its expenses incurred thereby through the issuance of general obligation bonds by the district or by the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) or by any other financing mechanism that does not encumber the school district's general fund.

SEC. 90. Section 17047.6 is added to the Education Code, to read:

17047.6. The board, with the advice of the Superintendent of Public Instruction, may determine the eligibility of county superintendents of schools to lease portable classrooms provided that a county superintendent of schools is eligible to receive one portable classroom pursuant to this section and Section 17717.2 for each 15 units of average daily attendance at county community schools in excess of the amount of average daily attendance claimed by the county superintendent of schools in the prior fiscal year except that, for pupils who are enrolled in a county community school and on independent study, only time spent in the classroom shall be included in the calculation of average daily attendance.

SEC. 91. Section 17150 is added to Chapter 16 (commencing with Section 17150) of Part 10 of the Education Code, to read:

17150. (a) Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 28 (commencing with Section 17870), the school district shall notify the county superintendent of schools and the county auditor. The superintendent of the school district shall provide the repayment schedules for

that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools and the county auditor may comment publicly to the governing board of the school district regarding the capability of the school district to repay that debt obligation.

(b) Upon the approval by the county board of education to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing pursuant to Chapter 28 (commencing with Section 17870), the county superintendent of schools or superintendent of a school district for which the county board serves as governing board shall notify the Superintendent of Public Instruction. The county superintendent of schools or the superintendent of a school district for which the county board serves as the governing board shall provide the repayment schedules for that debt obligation and evidence of the ability of the county office of education or school district to repay that obligation, to the Superintendent of Public Instruction, the governing board, and the public. Within 15 days of the receipt of the information the Superintendent of Public Instruction may comment publicly to the county board of education regarding the capability of the county office of education or school district to repay that debt obligation.

SEC. 92. Section 17182 is added to the Education Code, to read:

17182. (a) Except as otherwise provided in subdivision (b), all expenses incurred by the authority in implementing this chapter shall be payable solely from funds appropriated for purposes of this chapter, and the authority shall not incur liabilities in excess of the amount of those funds.

(b) The authority may request a loan by the Pooled Money Investment Board from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, and may execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. The loan shall be deposited in the fund for the purposes of carrying out the provisions of this chapter. The amount of the loan shall not exceed the amount of the unsold bonds that the authority by resolution, has authorized to be sold for the purposes of this chapter.

SEC. 93. Section 17183 is added to the Education Code, to read:

17883. (a) From time to time, the authority may, by resolution, issue its revenue bonds in order to provide funds for any of the purposes of this chapter. Bonds may be issued to finance any of the following:

(1) A single project or financing of working capital for a single participating district.

(2) A series of projects or financings of working capital for a single participating district.

(3) A single project or financing of working capital for several participating districts.

(4) Several projects or financing of working capital for several participating districts.

(5) A joint venture school facilities construction project undertaken pursuant to Article 5 (commencing with Section 17760) of Chapter 22.

(b) Except as otherwise expressly provided by the authority, all revenue bonds shall be payable from any available revenues or moneys of the authority not otherwise pledged, subject only to any agreements with holders of particular bonds or notes pledging any particular revenue or moneys. Notwithstanding that revenue bonds

issued pursuant to this section may be payable from a special fund, the revenue bonds shall be, and shall be deemed to be for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds for registration.

(c) The revenue bonds of the authority may be issued as serial bonds, term bonds, or the authority, in its discretion, may issue bonds of both types. The issuance shall be in accordance with the indenture, trust agreement, or resolution relating to the revenue bonds, which shall provide all of the following:

- (1) The date or dates of the bonds.
- (2) The date or dates upon which the bonds will mature, not to exceed 40 years from their respective dates.
- (3) The interest rate or rates, or methods of determining the interest rate or rates, of the bonds.
- (4) When the bonds are payable.
- (5) The denominations of the bonds.
- (6) The form of the bonds, which shall be either bearer or registered.
- (7) The registration privileges of the bonds.
- (8) The manner in which the bonds are to be executed.
- (9) The place or places at which the bonds shall be payable in lawful money of the United States of America.
- (10) The terms of redemption of the bonds.

(d) After giving due consideration to the recommendations of the participating district or districts, the revenue bonds of the authority shall be sold by the Treasurer at either a public or private sale at a price or prices, and upon the terms and conditions prescribed by the authority. The revenue bonds of the authority may be sold at, above, or below the par value of the bonds.

(e) Pending the preparation of the definitive bonds, the authority may issue interim receipts or certificates or temporary bonds which shall be exchanged for the definitive bonds.

(f) Any resolution authorizing the issuance of any bonds of the authority, or any issue of revenue bonds of the authority, may include any of the following provisions:

- (1) Provisions pledging all or any part of the proceeds of the bonds or revenue of a project or loan.
- (2) Provisions concerning the replacement of mutilated, destroyed, stolen, or lost bonds.
- (3) Provisions specifying insurance to be maintained on the project and the authorized uses of the proceeds of the insurance.
- (4) Covenants against the mortgaging or otherwise encumbering, selling, leasing, pledging, placing a charge upon, or otherwise disposing of the project prior to the payment of the bonds issued to finance the project.

(5) Provisions specifying the events of default, terms upon which the bonds may be declared due before maturity, and the terms upon which the declaration and its consequences may be waived.

(6) The rights, liabilities, powers, and duties arising upon the breach of any covenants, conditions, or obligations.

(7) Vesting of the right to enforce covenants in a trustee.

(8) The terms upon which all or any percentage of the bondholders may enforce covenants or duties.

(9) Procedures for amending the terms of the resolution, with or without the consent of the holders of a specified number of bonds.

(10) Provision for any other acts or things deemed necessary, convenient, or desirable by the authority to secure the bonds or improve their marketability.

(g) The validity of the authorization and issuance of any bond issue shall not be affected by proceedings for the acquisition,

construction, or improvement of any project, or by contracts relating to those proceedings. Any resolution authorizing the issuance of any bonds of the authority may provide authorization for the bonds to bear a statement certifying that they are issued pursuant to this chapter. Bonds bearing such a statement shall be conclusively deemed valid and issued in conformity with this chapter. Reference on the face of the bonds to the resolution by its date of adoption shall incorporate the provisions of the resolution and of this chapter into the terms of the bonds.

(h) Members of the authority, or any person executing the revenue bonds of the authority, shall not incur personal liability on the bonds, nor shall these persons incur personal liability or accountability by reason of the issuance of the revenue bonds of the authority.

(i) The authority is authorized, out of any funds available for that purpose, to purchase revenue bonds of the authority. The authority may hold, pledge, cancel, or resell any bonds purchased under the authority of this subdivision, subject to, and in accordance with, agreements with bondholders.

(j) The financing or refinancing of projects or working capital may be provided pursuant to this chapter by means other than revenue bonds, at the discretion of the authority, including financing or refinancing through certificates of participation, or other interests, in bonds, loans, leases, installment sales, or other agreements of the participating district or districts. In this connection, the authority may do all things and execute and deliver all documents and instruments as may be necessary or desirable with regard to issuance of the certificates of participation or other means of financing or refinancing.

(k) The authority may by resolution issue its revenue bonds in the form of commercial paper.

SEC. 94. Section 17199.3 is added to the Education Code, to read:

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time for purposes of this chapter, other than those revenue bonds under Section 17899.4, shall not exceed four hundred million dollars (\$400,000,000).

(b) The total amount of revenue bonds that may be issued under this chapter each fiscal year, for purposes of Section 17899.4 only, shall not exceed four hundred million dollars (\$400,000,000). Of that total amount of revenue bonds, not more than one hundred fifty million dollars (\$150,000,000) in revenue bonds may be issued for the purposes of joint venture school facilities construction projects undertaken pursuant to Article 5 (commencing with Section 17760) of Chapter 22. The total amount that may be outstanding at any time under this chapter, for purposes of Section 17899.4 only, shall not exceed four billion dollars (\$4,000,000,000).

(c) For purposes of subdivisions (a) and (b), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17888.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 95. Section 17199.4 is added to the Education Code, to read:

17199.4. (a) Notwithstanding any other law, any participating school district or county office of education, in connection with securing financing or refinancing of projects, except working capital, pursuant to this chapter may elect to guarantee or provide

for payment of the bonds in accordance with the following conditions:

(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds and identify a trustee appointed by the participating school district or county office of education or the authority for purposes of this section. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason, the school district or county office of education will not make the payment of principal and interest at the time the payment is required, the participating school district or county office of education shall notify the trustee of that fact and of the amount of the deficiency. The trustee shall immediately communicate that information to the Controller.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the trustee in the amount of the deficiency for the purpose of making the required payment of principal or interest, or both. The Controller shall make that apportionment only from moneys in Section A of the State School Fund designated for apportionment to the district pursuant to Section 42238 or to the county office of education pursuant to Section 2558.

(4) As an alternative to the procedures set forth in paragraphs (2) and (3), the participating school district or county office of education may provide a transfer schedule in its notice to the Controller of its election to participate under this section. The transfer schedule shall set forth amounts to be transferred to the trustee and the date for the transfers. The Controller shall, subject to the limitation in the last sentence of paragraph (3), make apportionments to the trustee of those amounts on the specified date for the purpose of making those transfers.

(b) The amount apportioned for a school district or for a county office of education pursuant to this section shall be deemed to be an allocation to the district or the county office of education for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution. For purposes of computing revenue limits pursuant to Section 42238 for any school district or pursuant to Section 2558 for any county office of education, the revenue limit for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraphs (3) and (4) of subdivision (a).

(c) (1) School districts or county offices of education that elect to participate under this section shall apply to the authority. The authority shall consider each of the following priorities in making funds available:

(A) First priority shall be given to school districts or county offices of education that apply for funding for instructional classroom space.

(B) Second priority shall be given to school districts or county offices of education that apply for funding of modernization of instructional classroom space.

(C) Third priority shall be given to all other eligible costs, as defined in Section 17873.

(2) The authority shall prioritize applications at appropriate intervals.

(3) A school district electing to participate under this section

that has applied for revenue bond moneys for the purposes of joint venture school facilities construction projects, pursuant to Article 5 (commencing with Section 17760) of Chapter 22, shall not be subject to the priorities set forth in paragraph (1) of this subdivision.

(d) This section shall not be construed to make the State of California liable for any payment of principal or interest on any bonds or certificates of participation within the meaning of Section 1 of Article XVI of the California Constitution or otherwise, except as expressly provided in this section.

(e) A school district that has a qualified or negative certification pursuant to Section 42131, or a county office of education that has a qualified or negative certification pursuant to Section 1240, may not participate under this section.

(f) The authority shall report to the Legislature by January 1, 2001, on the number of school districts or county offices of education electing to participate under this section and on the financial stability of the participating school districts and county offices of education.

(g) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 96. Section 17215 is added to the Education Code, to read:

17215. (a) In order to promote the safety of pupils, comprehensive community planning, and greater educational usefulness of schoolsites before acquiring title to property for a new schoolsite, the governing board of each school district, including any district governed by a city board of education, shall give the Department of Transportation written notice of the proposed acquisition and shall submit any information required by the department if the proposed site is within two miles, measured by air line, of that point on an airport runway or a potential runway included in an airport master plan that is nearest to the site.

(b) If the Department of Transportation is no longer in operation, the governing board of the school district shall, in lieu of notifying the Department of Transportation, notify the United States Department of Transportation or any other appropriate agency, in writing, of the proposed acquisition for the purpose of obtaining from the department or other agency any information or assistance that it may desire to give.

(c) The Department of Transportation shall investigate the proposed site and, within 30 working days after receipt of the notice, shall submit to the governing board a written report and its recommendations concerning acquisition of the site. As part of the investigation, the Department of Transportation shall give notice thereof to the owner and operator of the airport who shall be granted the opportunity to comment upon the proposed schoolsite.

(d) The governing board shall not acquire title to the property until the report of the Department of Transportation has been received. If the report does not favor the acquisition of the property for a schoolsite or an addition to a present schoolsite, the governing board shall not acquire title to the property until 30 days after the department's report is received and until the department's report has been read at a public hearing duly called after 10 days' notice published once in a newspaper of general circulation within the school district or, if there is no newspaper of general circulation within the school district, in a newspaper of general circulation within the county in which the property is located.

(e) Except as provided in subdivision (d), if the Department of

Transportation in its report submitted to a governing board of a school district does not favor acquisition of a proposed site that is within two miles of the centerline of an active runway, no state funds or local funds shall be apportioned or expended for the acquisition of that site, construction of any school building on that site, or for the expansion of any existing site to include that site.

(f) This section does not apply to sites acquired prior to January 1, 1966, nor to any additions or extensions to those sites.

(g) If the recommendations of the Department of Transportation are unfavorable, the recommendations shall not be overruled without the express approval of the State Allocation Board.

SEC. 97. Section 17224 of the Education Code is repealed.

SEC. 99. Section 17224 is added to the Education Code, to read:

17224. Any funds in the State School Site Utilization Fund, including interest, which are not subject to return to a school district pursuant to Section 39017 shall revert to the Deferred Maintenance Fund.

SEC. 98.5. Section 17224 is added to the Education Code, to read:

17224. Any funds in the State School Site Utilization Fund, including interest, which are not subject to return to a school district pursuant to Section 17223 shall revert to the School Major Maintenance Match Fund.

SEC. 99. Section 17716 of the Education Code, as amended by Chapter 1059 of the Statutes of 1996, is repealed.

SEC. 100. Section 17717.2 of the Education Code, as added by Chapter 1059 of the Statutes of 1996, is repealed.

SEC. 101. Section 17732.5 of the Education Code, as added by Chapter 1059 of the Statutes of 1996, is repealed.

SEC. 102. Section 17742 of the Education Code, as amended by Chapter 1059 of the Statutes of 1996, is repealed.

SEC. 103. Section 17742.9 of the Education Code, as added by Chapter 470 of the Statutes of 1996, is repealed.

SEC. 104. Section 17747.6 of the Education Code, as added by Chapter 1059 of the Statutes of 1996, is repealed.

SEC. 105. Section 17850 of the Education Code, as amended by Chapter 1071 of the Statutes of 1996, is repealed.

SEC. 106. Section 17882 of the Education Code, as amended by Chapter 1071 of the Statutes of 1996, is repealed.

SEC. 107. Section 17883 of the Education Code, as amended by Chapter 1071 of the Statutes of 1996, is repealed.

SEC. 108. Section 17899.3 of the Education Code, as amended by Chapter 1071 of the Statutes of 1996, is repealed.

SEC. 109. Section 17899.4 of the Education Code, as added by Chapter 1071 of the Statutes of 1996, is repealed.

SEC. 110. Section 38060 is added to the Education Code, to read:

38060. (a) Any person who enters a schoolbus or school pupil activity bus without prior authorization of the driver or other school official with intent to commit any crime and who refuses to disembark after being ordered to do so by the driver or other school official is guilty of a misdemeanor and is punishable by imprisonment in the county jail for not more than six months, by a fine of not more than one thousand dollars (\$1,000), or by both.

(b) A school district or county superintendent of schools may place a notice at the entrance of a schoolbus or school pupil activity bus that complies with the requirements of paragraph (3) of subdivision (c) of Section 1256.5 of Title 13 of the California Code of Regulations and that warns against unauthorized entry.

SEC. 111. Section 39005 of the Education Code, as amended by Chapter 1158 of the Statutes of 1996, is repealed.

SEC. 112. Section 8.5 of this bill incorporates amendments to Section 15301 of the Education Code proposed by AB 1042. It shall only become operative if (1) both this bill and AB 1042 are enacted and become effective on or before January 1, 1998, (2) AB 1042 amends Section 15301 of the Education Code, and (3) this bill is enacted after AB 1042, in which case Sections 7 and 8 of this bill shall not become operative.

SEC. 113. Section 98.5 of this bill incorporates amendments to Section 17244 of the Education Code proposed by AB 736. It shall only become operative if (1) both this bill and AB 736 are enacted and become effective on or before January 1, 1998, (2) AB 736 amends Section 17244 of the Education Code, and (3) this bill is enacted after AB 736, in which case Sections 97 and 98 of this bill shall not become operative.

SEC. 114. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

SEC. 115. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

BILL NUMBER: SB 1105 CHAPTERED 10/12/97

CHAPTER 940
FILED WITH SECRETARY OF STATE OCTOBER 12, 1997
APPROVED BY GOVERNOR OCTOBER 12, 1997
PASSED THE SENATE SEPTEMBER 5, 1997
PASSED THE ASSEMBLY SEPTEMBER 3, 1997
AMENDED IN ASSEMBLY JULY 10, 1997
AMENDED IN SENATE MAY 6, 1997

INTRODUCED BY Committee on Revenue and Taxation (Senators Alpert (Chair), Greene, Karnette, Knight, Kopp, and McPherson)

FEBRUARY 28, 1997

An act to amend Section 15031 of the Education Code, to amend Section 54902.5 of the Government Code, to amend Section 33674 of the Health and Safety Code, and to amend Sections 51, 69.5, 75.10, 408, 434.5, 670, 673, 1603, 1605, and 38904 of, and to amend, repeal, and add Section 619 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1105, Committee on Revenue and Taxation. Taxation.

Existing law authorizes school districts and community college districts to form school facilities improvement districts that are coterminous with school district or community college district boundaries, except to the extent that any portion of the school district or community college district is located within a community facilities district formed pursuant to a specified statutory authorization. It also establishes procedures and requirements with respect to the issuance of bonds by any improvement district that is so established, and provides, as specified, for the levying of a tax upon properties within the improvement district for the funding of those bonds.

This bill would require the governing body of a school district or community college district that forms a school facilities improvement district to comply with the filing requirements established by a specified statute with respect to local agency jurisdiction boundary changes, and would require certain of those filings to indicate which properties located within the school district or community college district are located outside the improvement district.

Existing law requires the levying authority of a city or district, as provided, the levies of which are carried on county tax rolls, to file with the relevant county auditors and the State Board of Equalization a statement, and a map or plat, with respect to the creation of, or any change in, that city or district's boundaries. It requires the State Board of Equalization to establish a schedule of fees for filing and processing the filed documents, and prohibits the fee schedule from containing any fee that exceeds the lesser of the board's reasonably anticipated costs or an amount equal to 25% of the "total anticipated tax revenue" to be collected by the city or district during the first fiscal year in which the new boundaries are effective.

This bill would define the term "total anticipated tax revenue"

the General Fund on November 30, and that the remaining 1/2 be reimbursed to the General Fund on May 31.

This bill would instead require that 1/2 of these amounts be reimbursed to the General Fund between November 1 and November 10, and that the remaining 1/2 of these amounts be reimbursed to the General Fund between May 1 and May 10.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 15301 of the Education Code is amended to read:

15301. (a) Any school district or community college district that has a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, that has as one of its purposes the construction of school facilities within a portion of the territory of the school district or community college district, may proceed under this chapter.

(b) The boundaries of any school facilities improvement district formed pursuant to this chapter shall include all of the portion of the territory within the boundaries of the school district or community college district that is not located within the boundaries of the community facilities district as described in subdivision (a).

(c) A school district or community college district may proceed under this chapter without meeting the requirements of subdivisions (a) and (b) if the governing board of the school district or community college district determines that it is necessary and in the best interest of the school district or community college district, respectively, to form a school facilities improvement district pursuant to this chapter to finance any or all of the improvements set forth in Section 15302. As a part of that determination, the governing board of the school district or community college district shall make a finding that the overall cost of financing the bonds issued pursuant to this chapter would be less than the overall cost of other school facilities financing options available to the school district or community college district, including, but not limited to, issuing bonds pursuant to the Mello-Roos Communities Facilities Act of 1982 (Ch. 2.5 (commencing with Sec. 53311), Pt. 1, Div. 2; Title 5, Gov. C.). The governing board of the school district or community college district proceeding under this subdivision shall define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the school district or community college district, except that the boundaries may not include all or a portion of the territory of the community facilities district described in subdivision (a).

(d) The governing body of a school district or community college district that proceeds under this chapter shall comply with the filing requirements established by Section 54902 of the Government Code. Any plat or map that is filed pursuant to this subdivision shall specifically identify any property, located within the school district or community college district, that is not located within the improvement district established by the school district or community college district pursuant to this chapter.

SEC. 2. Section 54902.5 of the Government Code is amended to read:

54902.5. (a) Notwithstanding Section 6103, the State Board of Equalization shall establish a schedule of fees for filing and processing the statements and maps or plats which are required to be filed with the board pursuant to Section 54902.

(1) The schedule shall not include any fee which exceeds the reasonably anticipated cost to the board of performing the work to which the fee relates, or an amount equal to 25 percent of the anticipated total tax revenue that will be collected by the city or district during the first full fiscal year, beginning on July 1, that the boundary changes are effective, as determined by the county auditor, whichever amount is less.

(2) For purposes of this subdivision, the term "anticipated total tax revenue" means the tax revenues that will be allocated to the city or district from all property located within the boundaries of the city or district, including the area affected by the boundary change.

(b) The city, district, or executive officer of a local agency formation commission, forwarding the statement to the tax or assessment levying authority for filing pursuant to Section 54900, shall accompany the statement with the necessary fee for transmittal to the board. However, with respect to a newly created city or district, no fee shall be required until the time that the city or district receives its first revenues.

SEC. 3. Section 33674 of the Health and Safety Code is amended to read:

33674. The portion of taxes mentioned in subdivision (b) of Section 33670 shall not be allocable and payable for the first time until the tax year which begins after the December 1st next following the transmittal of the documents as required in Section 33375 or Section 33457.

SEC. 4. Section 51 of the Revenue and Taxation Code is amended to read:

51. (a) For purposes of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for each lien date after the lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall, except as otherwise provided in subdivision (b) or (c), be the lesser of:

(1) Its base year value, compounded annually since the base year by an inflation factor, which shall be determined as follows:

(A) For any assessment year commencing prior to January 1, 1985, the inflation factor shall be the percentage change in the cost of living, as defined in Section 2212.

(B) For any assessment year commencing after January 1, 1985, and prior to January 1, 1998, the inflation factor shall be the percentage change, rounded to the nearest one-thousandth of 1 percent, from December of the prior fiscal year to December of the current fiscal year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations.

(C) For any assessment year commencing on or after January 1,

appeals board pursuant to this chapter, except in those instances when that property had previously been equalized for the year in question by the county board of equalization or assessment appeals board. The application shall be filed with the clerk no later than 60 days after the date on which the assessee was notified. Receipt by the assessee of a tax bill based upon that assessment shall suffice as that notice.

(f) For purposes of subdivision (a), "regular assessment period" means January 1 to and including July 1 of the calendar year in which the assessment, other than escape assessments, should have been enrolled if it had been timely made.

SEC. 15. Section 38904 of the Revenue and Taxation Code is amended to read:

38904. The money in the Timber Tax Fund is appropriated as follows:

(a) To reimburse the General Fund for funds advanced for costs incurred by the board in administration of this part as follows:

(1) Four hundred sixty-seven thousand nine hundred thirty dollars (\$467,930) for fiscal years 1975-76 and 1976-77.

(2) Amounts identified and approved in subsequent fiscal years as approved in the Budget Bill. One-half of this amount shall be reimbursed to the General Fund between November 1 and November 10, and the remaining one-half between May 1 and May 10. In the event that not all funds approved in the Budget Bill are actually expended by the board, then in the succeeding fiscal year, the amount to be reimbursed to the General Fund between November 1 and November 10 shall be reduced by an amount equal to the unexpended appropriation of the preceding fiscal year.

(b) To reimburse the General Fund for funds advanced for costs incurred by the State Forester in administration of Section 4582.8 of the Public Resources Code as follows:

(1) Thirteen thousand five hundred dollars (\$13,500) for fiscal years 1975-76 and 1976-77.

(2) Amounts identified and approved in subsequent fiscal years as approved in the Budget Bill.

(c) To the Controller to allocate pursuant to Sections 38905 and 38905.1.

(d) To pay refunds authorized by this part of taxes imposed pursuant to Section 38115 and interest, penalties, and other amounts paid or collected pursuant to this part and deposited in the Timber Tax Fund.

SEC. 16. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that Section 10 of this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 407

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INTRODUCED BY Senator Greene and Assembly Members Villaraigosa and Olberg

(Principal coauthors: Senators Alpert, Johnston, Karnette, and Polanco)

(Principal coauthors: Assembly Members Aguiar, Baca, Bustamante, Cardenas, Cardoza, Cedillo, Cunneen, Ducheny, Escutia, Frusetta, Gallegos, Havice, Hertzberg, Keeley, Kuehl, Kuykendall, Leonard, Mazzone, Migden, Miller, Napolitano, Oller, Prenter, Richter, Scott, Shelley, Takasugi, Torlakson, Washington, Wayne, Wildman, and Woods)

(Coauthors: Assembly Members Figueroa, Knox, Perata, Strom-Martin, Vincent, and Wright)

DECEMBER 2, 1996

An act to amend Sections 17260, 17262, 17303, 17305, 17306, and 17620 of, to add Sections 17009.3, 17009.5, 81134, 81135, and 81136 to, to add Chapter 12.5 (commencing with Section 17070.10) to Part 10 of, to add Part 68 (commencing with Section 100400) to, to repeal Section 15101 of, and to repeal and add Section 17261 of, the Education Code, to amend Section 1003 of the Elections Code, to amend Sections 65995 and 65996 of, and to add Sections 4420.5, 65995.5, 65995.6, 65995.7, 65997, and 65998 to, the Government Code, and to add and repeal Chapter 9 (commencing with Section 51450) to Division 31 of the Health and Safety Code, relating to education facilities, making an appropriation therefor, and by providing the funds necessary therefor through an election for, and the issuance and sale of, bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, Greene. Education: Leroy F. Greene School Facilities Act of 1998: Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998: school facilities construction: developers fees.

(1) Existing law prohibits an election on a bond measure of a school district or community college district within 45 days of a statewide election unless conducted at the same time as the statewide

SEC. 4. Chapter 12.5 (commencing with Section 17070.10) is added to Part 10 of the Education Code, to read:

CHAPTER 12.5. LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998
Article 1. General Provisions

17070.10. This chapter shall be known, and may be cited, as the Leroy F. Greene School Facilities Act of 1998.

17070.15. The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

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

(b) "Attendance area" means the geographical area serving an existing or proposed high school and those junior high schools and elementary schools included therein.

(c) "Board" means the State Allocation Board as established by Section 15490 of the Government Code.

(d) "Department" means the Department of General Services.

(e) "Committee" means the State School Building Finance Committee established pursuant to Section 15909.

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

(g) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(h) "School district" means a school district or a county office of education. For purposes of determining eligibility under this chapter, "school district" may also mean a high school attendance area.

(i) "Fund" means the 1998 State School Facilities Fund established pursuant to Section 17070.40.

(j) "County fund" means a county school facilities fund established pursuant to Section 17070.43.

(k) "Portable classroom" means a classroom building that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable classroom, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

(l) "School building capacity" means the capacity of a school building to house students.

17070.20. The Director of General Services shall administer this chapter and shall provide assistance to the board as it requires.

17070.25. The department shall first publish applications for funding under this chapter by November 4, 1998, and shall be prepared to receive and expeditiously act upon applications on and after that date.

17070.30. The State Allocation Board is continued in existence for the purpose of this chapter. The members of the board and the Members of the Legislature meeting with the board shall have no compensation for their services under this chapter, but shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties pursuant to this chapter, to be paid as an administrative expense.

17070.33. (a) The board shall adopt guidelines for use by

districts by June 30, 1999, to achieve measurable reductions in the costs of school facilities construction.

(b) The guidelines shall include, but need not be limited to, all of the following:

(1) Mechanisms designed to reduce the costs of professional fees.

(2) Mechanisms designed to reduce the costs of site preparation.

(3) Recommendations for the use of alternate cost-saving construction materials and methods.

(4) Recommendations regarding the joint use of core facilities.

(5) Mechanisms designed to reduce costs by incorporating efficiencies in schoolsite design.

(6) Recommendations regarding the use of cost-effective, efficient reusable facility plans.

(c) If a school district's matching funds include fees charged pursuant to Section 17620 or pursuant to Section 65995.5 or 65995.7 of the Government Code, or if a district receives funds pursuant to this chapter, the district shall consider the guidelines developed pursuant to this section as fully as is practicable.

(d) When the board adopts the guidelines, it shall not include any recommendation that would have a significant detrimental effect on educational programs.

17070.35. In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(a) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(b) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(c) Determine the eligibility of school districts to receive apportionments under this chapter.

(d) Apportion funds to eligible school districts under this chapter.

17070.40. (a) A fund is hereby established in the State Treasury to be known as the 1998 State School Facilities Fund. All money in the fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated for expenditure pursuant to this chapter.

(b) The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the 1998 State School Facilities Fund from any source.

(c) The board may make apportionments in amounts not exceeding those funds on deposit in the 1998 State School Facilities Fund, and any amount of bonds authorized by the State School Building Finance Committee, but not yet sold by the Treasurer.

(d) The board may make disbursements pursuant to any apportionment

made from any funds in the 1998 State School Facilities Fund, irrespective of whether there exists at the time of the disbursement an amount in the 1998 State School Facilities Fund sufficient to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

17070.43. (a) A county school facilities fund is hereby established in the county treasury within each county for each school district in the county.

(b) The board may from time to time authorize the Controller to transfer any funds that the board may deem necessary from the 1998 State School Facilities Fund to the corresponding county fund in the county treasury. Interest on all funds deposited in the county fund shall be retained in that fund.

(c) Funds may be expended from the county fund by the recipient school district for qualifying school facilities expenditures set forth in Sections 17072.35 and 17074.25.

17070.45. This chapter shall not be construed to change the powers and duties of the State Department of Education or the Department of General Services with respect to schoolsites and the construction of school buildings as contained in Chapter 1 (commencing with Section 17211) and Chapter 3 (commencing with Section 17251) of Part 10.5.

17070.50. The board shall not apportion funds to any school district, unless the applicant school district has certified to the board that the services of any architect, structural engineer, or other design professional for any work under the project have been obtained pursuant to a competitive process that is consistent with the requirements of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and has done either of the following:

(a) Obtained the written approval of the State Department of Education that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251.

(b) Certified to the board that it is in compliance with the standards set forth in subdivision (a).

17070.55. Upon request of any school district, the State Department of Education shall provide assistance in the evaluation and utilization of existing school facilities and the justification of the need for schoolsites, new facilities, and the rehabilitation or replacement of existing facilities, in accordance with board regulations.

17070.60. Funding decisions made by the board shall not, in themselves, make the board liable for any tort, breach of contract, or any other action for damages caused by a school district arising from new construction or modernization by the district. These contracts include, but are not limited to, contracts between the school district and its construction contractors, construction managers, architects, or engineers. The school district shall be liable for all torts, breaches of contract, or any other actions for damages caused by the school district.

17070.63. (a) The total funding provided under this chapter shall constitute the state's full and final contribution to the project and for eligibility for state facilities funding represented by the number of unhoused pupils for which the school district is receiving the state grant. As a condition of receipt of funds, a school district shall certify that the grant amount, combined with local funds, shall be sufficient to complete the school construction

project for which the grant is intended.

(b) Any funds provided to a school district under any article in this chapter may not be counted towards the local match for receipt of funds under any other article in this chapter.

(c) Any savings achieved by the district's efficient and prudent expenditure of these funds shall be retained by the district in the county fund for expenditure by the district for other high priority capital outlay purposes.

17070.65. From any moneys in the 1998 State School Facilities Fund, and approved for this purpose in the annual Budget Act, the board shall make available to the Director of General Services the amounts that the board determines necessary for the Department of General Services to provide the assistance, pursuant to this chapter, required pursuant to Section 15504 of the Government Code to facilitate the construction, modernization, reconstruction, or alteration of, or addition to, school buildings.

17070.70. (a) Title to all property acquired, constructed, or improved with funds made available under this chapter shall be held by the school district to which the board grants the funds.

(b) The applicant school district shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school buildings.

17070.75. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and to encourage school districts to maintain all buildings under their control, the board shall require an applicant school district to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the school district's general fund for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings, according to the highest priority to funding for the purposes set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for 20 years after receipt of funds under this chapter, a minimum amount equal to or greater than 3 percent of the applicant school district's general fund budget for that fiscal year. For the 1998-99 fiscal year and the 1999-2000 fiscal year, a school district may phase in this requirement by agreeing to certify the deposit of no less than 2 percent for the 1998-99 fiscal year and no less than 2 1/2 percent for the 1999-2000 fiscal year. Annual deposits to the fund established pursuant to paragraph (1) in excess of 2 1/2 percent of the district general fund budget may count towards the district's required match necessary to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 39619 to the extent that funds are used for purposes that qualify for funding under that section. In addition, any district contribution to this fund may be provided in lieu of meeting the ongoing maintenance requirements pursuant to Section 17014 to the extent the funds are used for purposes established in that section. This paragraph is applicable only to the following school districts:

(A) High school districts with an average daily attendance greater than 300 pupils.

(B) Elementary school districts with an average daily attendance greater than 900 pupils.

(C) Unified school districts with an average daily attendance

greater than 1,200 pupils.

(3) Certify that it has publicly approved an ongoing and major maintenance plan that outlines the use of the funds deposited, or to be deposited, pursuant to paragraph (2). The plan may provide that the district need not expend all of its annual allocation for ongoing and major maintenance in the year in which it is deposited if the cost of major maintenance requires that the allocation be carried over into another fiscal year. However, any state funds carried over into a subsequent year shall not be counted toward the annual minimum contribution by the district. A plan developed in compliance with this section shall be deemed to meet the requirements of Section 17585.

(c) A district for which paragraph (2) of subdivision (b) does not apply shall certify to the board that it can reasonably maintain its facilities with a lesser level of maintenance.

17070.80. (a) All school facilities purchased or newly constructed pursuant to this chapter for use, in whole or in part, by pupils who are individuals with exceptional needs, as defined in Section 56026, shall be designed and located on the schoolsite so as to maximize interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both.

(b) The governing board of each applicant school district and the county office of education shall ensure that school facilities for pupils who are individuals with exceptional needs are integrated with other school facilities.

(c) The State Allocation Board, after consultation with the State Department of Education and representatives from county offices of education, special education services regions, and school districts, shall develop and adopt any regulations necessary to implement this section.

(d) Notwithstanding any other provision of law, the requirement set forth in subdivision (a) may be waived, by the Superintendent of Public Instruction, only upon compliance with the following procedure:

(1) The applicant school district or county superintendent of schools shall file a written request for waiver that documents the reasons for its inability to comply with the requirement.

(2) The State Department of Education shall verify the reasons set forth pursuant to paragraph (1), including the documentation submitted, which verification shall be completed no later than 30 days after the filing of the request for waiver with the Superintendent of Public Instruction.

(3) The Advisory Commission on Special Education, as established under Section 33590, at its first scheduled meeting following the verification conducted pursuant to paragraph (2), shall review the request for waiver, accompanying documentation, and the verification findings of the State Department of Education. No later than 15 days following the date of that meeting, the commission shall submit its written comments and recommendations regarding the request for waiver to the Superintendent of Public Instruction.

(4) The Superintendent of Public Instruction shall review the comments and recommendations submitted by the Advisory Commission on Special Education prior to approving or rejecting the request for waiver.

(5) Any request for waiver, submitted in accordance with this section, that is not rejected within 60 days of its receipt by the State Department of Education, shall be deemed approved.

17070.85. Notwithstanding any other provision of law, a lien recorded on school district property that has been imposed pursuant to Section 16019 or 17030 shall be released on the operative date of

this section. The release shall conclusively protect any third party relying upon the same, and shall be acknowledged to permit recordation by the county recorder. On and after November 4, 1998, a lien may not be imposed pursuant to Section 16019 or Section 17030.

17070.90. As a part of its application, a school district shall certify that it has considered the feasibility of the joint use of land and facilities with other governmental entities in order to minimize school facilities costs. Funds provided pursuant to this chapter for growth and modernization may be used for the school portion of joint-use facilities.

17070.97. The board shall require the school district to insure against public liability or property damage in connection with any facility constructed or modernized with an apportionment under this chapter.

17070.98. A school district that does not have employees who possess adequate construction management experience may contract for the provision of construction management, and may use funds provided pursuant to Article 4 (commencing with Section 17072.10), Article 5 (commencing with Section 17072.20), and Article 7 (commencing with Section 17074.10) for the cost of those services as expressly authorized by Section 17072.35 and Section 17074.25.

Article 2. Existing School Building Capacity

17071.10. (a) The calculation determined by this article shall be made on a one-time basis, and will be used as the baseline for eligibility determinations pursuant to this chapter.

(b) Each school district that elects to participate in the new construction program pursuant to this chapter shall submit to the board a one-time report of existing school building capacity.

17071.25. (a) The existing school building capacity in the applicant school district or, where appropriate, in the attendance area, at the time of initial application shall be calculated pursuant to the following formula:

(1) Identify by grade level all permanent teaching stations existing in the school district or, where appropriate, the attendance area. For the purposes of this section, "teaching station" means any space that was constructed or reconstructed to serve as an area in which to provide pupil instruction, but shall not include portable buildings, except as provided in Section 17071.30.

(2) The assumed capacity of each calculated teaching station pursuant to paragraph (1) shall be 25 pupils for each teaching station used for kindergarten or for grades 1 to 6, inclusive, and 27 pupils for each teaching station used for grades 7 to 12, inclusive.

(3) Multiply the assumed capacity of each teaching station as specified in paragraph (2) by the number of teaching stations calculated under paragraph (1).

(4) The result of this computation shall be the number of pupils housed by grade level in the existing school building capacity of the applicant school district.

(b) The existing school building capacity of the applicant school district calculated under this section shall not include, in any school operated on a year-round schedule, any teaching station that has been in continuous use during the preceding five-year period primarily for the operation of a preschool program or programs.

17071.30. For purposes of determining the existing school building capacity, each applicant school district shall include each portable classroom, whether owned or leased, except as otherwise

provided in subdivision (a) or (b).

(a) Portable classrooms leased pursuant to Chapter 14 (commencing with Section 17085) shall be excluded from the existing school building capacity. Portable classrooms obtained by an applicant district pursuant to subdivision (b) of Section 17088.5 shall be excluded from the existing school building capacity, except as to any portable classroom or classrooms for which the district rejected the board's offer to purchase pursuant to that subdivision. Portable classrooms leased for a period of less than five years prior to the date of application shall not be included in existing school building capacity.

(b) The number of portable classrooms, reduced by the number of portable classrooms used as interim housing for modernization projects, that exceed 25 percent of the number of permanent classrooms available to the district shall not be included in the existing building capacity.

17071.33. For the purposes of determining existing school building capacity, the calculation shall be adjusted as required for first priority status pursuant to Section 17017.7 as that calculation would have been made under the policies of the board in effect immediately preceding September 1, 1998.

17071.35. Notwithstanding any other provisions of law, the maximum school building capacity for each applicant district shall be increased by the number of pupils reported by the Superintendent of Public Instruction for that grade level pursuant to Section 42268. This adjustment shall be calculated on the basis, at the district's option, of either the district as a whole or the appropriate attendance area.

17071.40. Each school on a year-round, multitrack calendar that has a density of 200 or more pupils enrolled per acre, that is located in a school district with 40 percent of its pupils attending multitrack, year-round schools shall be exempted from the increase in school building capacity required by Section 17071.35. Nothing in this section shall be construed as exempting the school from the requirements of Section 17071.33.

Article 3. New Construction Eligibility Determination

17071.75. After a one-time initial report of existing school building capacity has been completed, a school district's ongoing eligibility for new construction funding shall be determined by making all of the following calculations:

(a) Each school district that applies to receive funding for new construction shall calculate enrollment projections for the fifth year beyond the fiscal year in which the application is made. Projected enrollment shall be determined by utilizing the cohort survival enrollment projection system, as defined and approved by the board. The board may supplement the cohort survival enrollment projection by the number of unhoused pupils that are anticipated as a result of dwelling units proposed pursuant to approved and valid tentative subdivision maps.

(b) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for which facilities were provided pursuant to this chapter after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10).

(c) Subtract the number of pupils pursuant to subdivision (b) from

the number of pupils determined pursuant to subdivision (a).

(d) The calculations required to establish eligibility under this article shall result in a distinction between the number of existing unhoused pupils and the number of projected unhoused pupils.

17071.76. (a) Whenever the existing school building capacity in any high school attendance area prevents another high school attendance area from receiving the maximum per-unhoused-pupil grant specified for the school district as a whole, the eligibility may be computed separately for each high school attendance area.

(b) For the purposes of eligibility, a school district may combine two or more adjacent high school attendance areas pursuant to the following conditions:

(1) The funding eligibility is for the construction of a high school, junior high school, or elementary school located or to be located in any of those high school attendance areas.

(2) The high school, junior high school, or elementary school to be constructed is to serve pupils residing in each of those high school attendance areas.

(3) The combined eligibility reflects the eligibility to which each of the high school attendance areas would otherwise be entitled, reflecting the proportion of projected pupil enrollment in the school to be constructed, as calculated under this chapter, from each of those attendance areas.

Article 4. New Construction Grant Eligibility Determination

17072.10. (a) The board shall determine the applicant's maximum total new construction grant eligibility by multiplying the number of unhoused pupils calculated pursuant to Article 3 (commencing with Section 17071.75) in each school district with an approved application for new construction, by the per-unhoused-pupil grant as follows:

(1) Five thousand two hundred dollars (\$5,200) for elementary school pupils.

(2) Five thousand five hundred dollars (\$5,500) for middle school pupils.

(3) Seven thousand two hundred dollars (\$7,200) for high school pupils.

(b) The board shall annually adjust the per-unhoused-pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) The board may establish a single supplemental per-unhoused-pupil grant in addition to the amounts specified in subdivision (a) based on the statewide average marginal difference in costs in instances where a project requires multilevel school facilities due to limited acreage. The district's application shall demonstrate that a practical alternative site is not available.

17072.12. In addition to the amount provided in Section 17072.10, the board may provide funding for assistance in site development and acquisition if all of the following are met:

(a) The amount of the site acquisition and development assistance does not exceed 50 percent of the cost of site development to the school district, plus the lesser of 50 percent of the site cost to

the school district or 50 percent of the appraised value of the site at the time the complete application is submitted, whichever is less.

(b) The school district certifies that there is no alternative available site, or that the district plans to sell an available site in order to use the proceeds of the sale for the purchase of the new site.

17072.15. In conjunction with the State Department of Education and the Department of Finance, the Legislative Analyst shall review the method of funding the construction and modernization of school facilities for special education pupils and the amount provided per unboxed special education pupil pursuant to Sections 17072.10 and 17074.10. Pursuant to this review, the Legislative Analyst shall recommend modifications to this method that he or she deems to be advisable on or before September 1, 1999.

Article 5. New Construction Funding Process

17072.20. (a) An applicant school district that has been determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) or Article 3 (commencing with Section 17071.75) may submit at any time a request to the board for a project apportionment for all or a portion of the funding for which the school district is eligible.

(b) The application shall include, but shall not be limited to, the school district's determination of the amount of state funding that the district is otherwise eligible for relating to site acquisition, site development, new construction, and hardship funding provided pursuant to Article 8 (commencing with Section 17075.10), if any. The amount shall be reduced by the amount of the alternative fee collected pursuant to subdivision (a) of Section 65995.7 of the Government Code if a reimbursement election or agreement pursuant to Section 65995.7 of the Government Code is not in effect.

(c) The board shall verify and adjust, as necessary, and approve the district's application.

17072.25. (a) The board shall adopt regulations to develop a mechanism to rank approved applications for new construction funding. This mechanism shall be used to determine the priority of approved applications when state funds are insufficient.

(b) The ranking mechanism shall allocate priority points based upon the percentages of currently and projected unboxed pupils relative to the total population of the applicant district or attendance area and the total number of currently and projected unboxed pupils in an applicant district or attendance area.

(c) The board may award priority points based on other factors that in its judgment result in the most equitable distribution of resources among applicants. The additional factors may not constitute greater than a 10-percent weight in the overall priority ranking.

17072.30. Subject to the availability of funds, and to the determination of priority pursuant to Section 17072.25, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, and certification by the school district that the required 50 percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund, or will be expended by the district by the time the project is completed, in an amount at least equal to the proposed apportionment pursuant to

this chapter, prior to release of the state funds.

17072.32. For any project that has received an apportionment pursuant to Section 17072.30, funding shall be released in amounts equal to the amount of the local match upon certification by the district that the district has entered into a binding contract for completion of the approved project.

17072.33. In the case of site acquisition, a district may request that the state's share of site assistance be provided to the district in amounts equal to the amount of the local match when the district enters escrow for a site included within a project.

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

Article 6. Modernization Eligibility Determination

17073.10. Each school district that desires to receive an apportionment for modernization under this chapter shall submit an application in a form, and in the number of copies, that the board may require.

17073.15. A school district shall be eligible to receive an apportionment for modernization of permanent school buildings that are more than 25 years old, or in the case of portable classrooms that are at least 20 years old, and that have not been previously modernized with state funding.

17073.20. Funding may be approved for the modernization of any permanent school building that is more than 25 years old, or, in the case of any portable classroom that is more than 20 years old, as described in Section 17071.30, and that prior to November 4, 1998, had not been previously modernized with state funding.

Article 7. Modernization Apportionment

17074.10. (a) The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level housed in permanent school buildings that are at least 25 years old or portable classrooms that are at least 20 years old, and that have not been previously modernized with state funding:

- (1) Two thousand two hundred forty-six dollars (\$2,246) for each elementary pupil.
- (2) Two thousand three hundred seventy-six dollars (\$2,376) for each middle school pupil.
- (3) Three thousand one hundred ten dollars (\$3,110) for each high school pupil.

(b) The board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined

by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 17026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) It is the intent of the Legislature that the amounts provided pursuant to this article for school modernization do not include funding for administrative and overhead costs.

17074.15. The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 80-percent share, and the school district has provided its 20-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, and evidence that the certification by the school district that the required 20 percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

17074.20. As a condition for the receipt of funds under this article, a school district shall ensure that all buildings modernized comply with Sections 17212, 17212.5, and 17213.

17074.25. A modernization apportionment may be used for an improvement to extend the useful life of, or to enhance the physical environment of, the school. The improvement may only include the cost of design, engineering, testing, inspection, plan checking, construction management, demolition, construction, the replacement of portable classrooms, necessary utility costs, utility connection and other fees, the purchase and installation of air-conditioning equipment and insulation materials and related costs, furniture and equipment, including telecommunication equipment to increase school security, fire safety improvements, playground safety improvements, the identification, assessment, or abatement of hazardous asbestos, seismic safety improvements, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A modernization grant may not be used for costs associated with acquisition and development of real estate or for routine maintenance and repair.

Article 8. Hardship Application

17075.10. (a) A school district may apply for hardship assistance in cases of extraordinary circumstances.

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

(1) Demonstrate both of the following:

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

(B) That the school district is not financially capable of providing the matching funds otherwise required for state participation, that the district has made all reasonable efforts to impose all levels of local debt capacity and development fees, and

that the school district is, therefore, unable to participate in the program pursuant to this chapter except as set forth in this article.

(2) Demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities.

17075.15. (a) From funds available from any bond act for the purpose of funding facilities for school districts with a financial hardship, the board may provide other construction, modernization, or relocation assistance as set forth in this chapter or Chapter 14 (commencing with Section 17085) to the extent that severe circumstances may require, and may adjust or defer the local financial participation, as pupil health and safety considerations require to the extent that bond act funds are provided for this purpose.

(b) The board shall adopt regulations for determining the amount of funding that may be provided to a district, and the eligibility and prioritization of funding, under this article.

(1) The regulations shall include a method for determining the amount, and sources, of financing that the school district could reasonably provide for school facilities. Further, the regulations shall also specify a method for determining required levels of local effort to obtain matching funds.

(2) The value of any unused local general obligation debt capacity and developer fees added to the needs analysis to reflect the district's financial hardship, available for the purposes of school facilities financing shall be considered when evaluating available resources for the purposes of the determination described in paragraph (1).

Article 9. Program Accountability

17076.10. (a) A school district that has received any funds pursuant to this chapter shall submit a summary report of expenditure of state funds and of district matching funds annually until all state funds and district matching funds are expended, and shall then submit a final report to the board. The board may require an audit of these reports or other district records to ensure that all funds received pursuant to this chapter are expended in accordance with program requirements.

(b) If the board finds that a participating school district has made no substantial progress towards increasing its pupil capacity or renovating its facilities within 18 months of the receipt of any funding pursuant to this chapter, the board shall rescind the apportionment in an amount equal to the unexpended funds.

(c) If the board, after the review of expenditures or audit has been conducted pursuant to subdivision (a), determines that a school district failed to expend funds in accordance with this chapter, the department shall notify the school district of the amount that must be repaid to the 1998 State School Facilities Fund within 60 days. If the school district fails to make the required payment within 60 days, the department shall notify the Controller and the school district in writing, and the Controller shall deduct an amount equal to the amount received by the school district under this subdivision, from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained by the Controller shall be deposited into the 1998 State School Facilities Fund.

(d) If a school district has received an apportionment, but has

not met the criteria to have funds released pursuant to Section 17072.32 or 17074.15 within 18 months, the board shall rescind the apportionment and deny the district's application.

17072.32

requirements that apply to school buildings under this article. The department shall establish and maintain a list of the individuals, firms, and building officials or the authorized representatives of building officials so identified, and shall make that list available, upon request, to community college districts and other interested parties.

SEC. 15. Section 81136 is added to the Education Code, to read:

81136. (a) Upon submitting a complete application for review under this article, the applicant may request that the Department of General Services refer the documents necessary for the review of that application to a qualified plan review firm operating under contract with the department pursuant to Section 81135. The department immediately shall grant the request and refer the necessary documents to a qualified plan review firm if the applicant so requests. Upon completing the review, the qualified plan review firm shall submit the documents referred to it for the review of the application, together with the results of its review, to the Department of General Services.

(b) The Department of General Services shall establish a procedure governing the use by applicants of the review process alternative described in this section, including, but not limited to, provisions restricting the use of qualified plan review firms on the basis of conflict of interest.

SEC. 16. Part 68 (commencing with Section 100400) is added to the Education Code, to read:

PART 68. PUBLIC EDUCATION BONDS

CHAPTER 1. CLASS SIZE REDUCTION KINDERGARTEN-UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT OF 1998

100400. This part shall be known and may be cited as the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998.

100401. The incorporation of, or reference to, any provisions of California statutory law in this part includes all acts amendatory thereof and supplementary thereto.

100403. (a) Bonds in the total amount of nine billion two hundred million dollars (\$9,200,000,000), not including the amount of any refunding bonds issued in accordance with Chapter 2 (commencing with Section 100410) and Chapter 3 (commencing with Section 100450), or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 and the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

100405. For purposes of this part, "Chapter 12" means Chapter 12 (commencing with Section 17000) of Part 10 and "Chapter 12.5" means Chapter 12.5 (commencing with Section 17070.10) of Part 10.

CHAPTER 2. KINDERGARTEN THROUGH 12TH GRADE

Article 1. Kindergarten Through 12th Grade School Facilities
Program Provisions

100410. (a) Three billion three hundred fifty million dollars (\$3,350,000,000) of the proceeds of bonds issued and sold pursuant to this part shall be deposited in the 1998 State School Facilities Fund, which is established by Section 17070.40, and allocated by the State Allocation Board pursuant to this chapter. Before requesting the sale of bonds pursuant to Section 100432 for deposit in the State School Facilities Fund, the State Allocation Board shall request, pursuant to Section 100432, the sale of bonds sufficient to finance all projects for which application was made pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part 10) and for which an application was approved for construction, but funding was not available, prior to November 4, 1998.

(b) In addition to the amount specified in subdivision (a), three billion three hundred fifty million dollars (\$3,350,000,000) of the bonds authorized by this chapter shall only be issued and sold pursuant to this chapter on or after July 1, 2000, and the proceeds of those bonds shall be deposited in the 1998 State School Facilities Fund and allocated by the State Allocation Board pursuant to this chapter.

100415. (a) All moneys deposited in the 1998 State School Facilities Fund pursuant to this chapter shall be available and, notwithstanding any other provision of law to the contrary, are hereby appropriated to provide aid to school districts of the state in accordance with the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part 10) and in accordance with the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10), to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with Section 100420, to provide funds to repay any money advanced or loaned to the 1998 State School Facilities Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

(b) The bonds issued and sold pursuant to this chapter shall fund kindergarten and grades 1 through 12, inclusive, school constructions for a four-year period.

100420. (a) Of the proceeds from the sale of bonds, issued and sold pursuant to this chapter, as specified in subdivision (a) of Section 100410, not more than three billion three hundred fifty million dollars (\$3,350,000,000) shall be allocated beginning in the 1998-99 fiscal year in accordance with the following schedule:

(1) Not less than one billion three hundred fifty million dollars (\$1,350,000,000) for project funding related to the growth in enrollment of applicant school districts under Chapter 12 and Chapter 12.5 that have incurred or will incur enrollment increases.

(2) Not less than eight hundred million dollars (\$800,000,000) for the reconstruction or modernization of facilities pursuant to Chapter 12 and Chapter 12.5.

(3) Not more than five hundred million dollars (\$500,000,000) shall be deposited in the Public School Critical Hardship Account, which is hereby established in the 1998 State School Facilities Fund and shall be allocated by the State Allocation Board to fund critical hardships as defined in Chapter 12.5. These funds may be expended for the acquisition of portable classrooms for use in accordance with Chapter 14 (commencing with Section 17085) of Part 10.

(4) (A) Not more than seven hundred million dollars (\$700,000,000) may be allocated to assist school districts with site acquisition and facilities-related costs of kindergarten and grades 1 to 3, inclusive, that are in the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28 and Chapter 19 (commencing with Section 17200) of Part 10, and to assist districts with the restoration of facilities that previously accommodated other programs and were displaced as a result of the implementation of class size reduction. On and after July 1, 2000, if applications for the total funds available under this paragraph have not been filed with the State Allocation Board, the funds for which applications have not been received may be allocated by the board to other high priority needs as the board determines. On and after July 1, 2003, any funds not allocated are available for other high priority needs.

(B) The funds allocated in subparagraph (A) shall be allocated to the State Department of Education to provide class size reduction facilities grants necessary to implement the K-3 Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 and Chapter 19 (commencing with Section 17200) of Part 10. The department shall certify to the State Allocation Board the amount of funds needed for this purpose. The board shall transfer the amount of funds needed to the department. From these funds, the department shall award eligible districts forty thousand dollars (\$40,000) for each new option one class established for class size reduction for which the district had not previously received funding under class size reduction facilities programs.

(C) The remaining funds provided pursuant to subparagraph (A) shall be to provide funding for schoolsites that were eligible to receive a class size reduction land-locked waiver pursuant to Section 52122.6. The funds may be provided to districts to provide 50 percent of the cost of funding a facilities mitigation plan developed for the impacted site pursuant to Section 52122.7.

(D) Any funds not expended pursuant to subparagraphs (A), (B), or (C) shall be allocated to districts that request funding of forty thousand dollars (\$40,000) for each teaching station that (1) was displaced as a result of the implementation of class size reduction and (2) received less than forty thousand dollars (\$40,000) per teaching station in 1996-97 pursuant to Chapter 19 (commencing with Section 17200) of Part 10. Programs for which teaching stations may be restored may include child care, extended day care, school libraries, computer labs, and special education classrooms.

(b) Of the proceeds from the sale of bonds issued and sold pursuant to this chapter, as specified in subdivision (b) of Section 100410, not more than three billion three hundred fifty million dollars (\$3,350,000,000) shall be allocated beginning in the 2000-01 fiscal year in accordance with the following schedule:

(1) Not less than one billion five hundred fifty million dollars (\$1,550,000,000) for project funding related to the growth in enrollment of applicant school districts under Chapter 12.5 that have incurred or will incur enrollment increases.

(2) Not less than one billion three hundred million dollars (\$1,300,000,000) for the reconstruction or modernization of facilities pursuant to Chapter 12.5.

(3) Not more than five hundred million dollars (\$500,000,000) shall be deposited in the Public School Critical Hardship Account in the 1998 State School Facilities Fund and shall be allocated by the State Allocation Board to fund critical hardships as defined in Chapter 12.5. These funds may be expended for the acquisition of portable classrooms for use in accordance with Chapter 14 (commencing

with Section 17085) of Part 10.

(c) Districts may use funds allocated pursuant to paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) for one or more of the following purposes in accordance with Chapter 12.5:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other renovation or modernization of facilities pursuant to Chapter 12.5.

(d) Funds allocated pursuant to paragraph (1) of subdivision (a) and paragraph (1) of subdivision (b) may be utilized to provide new construction grants, without regard to funding priorities, for applicant county boards of education under Chapter 12.5 that are eligible for that funding or classrooms for severely handicapped pupils and funding for classrooms for county community school pupils.

(e) (1) The Legislature may amend this section to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (a) and the maximum funding amounts specified in paragraphs (3) and (4) of subdivision (a), and to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (b) and the maximum funding amount specified in paragraph (3) of subdivision (b), by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) or paragraphs (1) to (3), inclusive, of subdivision (b) or both, but may not increase or decrease the total amount to be expended pursuant to either subdivision.

Article 2. Kindergarten Through 12th Grade School Facilities Fiscal Provisions

100425. (a) Bonds in the total amount of six billion seven hundred million dollars (\$6,700,000,000), not including the amount of any refunding bonds issued in accordance with Section 100444, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established pursuant to Section 15909 at any different times necessary to service expenditures required by the apportionments.

100427. The State School Building Finance Committee, established

by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide the assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee.

100430. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the 1998 State School Facilities Fund.

100432. Upon request of the State Allocation Board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Sections 100415 and 100420, the State School Building Finance Committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100434. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

100435. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100440, appropriated without regard to fiscal years.

100436. The State Allocation Board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not

exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

100438. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100440. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 1998 State School Facilities Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

100442. All money deposited in the 1998 State School Facilities Fund, that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100444. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100446. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

CHAPTER 3. HIGHER EDUCATION FACILITIES

Article 1. Program Provision

100450. The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes

the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, and their respective off-campus centers. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the California Postsecondary Education Commission, the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, seven hundred fifty million dollars (\$750,000,000) per year into the next century.

(d) Proceeds from the sale of bonds issued and sold pursuant to this chapter may be used to fund construction on existing or new campuses and off-campus centers, including the construction of buildings and the acquisition of related fixtures, the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings at the University of California, the Hastings College of the Law, the California State University and the California Community Colleges.

(e) The purposes of this article include assisting in meeting the capital outlay financing needs of California's public higher education system.

100455. (a) Two billion five hundred million dollars (\$2,500,000,000) of the proceeds of bonds issued and sold pursuant to this part shall be deposited in the 1998 Higher Education Capital Outlay Bond Fund which is hereby established in the State Treasury. These funds shall be available for expenditure when appropriated.

(b) One billion two hundred fifty million dollars (\$1,250,000,000) of the bonds described in subdivision (a), shall only be issued and sold pursuant to this chapter on or after July 1, 2000.

100457. (a) Of the amount of bonds issued and sold pursuant to subdivision (b) of Section 100455, one hundred sixty-five million dollars (\$165,000,000) shall be allocated in the 2000-01 fiscal year to be available only for the following purposes:

(1) The development of new campuses of the University of California.

(2) The development of new campuses, small campuses with enrollments of less than 5,000 full-time equivalent students, and off-campus centers at the California State University and the California Community Colleges.

(b) The amount of the allocation of funds required pursuant to this section for the development of new campuses may be reduced by a future legislative act if the Legislature finds that state funds have been provided from sources other than the proceeds of bonds for capital outlay costs. The reduction shall be limited to the amount actually provided from sources other than bond proceeds.

100460. The Higher Education Facilities Finance Committee established pursuant to Section 67353 is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of providing funds to aid the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges.

Article 2. Higher Education Fiscal Provisions

100500. (a) Bonds in the total amount of two billion five hundred

million dollars (\$2,500,000,000), not including the amount of any refunding bonds issued in accordance with Section 100555, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

100510. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) For the purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 1998 Higher Education Capital Outlay Bond Fund is designated as the "board" for projects funded pursuant to this chapter.

(c) The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of funding aid to the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges, for the construction on existing or new campuses, and their respective off-campus centers, including the construction of buildings and the acquisition of related fixtures, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, for the equipping of new, renovated, or reconstructed facilities, which equipment shall have a useful life of at least 10 years, to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings.

100520. The Higher Education Facilities Finance Committee established pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in this chapter that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the purposes described in this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100525. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

100530. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100545, appropriated without regard to fiscal years.

100535. The board, as defined in subdivision (b) of Section 100510, may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board, as defined in subdivision (b) of Section 100510, shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

100540. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100545. (a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 1998 Higher Education Capital Outlay Bond Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in this chapter by the University of California, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan. Requests forwarded by a university or college shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, by the 2002-03 fiscal year, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college. Requests forwarded by the California Community Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs and priorities of the community college system, prioritized on a statewide basis.

100550. All money deposited in the 1998 Higher Education Capital

Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100555. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100560. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 17. Section 1003 of the Elections Code is amended to read:

1003. This chapter shall not apply to the following:

- (a) Any special election called by the Governor.
- (b) Elections held in chartered cities or chartered counties in which the charter provisions are inconsistent with this chapter.
- (c) School governing board elections consolidated pursuant to Section 5006 of the Education Code or initiated by petition pursuant to Section 5091 of the Education Code.
- (d) Elections of any kind required or permitted to be held by a school district located in a chartered city or county when the election is consolidated with a regular city or county election held in a jurisdiction that includes 95 percent or more of the school district's population.
- (e) County, municipal, district, and school district initiative, referendum, or recall elections.
- (f) Any election conducted solely by mailed ballot pursuant to Division 4 (commencing with Section 4000).
- (g) Elections held pursuant to Article 1 (commencing with Section 15100) of Chapter 1 of Part 10 of the Education Code.

SEC. 18. Section 4420.5 is added to the Government Code, to read:

4420.5. (a) Subdivision (b) of Section 4420 shall not apply to any construction or renovation project undertaken by a school district.

(b) The district may use owner-controlled or wrap-up insurance with regard to a construction or renovation project if the district makes the following determinations:

(1) Prospective bidders, including contractors and subcontractors, meet minimum occupational safety and health qualifications established to bid on the project. The evaluation of prospective bidders shall be based on consideration of the following factors:

(A) Serious and willful violations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, by a contractor or subcontractor during the past five-year period.

(B) The contractor's or subcontractor's workers' compensation experience modification factor.

(C) A contractor's or subcontractor's injury prevention program instituted pursuant to Section 3201.5 or 6401.7 of the Labor Code.

(2) The use of owner-controlled or wrap-up insurance will maximize the expenditure of public funds on the project in conjunction with the exercise of appropriate risk management.

(c) For purposes of this section, "owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover all

12.5 (commencing with Section 17070.10) of Part 10 of the Education Code, as added by Section 4 of, this act shall become inoperative on November 4, 1998.

SEC. 33. Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, and 9082 of the Elections Code or any other provision of law, the Secretary of State shall submit Section 16 of this act to the voters at the November 3, 1998, statewide general election.

SEC. 34. Notwithstanding Section 13115 of the Elections Code, Section 16 of this act shall be placed first on the ballot for the November 3, 1998, statewide general election, and shall be designated as Proposition 1A.

SEC. 35. Notwithstanding Section 13282 of the Elections Code, the public shall be permitted to examine the condensed statement of the ballot title regarding the measure set forth in Section 16 of this act for not more than eight days, and the financial impact statement from the time it is received by the Secretary of State until the end of the eight days. Any voter may seek a writ of mandate for the purpose of requiring any statement of the ballot title, or portion thereof, to be amended or deleted only within that eight-day period.

SEC. 36. The Secretary of State shall include, in the ballot pamphlets mailed pursuant to Section 9094 of the Elections Code, the information specified in Section 9084 of the Elections Code regarding the bond act contained in Section 16 of this act. If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding this act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall be mailed separately.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate school facilities to house the growing pupil population attending the California schools, to facilitate class size reduction, to renovate existing facilities, to provide for joint-use facilities, and to provide adequate higher education facilities to accommodate the growing number of students, it is necessary that this act take effect immediately.

CHAPTER 485

FILED WITH SECRETARY OF STATE SEPTEMBER 14, 1998

APPROVED BY GOVERNOR SEPTEMBER 13, 1998

PASSED THE ASSEMBLY AUGUST 18, 1998

PASSED THE SENATE AUGUST 13, 1998

AMENDED IN SENATE AUGUST 6, 1998

AMENDED IN SENATE JULY 8, 1998

AMENDED IN SENATE JUNE 11, 1998

INTRODUCED BY Committee on Judiciary (Escutia (Chair), Alby, Aroner, Baugh, Figueroa, Hertzberg, Keeley, Kuehl, Morrow, Ortiz, and Pacheco)

MARCH 12, 1998

An act to amend Sections 4840, 5040, 5051, 5681, 6009.3, 7507.10, 10085.5, 10133.1, 10133.15, 10133.5, 10145, 10165, 10231, 10231.2, 10232, 10232.1, 10232.4, 10236, 10236.2, 11000.1, 11010.2, 11010.4, 11018.3, 11018.12, 17505.2, 17538, 17762, 19556, 19846A, 19847A, 19942, 22252.5, 23817.5, 24045.14, 24045.15, and 25503.30 of, and to repeal Section 10223 of, the Business and Professions Code, to amend Sections 1714.45 and 2924c of, and to amend and renumber Section 3333.4 of, the Civil Code, to amend Sections 14312, 15052, and 16956 of the Corporations Code, to amend Sections 11301, 17016, 17203.5, 17591, 19116, 27405, 44279.7, 44306, 44308, 44759.4, 52122, 52122.1, 52124, 52181, 52183, 60640, 69621, 69629, and 89010 of, and to amend and renumber Section 17883 of, the Education Code, to amend Sections 3030, 4901, 7552, 7571, 7572, and 7575 of the Family Code, to amend Sections 1505, 13081, and 22050 of the Financial Code, to amend Sections 1348.2, 2052.1, 4600, and 7151 of, and to repeal Section 4606 of, the Fish and Game Code, to amend Section 12803 of, to repeal the heading of Article 2 (commencing with Section 11241) of Chapter 2 of Part 4 of Division 5 of, to repeal the headings of Chapter 4 (commencing with Section 16701) and Chapter 5 (commencing with Section 16801) of Part 1 of Division 9 of, and to repeal the heading of Article 5 (commencing with Section 39461) of Chapter 8 of Part 3 of Division 15 of, the Food and Agricultural Code, to amend Sections 6254, 12940, 15814.26, 15814.27, 21290, 22825.5, 51017.1, 53125, 54902.5, 73759, 75050, and 95022 of, to amend and renumber the heading of Chapter 2.1 (commencing with Section 68650) of Title 8 of, to amend and renumber Sections 68650, 68651, 68652, 68653, 68654, 68655, and 68656 of, to repeal Section 29550.2 of, and to repeal Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of, the Government Code, to repeal Section 651 of the Harbors and Navigation Code, to amend Sections 1206, 1357.52, 1746, 44056, 44401, 102425, and 111940 of, to amend and renumber Sections 40928 and 40929 of, and to amend and renumber the heading of Article 1.5 (commencing with Section 42320) of Chapter 4 of Part 4 of, the Health and Safety Code, to amend Sections 1760.5, 10273.4, 10700, 10841, and 14029 of the Insurance Code, to amend Sections 1295.5, 1776, 1813, 3710.3, 4064, 4600.3, and 5433 of the Labor Code, to amend Section 1011 of the Military and Veterans Code, to amend Sections 290, 290.4, 629.82, 830.3, 1054.2, 1203.1d, 11167.5, and 13764 of the Penal Code, to amend Section 22050 of the Public Contract Code, to amend Sections 6353 and 130051.18 of the Public Utilities Code, to amend Sections 69.5, 95.31, 97.3, 619, 3772.5, 7273, 7284.6, 7284.7, 17053.5, 18804, 18872, 19141.6, 19271, 19533, and 41136 of, and to amend and renumber Section 19721.6 of, the Revenue and Taxation Code,

to amend Section 1088.7 of the Unemployment Insurance Code, to amend Sections 12514, 12523.6, and 14602.7 of the Vehicle Code, to amend Sections 1811 and 13274 of the Water Code, to amend Sections 827.6 and 11478.2 of the Welfare and Institutions Code, and to amend Section 3 of Chapter 708 of the Statutes of 1997, relating to maintenance of the codes.

Bill Number: SB 1000

SEC. 45. Section 17016 of the Education Code is amended to read:

17016. (a) The board, by the adoption of rules, may establish priorities for the construction and leasing of projects to those school districts the pupils of which will benefit most. The board may make exceptions from established priorities when it determines that to do so will benefit the pupils affected.

(b) The board may adopt rules establishing priorities for the acquisition and leasing of portable classrooms to county superintendents of schools that will most benefit pupils needing a county community school. The board shall require each county superintendent of schools who leases portable classrooms pursuant to Section 17017.2 to demonstrate that the portable classrooms are utilized solely for operation of a county community school.

SEC. 46. Section 17203.5 of the Education Code is amended to read:

17203.5. Notwithstanding any other provision of law, to be eligible for funding under this chapter pursuant to Section 17203, a school district shall comply with the following:

(a) In the 1997-98 fiscal year, identify by grade level all available teaching stations in the schools in the school district that serve kindergarten or any grades 1 to 6, inclusive. For the purposes of this section, "teaching station" shall be determined as specified in Sections 17042.5 and 17042.7.

(b) Notwithstanding paragraphs (1) to (3), inclusive, of subdivision (b) of Section 52122.1, in the 1997-98 fiscal year, for the purposes only of determining eligibility for funding under subdivisions (c) to (i), inclusive, of Section 52122.1, a school district is not required to count teaching stations at a schoolsite leased to outside agencies prior to July 1, 1996.

SEC. 47. Section 17591 of the Education Code is amended to read:

17591. Each district desiring an apportionment pursuant to Section 39619 shall file with the State Allocation Board and receive approval of a five-year plan of the maintenance needs of the district over that five-year period. This plan may be amended from time to time. Any expenditure of funds from the district deferred maintenance fund shall conform to the plan approved by the State Allocation Board.

SEC. 48. Section 17883 of the Education Code is amended and renumbered to read:

17183. (a) From time to time, the authority may, by resolution, issue its revenue bonds in order to provide funds for any of the purposes of this chapter. Bonds may be issued to finance any of the following:

(1) A single project or financing of working capital for a single participating district.

(2) A series of projects or financings of working capital for a single participating district.

(3) A single project or financing of working capital for several participating districts.

(4) Several projects or financing of working capital for several participating districts.

(5) A joint venture school facilities construction project undertaken pursuant to Article 5 (commencing with Section 17060) of Chapter 12.

(b) Except as otherwise expressly provided by the authority, all revenue bonds shall be payable from any available revenues or moneys of the authority not otherwise pledged, subject only to any agreements with holders of particular bonds or notes pledging any particular revenue or moneys. Notwithstanding that revenue bonds issued pursuant to this section may be payable from a special fund,

the revenue bonds shall be, and shall be deemed to be for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds for registration.

(c) The revenue bonds of the authority may be issued as serial bonds, term bonds, or the authority, in its discretion, may issue bonds of both types. The issuance shall be in accordance with the indenture, trust agreement, or resolution relating to the revenue bonds, which shall provide all of the following:

- (1) The date or dates of the bonds.
- (2) The date or dates upon which the bonds will mature, not to exceed 40 years from their respective dates.
- (3) The interest rate or rates, or methods of determining the interest rate or rates, of the bonds.
- (4) When the bonds are payable.
- (5) The denominations of the bonds.
- (6) The form of the bonds, which shall be either bearer or registered.
- (7) The registration privileges of the bonds.
- (8) The manner in which the bonds are to be executed.
- (9) The place or places at which the bonds shall be payable in lawful money of the United States of America.
- (10) The terms of redemption of the bonds.

(d) After giving due consideration to the recommendations of the participating district or districts, the revenue bonds of the authority shall be sold by the Treasurer at either a public or private sale at a price or prices, and upon the terms and conditions prescribed by the authority. The revenue bonds of the authority may be sold at, above, or below the par value of the bonds.

(e) Pending the preparation of the definitive bonds, the authority may issue interim receipts or certificates or temporary bonds which shall be exchanged for the definitive bonds.

(f) Any resolution authorizing the issuance of any bonds of the authority, or any issue of revenue bonds of the authority, may include any of the following provisions:

- (1) Provisions pledging all or any part of the proceeds of the bonds or revenue of a project or loan.
- (2) Provisions concerning the replacement of mutilated, destroyed, stolen, or lost bonds.
- (3) Provisions specifying insurance to be maintained on the project and the authorized uses of the proceeds of the insurance.
- (4) Covenants against the mortgaging or otherwise encumbering, selling, leasing, pledging, placing a charge upon, or otherwise disposing of the project prior to the payment of the bonds issued to finance the project.
- (5) Provisions specifying the events of default, terms upon which the bonds may be declared due before maturity, and the terms upon which the declaration and its consequences may be waived.
- (6) The rights, liabilities, powers, and duties arising upon the breach of any covenants, conditions, or obligations.
- (7) Vesting of the right to enforce covenants in a trustee.
- (8) The terms upon which all or any percentage of the bondholders may enforce covenants or duties.
- (9) Procedures for amending the terms of the resolution, with or without the consent of the holders of a specified number of bonds.
- (10) Provision for any other acts or things deemed necessary, convenient, or desirable by the authority to secure the bonds or improve their marketability.

(g) The validity of the authorization and issuance of any bond issue shall not be affected by proceedings for the acquisition, construction, or improvement of any project, or by contracts relating

to those proceedings. Any resolution authorizing the issuance of any bonds of the authority may provide authorization for the bonds to bear a statement certifying that they are issued pursuant to this chapter. Bonds bearing that statement shall be conclusively deemed valid and issued in conformity with this chapter. Reference on the face of the bonds to the resolution by its date of adoption shall incorporate the provisions of the resolution and of this chapter into the terms of the bonds.

(h) Members of the authority, or any person executing the revenue bonds of the authority, shall not incur personal liability on the bonds, nor shall these persons incur personal liability or accountability by reason of the issuance of the revenue bonds of the authority.

(i) The authority is authorized, out of any funds available for that purpose, to purchase revenue bonds of the authority. The authority may hold, pledge, cancel, or resell any bonds purchased under the authority of this subdivision, subject to, and in accordance with, agreements with bondholders.

(j) The financing or refinancing of projects or working capital may be provided pursuant to this chapter by means other than revenue bonds, at the discretion of the authority, including financing or refinancing through certificates of participation, or other interests, in bonds, loans, leases, installment sales, or other agreements of the participating district or districts. In this connection, the authority may do all things and execute and deliver all documents and instruments as may be necessary or desirable with regard to issuance of the certificates of participation or other means of financing or refinancing.

(k) The authority may by resolution issue its revenue bonds in the form of commercial paper.

SEC. 165. Section 3 of Chapter 708 of the Statutes of 1997 is amended to read:

Sec. 3. (a) Notwithstanding Sections 46201, 46202, and 46206 of the Education Code, the school districts identified in subdivision (b) which failed to maintain the level of instructional minutes required in paragraph (3) of subdivision (a) of Section 46201 of the Education Code in any of the fiscal years 1990-91 to 1994-95, inclusive, or with respect to the Ferndale Unified School District, the fiscal years 1990-91 to 1995-96, inclusive, and subject to fiscal penalties resulting from audits of instructional minutes, shall pay the lesser of one-quarter of the required fiscal assessment or 5 percent of the total revenue limit of the district commencing with the 1997-98 fiscal year and continuing until the full amount of the required fiscal assessment is paid. The Superintendent of Public Instruction shall make the necessary adjustments to facilitate apportioning the appropriate amounts from each school district's apportionments.

(b) The following school districts are subject to subdivision (a):

- (1) Butte Valley Unified School District.
- (2) Calaveras Unified School District.
- (3) Mina Union High School District.
- (4) Ferndale Unified School District.
- (5) Fort Sage Unified School District.
- (6) Graves Elementary School District.
- (7) Los Angeles Unified School District.
- (8) Parlier Unified School District.
- (9) Siskiyou Union High School District.

(c) In addition to the amount specified in subdivision (a), the Graves Elementary School District shall have one-half the amount specified in subdivision (b) of Section 41420 of the Education Code withheld from its apportionments on the same terms as specified in subdivision (a), if the district failed to comply with the 175-day minimum school year in any school year described in subdivision (a).

SEC. 166. Any section of any act enacted by the Legislature during the 1998 calendar year that takes effect on or before January 1, 1999, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 1998 calendar year and takes effect on or before January 1, 1999, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

SCHOOLS AND SCHOOL DISTRICTS—INDIVIDUALS
WITH DISABILITIES—INDIVIDUALIZED
EDUCATION PROGRAMS

CHAPTER 691

S.B. No. 1686

AN ACT to amend Sections 2571, 17047, 33050, 33590, 33595, 33596, 41601, 46200.5, 46201.5, 56031, 56032, 56050, 56155.5, 56301, 56329, 56343, 56345, 56361, 56363.1, 56364, 56364.1, 56366.3, 56366.4, 56381, 56426, 56501, 56505, 56505.1, 56506, and 56507 of, to amend and renumber Section 56364.5, as added by Chapter 854 of the Statutes of 1997, of, to add Sections 56041.5, 56043, 56302.5, 56341.5, and 56342.5 to, to add Article 3.5 (commencing with Section 56145) and Article 5.6 (commencing with Section 56170) to Chapter 2 of, and to add Article 7 (commencing with Section 56837) to Chapter 7.2 of, Part 30 of, to repeal Sections 33594 and 56365.5 of, to repeal and amend Sections 56001 and 56026 of, and to repeal and add Sections 56205 and 56345.1 of, the Education Code, and to amend Section 7570 of the Government Code, relating to special education.

[Approved by Governor September 21, 1998.]

[Filed with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1686, Solis. Special education.

Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act, in order that the state may qualify for federal funds available for the education of individuals with exceptional needs. Existing law provides for the State Advisory Commission on Special Education.

This bill would change terminology and code section references in the Education Code to conform those provisions of the Education Code with the amended Individuals with Disabilities Education Act. The bill would change the composition and duties of the Advisory Commission on Special Education to conform with the Individuals with Disabilities Education Act. The bill would further repeal provisions of the Education Code that are no longer relevant. The bill would codify existing state regulations relating to pupil records and the implementation of a pupil's individualized education program. The bill would also make technical, nonsubstantive changes.

The bill would impose a state-mandated local program by imposing new duties on local education agencies in conformance with the provisions of the amended federal Individuals with Disabilities Education Act in regard to the identification, location, and assessment of individuals with exceptional needs, in regard to the transfer of parent's rights when an individual with exceptional needs reaches the age of 18, in regard to services provided to individuals with exceptional needs attending charter schools, in regard to private school

Additions or changes indicated by underline; deletions by asterisks * * *

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children with disabilities, and in regard to the individualized education program for individuals with exceptional needs. The bill would provide for the method of allocating to the state federal appropriations pursuant to Part B of the Individuals with Disabilities Education Act in conformance with that act.

Existing law requires each special education local plan area to submit a local plan to the Superintendent of Public Instruction.

This bill would impose a state-mandated local program by requiring each special education local plan area submitting a local plan to demonstrate that it has in effect policies, procedures, and programs that are consistent with state laws, regulations, and policies governing, among other things, a free appropriate public education and a comprehensive system of personnel development.

Existing law requires the superintendent to review the appropriateness of new public and nonpublic school special education placements of individuals with exceptional needs if the cost of the placement exceeds \$20,000.

This bill would repeal this provision.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 2571 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

2571. The Superintendent of Public Instruction shall make the following computations for each county superintendent of schools:

(a) Add the property tax revenues received for the 1977-78 fiscal year pursuant to subdivisions (b), (c) and (d) of Section 2500, Section 2501 for purposes of Section 1705, Section 2502 for purposes of Section 56811, Section 2505 for special education tuition charges, Section 42909 for purposes of Section 56604, and Section 56364 or Section 56364.2, as applicable. For purposes of this subdivision, section references are to sections effective during the 1977-78 fiscal year.

(b) Divide the sum computed pursuant to subdivision (a) by the total amount of property tax revenues received by the county superintendent of schools for the 1977-78 fiscal year.

(c) Multiply the quotient computed pursuant to subdivision (b) by the total amount of property tax revenues received by the county superintendent of schools for the then current fiscal year.

(d) Subtract the product computed pursuant to subdivision (c) from the total amount of property tax revenues received by the county superintendent of schools for the then current fiscal year.

(e) For purposes of subdivisions (c) and (d), "total property tax revenues" include taxes on the secured roll, taxes on the unsecured roll, prior year taxes and subventions of property taxes.

SEC. 2. Section 17047 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

17047. (a) The allowable new building area for the purpose of providing special day class and Resource Specialist Program facilities for special education pupils shall be negotiated and approved by the State Allocation Board, with any necessary assistance to be provided by the Special Education Division of the State Department of Education. The square footage allowances shall be computed within the maximum square footage set forth in the following schedule:

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Additions or changes indicated by underline; deletions by asterisks * * *

Special Day Class Basic Need	Grade Levels	Load- ing*	Square Footage		
Nonsevere Disability					
—Specific Learning Disability	All	12	1080		
—Mildly Mentally Retarded	All	12	1080		
—Severe Disorder of Language	All	10	1080		
Severe Disability					
—Deaf and Hard of Hearing	All	10	1080		
—Visually Impaired	All	10	1330 (1080 + 250 storage)		
—Orthopedically and Other Health Impaired	All	12	2000 (1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy + 750 thera- py per additional classroom)		
—Autistic	All	6	1160 (1080 + 80 toilets)		
—Severely Emotionally Disturbed	All	6	1160 (1080 + 80 toilets)		
—Severely Mentally Retarded	Elem.	12	1750 (1080 + 400 toilets + 270 daily living skills) Secun. 2150 (1080 + 400 toilets + 270 daily living skills + 400 vocational)		
—Developmentally Disabled	All	10	2000 (1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy*** + 750 therapy per additional CR)		
—Deaf-Blind/Multi	All	5	1400 (1080 + 200 storage + 150 toilets)		
					Square Feet
Resource Specialist Program for those pupils with disabling conditions whose needs have been identified by the Individualized Education Program (IEP) Team, who require special education for a portion of the day, and who are assigned to a regular classroom for a majority of the school day.***		All Maximum caseload for RS is 28, not all served at same time		Pupils 1-8 9-28 29-37 38-56 57-65 66-85 86-94 95-112	240 480 720 960 1200 1440 1680 1920

* Special pupils may usually be grouped without accordance to type, especially in smaller districts or where attendance zones may indicate, to maximize loadings per classroom where there are children with similar educational needs (Sec. 56364 or 56364.2, as applicable).

** Therapy add-ons not to be provided if on same site as orthopedically impaired.

*** To a maximum of 4 percent of the unhoused average daily attendance of the district, per new school or addition, to a maximum of 1920 square feet.

Additions or changes indicated by underline; deletions by asterisks * * *

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(b) The allowable new building area shall be computed by dividing the number of eligible pupils by the minimum required loading per classroom for special day classes for the type of pupils to be enrolled. No new or additional facility shall be provided for special day classes unless the number of additional eligible pupils equals one-third or more of the minimum required loading.

SEC. 3. Section 33050 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(8) Sections 52163, 52165, 52166, and 52178.

(9) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(10) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(11) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(12) Section 51513.

(13) Chapter 6.10 (commencing with Section 52120) of Part 28, relating to the Class Size Reduction Program.

(14) Section 56364.1, except that this restriction shall not prohibit the State Board of Education from approving any waiver of Section 56364 or Section 56364.2, as applicable, relating to full inclusion.

(15) Article 4 (commencing with Section 60640) of Chapter 5 of Part 33, relating to the STAR Program, and any other provisions of Chapter 5 (commencing with Section 60600) of Part 33 that establish requirements for the STAR Program.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

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Additions or changes indicated by underline; deletions by asterisks * * *

(3) The termination of the obligation of the district, special education local plan area, and county office, consistent with this part, to provide a program of special education to an individual or individuals with exceptional needs.

(4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of facilities.

(d) Notwithstanding the provisions of subdivisions (a) and (b), for any fiscal year in which the amounts appropriated by Congress for the purposes of Section 1411 of Title 20 of the United States Code exceed four billion one hundred million dollars (\$4,100,000,000), a district, special education local plan area, or county office, may reduce expenditures from local funds for the education of individuals with exceptional needs by an amount that shall not exceed 20 percent of the amount of federal funds available under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and allocated to the district, special education local plan area, and county office which exceeds the amount of these funds received by the district, special education local plan area, or county office in the preceding fiscal year.

(e) A district, special education local plan area, or county office may reduce expenditures from local funds for the education of individuals with exceptional needs pursuant to subdivision (d) only if the superintendent determines that the district, special education local plan area, or county office is meeting the requirements of this part and the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) regarding the education of individuals with exceptional needs.

56842. The superintendent shall annually identify and submit to the Director of Finance recommendations for capacity-building and improvement grants for districts, special education local plan areas, or county offices for appropriation through the annual Budget Act. The capacity-building and improvement grants, if approved by the Legislature and the Governor, would be available to districts, special education local plan areas, and county offices pursuant to paragraph (4) of subsection (f) of Section 1411 of Title 20 of the United States Code. The capacity-building and improvement grant recommendations shall be submitted to meet the annual deadline of the Director of Finance for the development of the annual Budget Act.

SEC. 50. Section 7570 of the Government Code is amended to read:

7570. Ensuring maximum utilization of all state and federal resources available to provide * * * a child with a disability, as defined in * * * paragraph (3) of Section 1401 of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in * * * paragraph (22) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to * * * a child with a disability, shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare. The Superintendent of Public Instruction shall ensure that this chapter is carried out through monitoring and supervision.

SEC. 51. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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SCHOOLS AND SCHOOL DISTRICTS—BOND ISSUANCE—LIMITATIONS

CHAPTER 741

A.B. No. 89

AN ACT to amend Sections 17199.3 and 17199.4 of, and to repeal Section 94153 of, the Education Code, relating to educational facilities, and making an appropriation therefor.

[Approved by Governor September 22, 1998.]

[Filed with Secretary of State September 23, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 89, Pringle. California School Finance Authority Act: California Educational Facilities Authority Act.

Existing law, known as the California School Finance Authority Act, establishes the California School Finance Authority and authorizes it to administer the continuously approp-

Additions or changes indicated by underline; deletions by asterisks * * *

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riated California School Finance Authority Fund. The act limits to \$400,000,000 the total amount of revenue bonds that may be issued under a provision of the act, which is to be repealed on January 1, 2006, that permits a participating school district or county office of education to obtain state assistance from the authority to guarantee or provide for payment of bonds issued under the act in connection with securing financing or refinancing of projects, except for working capital.

This bill would delete the \$400,000,000 limitation on the issuance of bonds under this bond guarantee or payment provision and delete the January 1, 2006, repeal date, thereby extending its duration indefinitely. This bill would make an appropriation by deleting the limitation on issuance of revenue bonds for, and extending the duration of, the bond guarantee or payment provisions, for which continuously appropriated funds could be expended.

Under existing law, the total amount of bonds authorized to be outstanding at any one time under the California Educational Facilities Authority Act, with respect to dormitory or educational facility projects, is \$2,600,000,000 and the total amount of bonds authorized to be outstanding at any one time under the act, with respect to student loan projects, is \$300,000,000.

This bill would make an appropriation by repealing these limitations.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 17199.3 of the Education Code is amended to read:

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time for purposes of this chapter, other than those revenue bonds issued under Section 17199.4, shall not exceed four hundred million dollars (\$400,000,000).

(b) The total amount * * * that may be * * * outstanding at any time under this chapter * * *, for purposes of Section * * * 17199.4 only, shall not exceed four billion dollars (\$4,000,000,000).

(c) For purposes of subdivisions (a) and (b), bonds which meet any of the following conditions shall not be deemed to be outstanding:

- (1) Bonds which have been refunded pursuant to Section 17188.
- (2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.
- (3) Bonds which have been issued to provide working capital.

SEC. 2. Section 17199.4 of the Education Code is amended to read:

17199.4. (a) Notwithstanding any other law, any participating school district or county office of education, in connection with securing financing or refinancing of projects, except working capital, pursuant to this chapter may elect to guarantee or provide for payment of the bonds in accordance with the following conditions:

(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds and identify a trustee appointed by the participating school district or county office of education or the authority for purposes of this section. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason, the school district or county office of education will not make the payment of principal and interest at the time the payment is required, the participating school district or county office of education shall notify the trustee of that fact and of the amount of the deficiency. The trustee shall immediately communicate that information to the Controller.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the trustee in the amount of the deficiency for the purpose of making the required payment of principal or interest, or both. The Controller shall make that apportionment only from moneys in Section A of the State School Fund designated for apportionment

to the district pursuant to Section 42238 or to the county office of education pursuant to Section 2558.

(4) As an alternative to the procedures set forth in paragraphs (2) and (3), the participating school district or county office of education may provide a transfer schedule in its notice to the Controller of its election to participate under this section. The transfer schedule shall set forth amounts to be transferred to the trustee and the date for the transfers. The Controller shall, subject to the limitation in the last sentence of paragraph (3), make apportionments to the trustee of those amounts on the specified date for the purpose of making those transfers.

(b) The amount apportioned for a school district or for a county office of education pursuant to this section shall be deemed to be an allocation to the district or the county office of education for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution. For purposes of computing revenue limits pursuant to Section 42238 for any school district or pursuant to Section 2558 for any county office of education, the revenue limit for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraphs (3) and (4) of subdivision (a).

(c)(1) School districts or county offices of education that elect to participate under this section shall apply to the authority. The authority shall consider each of the following priorities in making funds available:

(A) First priority shall be given to school districts or county offices of education that apply for funding for instructional classroom space.

(B) Second priority shall be given to school districts or county offices of education that apply for funding of modernization of instructional classroom space.

(C) Third priority shall be given to all other eligible costs, as defined in Section 17173.

(2) The authority shall prioritize applications at appropriate intervals.

(3) A school district electing to participate under this section that has applied for revenue bond moneys for the purposes of joint venture school facilities construction projects, pursuant to Article 5 (commencing with Section 17060) of Chapter 12, shall not be subject to the priorities set forth in paragraph (1) * * *.

(d) This section shall not be construed to make the State of California liable for any payment of principal or interest on any bonds or certificates of participation within the meaning of Section 1 of Article XVI of the California Constitution or otherwise, except as expressly provided in this section.

(e) A school district that has a qualified or negative certification pursuant to Section 42131, or a county office of education that has a qualified or negative certification pursuant to Section 1240, may not participate under this section.

(f) The authority shall report to the Legislature by January 1, 2001, on the number of school districts or county offices of education electing to participate under this section and on the financial stability of the participating school districts and county offices of education.

* * *

SEC. 3. Section 94153 of the Education Code is repealed.

Additions or changes indicated by underline; deletions by asterisks * * *

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SCHOOLS AND SCHOOL DISTRICTS—PORTABLE
CLASSROOMS—LEASES

CHAPTER 848

A.B. No. 2696

AN ACT to amend Section 17089.2 of the Education Code, relating to portable classrooms.

[Approved by Governor September 24, 1998.]

[Filed with Secretary of State September 25, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2696, Cardoza. School facilities: portable classrooms.

Existing law, the State Relocatable Classroom Law of 1979, authorizes a school district or county superintendent of schools to purchase any portable classroom that is leased from the State Allocation Board by a school district or county superintendent of schools on July 1, 1991, for an amount equal to the purchase price paid by the board, including certain purchase costs, less the amount of any rent already paid to the board by the district or county superintendent of schools for that classroom.

This bill would apply these provisions to portable classroom leases on or prior to December 1, 1991, rather than on July 1, 1991.

The people of the State of California do enact as follows:

SECTION 1. Section 17089.2 of the Education Code is amended to read:

17089.2. Any portable classroom that is leased from the board by a school district or county superintendent of schools under this chapter on * * * or prior to December 1, 1991, may be purchased by that district or county superintendent of schools for an amount equal to

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Additions or changes indicated by underline; deletions by asterisks * * *

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the purchase price paid by the board, including the purchase costs specified in subdivision (c) of Section 17088.7, less the amount of any rent already paid to the board by the district or county superintendent of schools for that classroom. Payment for purchases made pursuant to this section shall be in equal annual installments for an agreed upon term not to exceed nine years.

Additions or changes indicated by underline; deletions by asterisks * * *

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SEC. 2. It is the intent of the Legislature that funds will be appropriated in the annual Budget Act for purposes of Section 49471.5 of the Education Code.

**SCHOOLS AND SCHOOL DISTRICTS—CONSTRUCTION
OF FACILITIES—FUNDING**

CHAPTER 941

A.B. No. 191

AN ACT to add Section 17018.7 to the Education Code, relating to school facilities.

[Approved by Governor September 28, 1998.]

[Filed with Secretary of State September 29, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 191, Napolitano. School facilities.

Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (hereafter the Greene Act), authorizes the State Allocation Board (hereafter the board) to apportion state funding to applicant school districts for designated school facilities construction purposes. Existing law requires the board to grant first priority for construction funds to a school district with a substantial enrollment in multitrack year-round schools requesting state funding for 50% of the cost of a project, and second priority to school districts with a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project.

This bill would, notwithstanding any other provision of law to the contrary, permit a school district that has, within the previous 24-month period, constructed or otherwise acquired school facilities with 100% local funding, as defined, to apply for funding under the Greene Act for the construction of a gymnasium or multipurpose room. The bill would require the project to be accorded the funding priority status of a project for which funding is requested for only 50% of the cost if the board determines that the schoolsite does not have adequate facilities in that regard and would require the board to grant the school district a credit against its local matching share requirement of up to 50% of the costs of the project or the total local funds expended on the school facilities funded by 100% local funds within the immediately preceding 24-month period, whichever is less.

The people of the State of California do enact as follows:

SECTION 1. Section 17018.7 is added to the Education Code, to read:

17018.7. (a) Notwithstanding any other provision of law to the contrary, a school district that has, within the previous 24-month period, constructed or otherwise acquired school facilities with 100 percent local funding, may apply for funding for the construction of a gymnasium or multipurpose room on the site where it constructed or otherwise acquired school facilities with 100 percent local funding.

(b) If the State Allocation Board determines that the schoolsite does not have adequate gymnasium or multipurpose room facilities, the board may approve the application pursuant to this section.

(c) For an application approved pursuant to this section, the board shall grant the school district a credit against its local matching share requirement of up to 50 percent of the costs of the project or the total local funds expended by the school district on any school facilities funded by 100 percent local funds within the immediately preceding 24-month period, whichever is less.

(d) For an application approved under this section, the project shall be accorded the priority status that is otherwise accorded under Section 17017.7 to a project for which state funding is requested for only 50 percent of the costs.

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Additions or changes indicated by underline; deletions by asterisks * * *

(e) As used in this section "100 percent local funding" includes construction or acquisition of a school facility with 40 percent funding from the general fund of the school district and with the remainder of the local funding from the sale of surplus school property.

SCHOOLS AND SCHOOL DISTRICTS—SUMMER SCHOOL—FUNDING

CHAPTER 942

S.B. No. 1370

AN ACT to amend Section 42239 of the Education Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998.]

[Filed with Secretary of State September 29, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1370, Polanco. Education: summer school funding.

(1) Existing law requires the governing board of each school district that maintains any or all of grades 7 to 12, inclusive, to offer summer school instructional programs for pupils assessed as not meeting the district's adopted standards of proficiency in basic skills. Under existing law, school districts receive apportionments for summer school based generally on summer school attendance, adjusted for various factors. Under existing law, generally, a school district's maximum entitlement for reimbursement for pupil attendance in summer school programs offered for mathematics, science, English as a second language, or other core academic areas designated by the Superintendent of Public Instruction is an amount equal to 5% of the district's total enrollment for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year, as determined pursuant to specified provisions.

This bill would, commencing in the 1998-99 fiscal year, except as otherwise provided by specified provisions, make a school district's maximum entitlement for reimbursement for pupil attendance in those summer school programs an amount equal to 7% of the district's total enrollment for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year. The bill would require the Superintendent of Public Instruction to reallocate to any school district any unexpended balance of the appropriations made for the current fiscal year for core academic summer school programs, as prescribed, to the extent of the shortfall in funding needed to provide supplemental instructional services offered under the bill. The bill would require the superintendent, if funds are not needed for that purpose, to reallocate to any school district any unexpended balance for reimbursement for pupil attendance in specified summer school programs. The bill would prohibit any district from receiving reimbursement for pupil attendance in summer school programs in excess of the district's enrollment for the prior fiscal year, multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year.

The bill would appropriate \$75,000,000 from the General Fund to the Superintendent of Public Instruction for allocation to school districts for the purposes of supplemental instructional programs established pursuant to specified provisions added by AB 1639 of the 1997 Regular Session. The bill would appropriate \$30,000,000 from the General Fund to the State Department of Education to augment a specified item of appropriation in the Budget Act of 1998 to provide remedial instruction in pupils in grades 7 to 9, inclusive, who have been retained or identified as being at risk of retention pursuant to specified provisions. The bill would appropriate \$94,146,000 from the General Fund to the Superintendent of Public Instruction for allocation to school districts, county offices of education, and other agencies receiving funding under a specified item of appropriation in the Budget Act of 1998 for providing cost-of-living adjustments and enrollment growth funding, to be distributed to each program that is funded under that item in a specified amount. For the purposes of making

Additions or changes indicated by underline; deletions by asterisks * * *

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SCHOOLS AND SCHOOL DISTRICTS—FACILITY
CONSTRUCTION—FUNDING

CHAPTER 957

S.B. No. 2045

AN ACT to amend Section 17017.9 of the Education Code, relating to school facilities.

[Approved by Governor September 28, 1998.]

[Filed with Secretary of State September 29, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2045, Greene. School facilities construction.

Pursuant to existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (hereafter the Greene Act), the State Allocation Board (hereafter the board) is authorized to apportion state funding to applicant school districts for designated school facilities construction purposes. Existing law requires the board to grant first priority for construction funds to a school district with a substantial enrollment in multitrack year-round schools requesting state funding for 50% of the cost of a project, and second priority to school districts with a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project.

Additions or changes indicated by underline; deletions by asterisks * * *

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Existing law, notwithstanding these provisions, requires that, with certain exceptions, a project be accorded first priority if certain conditions are met, including, but not limited to, the requirement that the district document that it has incurred bonded indebtedness in an amount not less than 95% of the bonding capacity of the district, and that the district agree that all unexpended bonding capacity of the district, and all funding made available from prescribed sources, including, but not limited to, the Mello-Roos Community Facilities Act of 1982, and the Planning and Zoning Law, shall apply toward the district's 50% share of the costs of the project.

This bill would, instead, require the district to agree to apply 95% of the unexpended bonding capacity of the district, and would delete the provision limiting this amount to 50% of the cost of the project.

This bill would require the district, except as specified, to agree to apply developer fees toward the cost of projects for which the district requests Greene Act funding, would limit this provision to 50% of the cost of any project, and would exempt fees needed for interim housing for capital outlay purposes for modernization and new construction projects, school district administration capital outlay projects, and capital outlay projects for transportation needs.

This bill would include funding pursuant to the Mello-Roos Community Facilities Act of 1982, within the definition of bonded indebtedness for the purposes of the requirement that the district document that it has incurred bonded indebtedness in an amount not less than 95% of the bonding capacity of the district.

The bill would delete the reference to funding pursuant to the Planning and Zoning Law from the requirement that the district agree that certain funding be made available for the district's 50% share of the costs of the project.

This bill would authorize the board to recalculate program allowances and apportionments pursuant to these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 17017.9 of the Education Code is amended to read:

17017.9. (a) Notwithstanding any other provision of law, a project shall be accorded, subject to subdivision (b), the priority status that otherwise is accorded under Section 17017.7 to a project for which state funding is requested for only 50 percent of the cost, if all of the following conditions are met:

(1) The applicant district documents to the satisfaction of the board that it has incurred bonded indebtedness in an amount not less than 95 percent of the bonding capacity of the district. "Bonded indebtedness" for the purposes of this section includes, but is not limited to, funding provided pursuant to Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code.

(2) The applicant district agrees that * * * up to 95 percent of the * * * unexpended bonding capacity of the district, existing on or after the date of the district's first application for project funding pursuant to this section, shall apply toward the cost of projects.

(3) Either of the following apply:

(A) * * * The applicant district agrees that developer fees imposed pursuant to Section 17620 shall apply toward the cost of projects for which the district requests state funding pursuant to this chapter, not to exceed 50 percent of the cost of any project. Fees needed for interim housing for capital outlay purposes for modernization and new construction projects, school district administration capital outlay projects, and capital outlay projects for transportation needs, are exempt from this requirement.

(B) * * * The applicant is a school district with an average daily attendance of 2,500 or less.

(b) An applicant district qualifying for the priority status described in subdivision (a) as to any project shall continue to be accorded that status for all subsequent projects under this chapter until the time that the bonding capacity of the district determined for purposes of that subdivision increases by 20 percent.

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Additions or changes indicated by underline; deletions by asterisks * * *

(c) The condition set forth in paragraph (2) of subdivision (a) shall apply until either the applicant district's eligibility under this section terminates pursuant to subdivision (b), or funding for the district is approved and apportioned under this chapter for a project for which 50 percent or more of the cost is provided by the district from funding sources other than any state program administered by the board, whichever occurs first.

(d) Notwithstanding any other provision of law, as to any project for which priority status is accorded pursuant to subdivision (a), the estimate of average daily attendance for the applicant district may be calculated, upon request of the district, in the manner set forth in subdivision (a) of Section 17040.3.

(e) The board may recalculate program allowances and apportionments pursuant to this section.

Additions or changes indicated by underline; deletions by asterisks * * *

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TEACHERS—RETIREMENT—BENEFITS

CHAPTER 1076

S.B. No. 2126

AN ACT to amend Sections 22801, 22803, 22820, 23203, and 24201 of, and to add Sections 17193.5, 17199.5, 22147.5, 22260, and 22826 to, the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 30, 1998.]

[Filed with Secretary of State September 30, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2126, Committee on Public Employment and Retirement. State Teachers' Retirement System: benefits.

(1) The State Teachers' Retirement Law authorizes members to receive additional service credit upon payment of contributions.

This bill would require those payments to be made in not more than 120 monthly installments. The bill would authorize purchase of up to 5 years of nonqualified service, as defined.

(2) Existing law authorizes redeposited refunded accumulated contributions to be made in not more than 60 monthly installments.

This bill would authorize repayment in 120 monthly installments.

(3) Existing law authorizes purchase of out-of-state service and excludes that service from vesting requirements.

This bill would delete that exclusion, except as specified.

(4) The California School Finance Authority Act authorizes the Controller, upon receipt of a deficiency notice from any school district or county office of education, to make specified apportionments to trustees.

This bill would require the Controller to allocate apportionments to public credit providers, as defined, rather than the trustee if the bonds were subject to a credit enhancement agreement. The bill would authorize the State Teachers' Retirement System to provide credit enhancement for bonds, notes, certificates of participation, or other evidence of indebtedness of school employees.

(5) The bill would incorporate additional changes in Section 24201 of the Education Code proposed by SB 610, that would become operative only if SB 610 and this bill are both chaptered and became effective on or before January 1, 1999, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 17193.5 is added to the Education Code, to read:

17193.5. (a) For purposes of this section, "public credit provider" means any financial institution or combination of financial institutions, which consists either solely, or has as a member or participant, a public retirement system. Notwithstanding any other provision of law, a public credit provider may, in connection with providing credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of a school district or county office of education, require the school district or county office of education to agree to the following conditions:

Additions or changes indicated by underline; deletions by asterisks * * *

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(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds, notes, certificates of participation, or other evidence of indebtedness and identify the public credit provider that provided credit enhancement. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason a public credit provider is required to make principal or interest payments or both pursuant to a credit enhancement agreement, the public credit provider shall immediately notify the Controller of that fact and of the amount paid out by the public credit provider.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the public credit provider in the amount of the payments made by the public credit provider for the purpose of reimbursing the public credit provider for its expenditures made pursuant to the credit enhancement agreement. The Controller shall make that apportionment only from moneys designated for apportionments to the school district pursuant to Section 42238 or to the county office of education pursuant to Section 2558 or to the community college district pursuant to Section 84750.

(b) The amount apportioned for a school district, a county office of education, or a community college district pursuant to this section shall be deemed to be an allocation to the district or the county office of education or the community college district for purposes of subdivision (b) or Section 8 of Article XVI of the California Constitution. For purposes of computing revenue limits or revenue levels pursuant to Section 42338 for any school district or pursuant to Section 2558 for any county office of education or pursuant to Section 84750 for any community college district, the revenue limit or revenue level for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraph (3) of subdivision (a).

SEC. 2. Section 17199.5 is added to the Education Code, to read:

17199.5. Notwithstanding Section 17199.4, if the bonds were subject to a credit enhancement agreement provided by a public credit provider pursuant to Section 17193.5 for which a payment for principal or interest, or both, has been made by the public credit provider, the Controller shall allocate to the public credit provider, rather than the trustee, the percentage of the apportionment to be made pursuant to this paragraph equal to the percentage of the outstanding indebtedness which is subject to the credit enhancement agreement.

SEC. 3. Section 22147.5 is added to the Education Code, to read:

22147.5. "Nonqualified service" means time during which creditable service subject to coverage by the plan is not performed, excluding time a member is eligible to purchase as permissive or additional service credit pursuant to Chapter 14 (commencing with Section 22800), Chapter 14.2 (commencing with Section 22820), and Chapter 14.5 (commencing with Section 22850).

SEC. 4. Section 22260 is added to the Education Code, to read:

22260. Notwithstanding any other provision of law, the system may provide credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of an employer, provided that any credit enhancement transaction satisfies the requirement of Section 22250 and does not constitute a prohibited transaction for purposes of Section 503 of the United States Internal Revenue Code.

SEC. 5. Section 22801 of the Education Code is amended to read:

22801. (a) A member who elects to receive additional service credit as provided in this chapter shall pay, prior to retirement, all contributions with respect to that service at the contribution rate for additional service credit, adopted by the board as a plan amendment, in effect at the time of election. Contributions shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(b) If the member is employed to perform creditable service subject to coverage by the plan at the time of the election, the contributions shall be based upon the compensation

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security system, if he or she has attained age 55 years and retires concurrently under the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, or the San Francisco City and County Employees' Retirement System.

* * *

(b) Application for retirement under paragraph (2) of subdivision (a) may be made at any time.

SEC. 11. Section 24201 of the Education Code is amended to read:

24201. (a) A member may retire for service upon written application for retirement to the board, under paragraph (1) or (2) as follows:

(1) The member has attained age 55 years or more and has at least five years of credited * * * service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions * * *. The five * * * years of credited service may include out-of-state service purchased pursuant to Section 22820.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security system, if he or she has attained age 55 years and retires concurrently under the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, county retirement systems established under the County Employee Retirement Law of 1937, or the San Francisco City and County Employees' Retirement System.

* * *

(b) Application for retirement under paragraph (2) of subdivision (a) may be made at any time.

SEC. 12. Section 11 of this bill incorporates amendments to Section 24201 of the Education Code proposed by both this bill and SB 610. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 24201 of the Education Code, and (3) this bill is enacted after SB 610, in which case Section 10 of this bill shall not become operative.

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SCHOOLS AND SCHOOL DISTRICTS—FACILITIES—
DISABLED VETERANS

CHAPTER 133

A.B. No. 1633

AN ACT to add Section 17076.11 to the Education Code, relating to school facilities.

[Filed with Secretary of State July 20, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1633, Floyd. School facilities: disabled veteran business enterprises.

Existing law, the Leroy F. Greene School Facilities Act of 1998, among other things, establishes the continuously appropriated 1998 State School Facilities Fund, appropriates money to school facilities funds from which the State Allocation Board may apportion to school districts for school facility purposes.

This bill would require any school district using funds allocated pursuant to the act for the construction or modernization of a school building, to have a participation goal of not less than 3% per year, of the overall dollar amount expended each year to the school district for disabled veteran business enterprises.

The people of the State of California do enact as follows:

SECTION 1. Section 17076.11 is added to the Education Code, to read:

17076.11. Any school district using funds allocated pursuant to this chapter for the construction or modernization of a school building, shall have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises.

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SCHOOLS AND SCHOOL DISTRICTS—PUPIL
SAFETY—CLASSROOM TELEPHONES

CHAPTER 709

A.B. No. 1136

AN ACT to add Article 10 (commencing with Section 17077.10) to Chapter 12.5 of Part 10 of, and to add Section 17096 to, the Education Code, relating to school facilities.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1136, Strom-Martin. School facilities: pupil safety: classroom telephones.

Existing law, the Field Act, requires school buildings, as defined, to meet various safety specifications. Existing law, the Leroy F. Greene School Facilities Act of 1998 (Greene Act), provides funding to school districts to finance the construction, as defined, of school facilities. Existing law, the State Relocatable Classroom Law of 1979, requires the State Allocation Board to lease portable classrooms to qualifying school districts and county superintendents of schools. The State Relocatable Classroom Law of 1979 authorizes any qualifying school district, or under a joint powers agreement between any combination of one or more school districts or county superintendents of schools, to purchase portable classrooms.

This bill, so as to enhance pupil safety, would require, commencing with applications submitted on or after January 1, 2000, any school district applying for funding pursuant to the Greene Act to include in its plans and specifications for the construction or fabrication of a

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new or modernized school building, as defined, that includes the construction or fabrication of new or modernized classrooms, a hard-wired connection to a public switched network in each new or modernized classroom.

This bill would require, commencing with leases entered into on or after January 1, 2000, the plans and specifications for portable classrooms funded under the State Relocatable Classroom Law of 1979 to include a provision for a telephone in each portable classroom. The bill would provide that these requirements may be met by utilizing wireless technology equal to a hard-wired connection to a public switched telephone network.

The people of the State of California do enact as follows:

SECTION 1. Article 10 (commencing with Section 17077.10) is added to Chapter 12.5 of Part 10 of the Education Code, to read:

Article 10. School Project Safety Components

17077.10. (a) It is a goal of the Legislature to eventually enhance pupil safety by equipping all elementary and secondary school classrooms with a telephone hook connected to a public switched network.

(b) The Legislature finds and declares that as of 1999, there are approximately 205,000 classrooms in California's elementary and secondary schools and only a small, undetermined percentage of these classrooms have telephones. The Legislature finds and declares that in order to protect the safety of pupils, schools should be integrated into local emergency, information, and interagency health and safety, networks with up-to-date telecommunications systems. Connection to these systems would also facilitate community and parent interaction with teachers and schools, and thereby further enhance pupil safety.

(c) "School building" as used in this section means and includes any building used, or designed to be used, for elementary or secondary school purposes and constructed, reconstructed, altered, or added to, by the state or by any city or city and county, or by any political subdivision, or by any school district of any kind within the state, or by any regional occupational center or program, established by or authorized to act by any agreement under joint exercise of power, or by the United States government, or any agency thereof. This definition includes any fabrication, construction, or alteration of a relocatable school building.

(d) Commencing with applications submitted on or after January 1, 2000, any school district applying for funding pursuant to this chapter shall include in its plans and specifications for the construction or fabrication of a new or modernized school building, that includes the construction or fabrication of new or modernized classrooms, a hard-wired connection to a public switched telephone network in each new or modernized classroom. However, a school district may meet this requirement by utilizing wireless technology equal to a hard-wired connection to a public switched telephone network.

SEC. 2. Section 17096 is added to the Education Code, to read:

17096. Commencing with leases entered into on or after January 1, 2000, the plans and specifications for portable classrooms funded pursuant to this chapter shall include a provision for a telephone in each portable classroom. The connection from the portable classroom to a public switched telephone network, as set forth in Section 17077.10, shall be made by the school district at the time of the installation of the building. However, a school district may meet this requirement by utilizing wireless technology equivalent to a hard-wired connection to a public switched telephone network.

SCHOOLS AND SCHOOL DISTRICTS—FACILITIES—CONSTRUCTION

CHAPTER 858

A.B. No. 695.

AN ACT to amend Sections 15340, 17009.5, 17070.15, 17070.75, 17071.10, 17071.25, 17071.75, 17072.10, 17072.20, 17074.10, 17076.10, and 100420 of, to add Section 17072.17 to, and to repeal Section 15341 of, the Education Code, to amend Section 1003 of the Elections Code, and to amend Sections 65995.5 and 65995.6 of the Government Code, relating to school facilities.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 695, Mazzoni. School facilities: construction and modernization.

Existing law, the Leroy F. Greene School Facilities Act of 1998, (the Greene Act of 1998) establishes a program in which the State Allocation Board is required to provide state per-pupil funding, including hardship funding, for new school facilities construction and school facilities modernization to applicant school districts, as defined, and requires applicants to provide local matching funds.

This bill would authorize the board to adopt or amend regulations on or after January 1, 2000, to adjust the assumed capacity for each teaching station used for nonsevere or severe special day class purposes after considering the recommendations of the Legislative Analyst required pursuant to existing law, which would be implemented upon approval of the Director of Finance.

This bill would authorize the board to adopt, on or after January 1, 2001, regulations establishing assumed capacity standards, after consideration of recommendations developed by the Director of Finance, for continuation high school, community day school, county

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This bill would, instead, authorize that the unexpended funds be allocated in this manner. Existing law authorizes the governing board of a school district to impose an amount calculated pursuant to a prescribed formula in lieu of amounts that may be imposed upon residential construction pursuant to prescribed provisions of law, and with certain exceptions, requires that these amounts be expended solely on school facilities identified as being attributable to projected growth from the construction of new residential units. Existing law limits site development costs for these purposes to 2 times the amount funded by the State Allocation Board.

This bill would recast those provisions and would make this limitation applicable to expenditure of fees assessed pursuant to provisions permitting increased fees when state funds for new school construction are not available. The bill would limit site development costs for these purposes to the estimated amount that would be funded by the State Allocation Board pursuant to its regulations.

Existing law requires the governing board of a school district to conduct a facility needs analysis for this purpose, and permits its revision at any time.

This bill would require recalculation of the school building capacity for those purposes as part of any revision of the needs analysis.

The people of the State of California do enact as follows:

SECTION 1. Section 15340 of the Education Code is amended to read:

15340. (a) After adopting the resolution ordering the formation of the school facilities improvement district, the governing board may provide for and call a special bond election within the school facilities improvement district to, or may at the next statewide election, submit to the voters of the school facilities improvement district a proposition of whether or not an indebtedness of the district shall be incurred and bonds issued therefor in an amount not exceeding the estimate stated in the resolution ordering the school facilities improvement district formed. Notwithstanding any other provision of law, any special election called pursuant to this section may be called for any date except as set forth in Section 1100 of the Elections Code.

(b) The indebtedness and the bonds shall be payable from taxes to be levied and collected upon lands located within the school facilities improvement district.

SEC. 2. Section 15341 of the Education Code is repealed.

SEC. 3. Section 17009.5 of the Education Code is amended to read:

17009.5. (a) On and after November 4, 1998, the board shall only approve and fund school facilities construction projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(b) A school district with a first priority project that has received a construction approval by the Department of General Services, Division of the State Architect, or a joint-use project approval by the board, prior to November 4, 1998, for growth or modernization pursuant to this chapter shall receive funding pursuant to this chapter for all unfunded approved project costs as it would have received under this chapter, and the increased capacity assigned to the project shall be included in calculating the district's capacity pursuant to Chapter 12.5 (commencing with Section 17070.10). Funds received for projects described in this subdivision shall constitute the state's final and full contribution to these projects. The board shall not consider additional project funding except when otherwise authorized under Chapter 12.5 (commencing with Section 17070.10).

(c) A school district with a second priority project that has received a construction approval by the Department of General Services, Division of the State Architect prior to November 4, 1998, for growth or modernization pursuant to this chapter shall elect to do either of the following:

(1) Withdraw the application under this chapter, submit an initial report and application pursuant to Chapter 12.5 (commencing with Section 17070.10), and receive per pupil allocations as set forth in Chapter 12.5 (commencing with Section 17070.10). * * * If the district withdraws the application, any funds previously allocated under this chapter for the project shall be offset from the first grant to the district under Chapter 12.5 (commencing with Section 17070.10).

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(2) Convert the second priority project approved under this chapter to a first priority status and receive funds in accordance with this chapter.

(d) Notwithstanding priorities established pursuant to Chapter 12.5 (commencing with Section 17070.10), projects authorized for funding as set forth in this section shall be funded by the board pursuant to this chapter prior to funding other projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(e) For purposes of funding priority for modernization grants under Chapter 12.5 (commencing with Section 17070.10), a district that applies under subdivision (b) or paragraph (1) of subdivision (c) shall retain its original project approval date.

(f) Notwithstanding Section 17017.1, West Contra Costa Unified School District shall be eligible for state facilities funds beginning November 4, 1998.

(g) The State Allocation Board shall adopt regulations to ensure that an appropriate offset is made from funds approved pursuant to this chapter, for funds awarded to school districts pursuant to Chapter 12 (commencing with Section 17000) prior to November 4, 1998.

SEC. 4. Section 17070.15 of the Education Code is amended to read:

17070.15. The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

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

(b) "Attendance area" means the geographical area serving an existing or proposed high school and those junior high schools and elementary schools included therein.

(c) "Board" means the State Allocation Board as established by Section 15490 of the Government Code.

(d) "Department" means the Department of General Services.

(e) "Committee" means the State School Building Finance Committee established pursuant to Section 15909.

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

(g) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(h) "School district" means a school district or a county office of education. For purposes of determining eligibility under this chapter, "school district" may also mean a high school attendance area.

(i) "Fund" means the 1998 State School Facilities Fund established pursuant to Section 17070.40.

(j) "County fund" means a county school facilities fund established pursuant to Section 17070.43.

(k) "Portable classroom" means a classroom building of one or more stories that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable classroom, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

(l) "School building capacity" means the capacity of a school building to house pupils.

SEC. 5. Section 17070.75 of the Education Code is amended to read:

17070.75. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and to encourage school districts to maintain all buildings under their control, the board shall require an applicant school district to do all of the following prior to the approval of a project:

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(1) Establish a restricted account within the school district's general fund for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings, according the highest priority to funding for the purposes set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for 20 years after receipt of funds under this chapter, a minimum amount equal to or greater than 3 percent of the applicant school district's general fund budget for that fiscal year. For the 1998-99 fiscal year and the 1999-2000 fiscal year, a school district may phase in this requirement by agreeing to certify the deposit of no less than 2 percent for the 1998-99 fiscal year and no less than 2½ percent for the 1999-2000 fiscal year. Annual deposits to the fund established pursuant to paragraph (1) in excess of 2½ percent of the district general fund budget may count towards the district's * * * matching funds requirement necessary to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 39619 to the extent that funds are used for purposes that qualify for funding under that section. In addition, any district contribution to this fund may be provided in lieu of meeting the ongoing maintenance requirements pursuant to Section 17014 to the extent the funds are used for purposes established in that section. This paragraph is applicable only to the following school districts:

(A) High school districts with an average daily attendance greater than 300 pupils.

(B) Elementary school districts with an average daily attendance greater than 900 pupils.

(C) Unified school districts with an average daily attendance greater than 1,200 pupils.

(3) Certify that it has publicly approved an ongoing and major maintenance plan that outlines the use of the funds deposited, or to be deposited, pursuant to paragraph (2). The plan may provide that the district need not expend all of its annual allocation for ongoing and major maintenance in the year in which it is deposited if the cost of major maintenance requires that the allocation be carried over into another fiscal year. However, any state funds carried over into a subsequent year shall not be counted toward the annual minimum contribution by the district. A plan developed in compliance with this section shall be deemed to meet the requirements of Section 17585.

(c) A district to which paragraph (2) of subdivision (b) does not apply shall certify to the board that it can reasonably maintain its facilities with a lesser level of maintenance.

(d) For the purposes of calculating a county office of education requirement pursuant to this section, the 3 percent maintenance requirement shall be calculated based upon the county office of education general fund less any restricted accounts.

SEC. 6. Section 17071.10 of the Education Code is amended to read:

17071.10. (a) The calculation determined by this article shall be made on a one-time basis, and will be used as the baseline for eligibility determinations pursuant to this chapter.

(b) Each school district that elects to participate in the new construction program pursuant to this chapter shall submit to the board a one-time report of existing school building capacity.

(c) Notwithstanding subdivisions (a) and (b), a school district newly formed, reorganized, or affected by reorganization, pursuant to an election that occurred on or after November 4, 1998, shall calculate or recalculate its existing school building capacity pursuant to regulations adopted by the State Allocation Board.

SEC. 7. Section 17071.25 of the Education Code is amended to read:

17071.25. (a) The existing school building capacity in the applicant school district or, where appropriate, in the attendance area, at the time of initial application shall be calculated pursuant to the following formula:

(1) Identify by grade level all permanent teaching stations existing in the school district or, where appropriate, the attendance area. For the purposes of this section, "teaching station" means any space that was constructed or reconstructed to serve as an area in which to provide pupil instruction, but shall not include portable buildings, except as provided in Section 17071.30.

17072.10. (a) The board shall determine the applicant's maximum total new construction grant eligibility by multiplying the number of unhoused pupils calculated pursuant to Article 3 (commencing with Section 17071.75) in each school district with an approved application for new construction, by the per-unhoused-pupil grant as follows:

- (1) Five thousand two hundred dollars (\$5,200) for elementary school pupils.
- (2) Five thousand five hundred dollars (\$5,500) for middle school pupils.
- (3) Seven thousand two hundred dollars (\$7,200) for high school pupils.

(b) The board shall annually adjust the per-unhoused-pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) The board may establish a single supplemental per-unhoused-pupil grant in addition to the amounts specified in subdivision (a) based on the statewide average marginal difference in costs in instances where a project requires multilevel school facilities due to limited acreage. The district's application shall demonstrate that a practical alternative site is not available.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to seven thousand five hundred dollars (\$7,500) for any new construction project assistance. The amount of the supplemental apportionment authorized pursuant to this subdivision shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction. This subdivision shall be operative only until January 1, 2003.

SEC. 10. Section 17072.17 is added to the Education Code, to read:

17072.17. In conjunction with the State Department of Education, the Department of Finance, and the Legislative Analyst, the Department of General Services shall review the method of funding the construction and modernization of school facilities for continuation high school, community day school, county community school, and county community day school, teaching stations pursuant to Sections 17072.10 and 17074.10. Pursuant to this review, the Director of General Services shall, by September 1, 2000, recommend modifications to this method that he or she deems to be advisable.

SEC. 11. Section 17072.20 of the Education Code is amended to read:

17072.20. (a) An applicant school district that has been determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) or Article 3 (commencing with Section 17071.75) may submit at any time a request to the board for a project apportionment for all or a portion of the funding for which the school district is eligible.

(b) The application shall include, but shall not be limited to, the school district's determination of the amount of state funding that the district is otherwise eligible for relating to site acquisition, site development, new construction, and hardship funding provided pursuant to Article 8 (commencing with Section 17075.10), if any. The amount shall be reduced by the amount of the alternative fee collected pursuant to subdivision (a) of Section 65995.7 of the Government Code if a reimbursement election or agreement pursuant to Section 65995.7 of the Government Code is not in effect.

(c) The board shall verify and adjust, as necessary, and approve the district's application.

(d) Unless otherwise requested by an applicant school district, or unless the school district's eligibility is reduced because of an increase in the existing school building capacity as calculated pursuant to subdivision (b) of Section 17071.75, the eligibility for funding determined pursuant to this section shall be effective for a period of three years for school districts having an enrollment of 2,500 or less for the prior fiscal year.

SEC. 12. Section 17074.10 of the Education Code is amended to read:

17074.10. (a) The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level

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housed in permanent school buildings that are at least 25 years old or portable classrooms that are at least 20 years old, and that have not been previously modernized with state funding:

- (1) Two thousand two hundred forty-six dollars (\$2,246) for each elementary pupil.
- (2) Two thousand three hundred seventy-six dollars (\$2,376) for each middle school pupil.
- (3) Three thousand one hundred ten dollars (\$3,110) for each high school pupil.

(b) The board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) It is the intent of the Legislature that the amounts provided pursuant to this article for school modernization do not include funding for administrative and overhead costs.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to two thousand five hundred dollars (\$2,500) for any modernization project assistance. The amount of the supplemental apportionment shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction. This subdivision shall be operative only until January 1, 2003.

SEC. 13. Section 17076.10 of the Education Code is amended to read:

17076.10. (a) A school district that has received any funds pursuant to this chapter shall submit a summary report of expenditure of state funds and of district matching funds annually until all state funds and district matching funds are expended, and shall then submit a final report to the board. The board may require an audit of these reports or other district records to ensure that all funds received pursuant to this chapter are expended in accordance with program requirements.

(b) If the board finds that a participating school district has made no substantial progress towards increasing its pupil capacity or renovating its facilities within 18 months of the receipt of any funding pursuant to this chapter, the board shall rescind the apportionment in an amount equal to the unexpended funds.

(c) If the board, after the review of expenditures or audit has been conducted pursuant to subdivision (a), determines that a school district failed to expend funds in accordance with this chapter, the department shall notify the school district of the amount that must be repaid to the 1998 State School Facilities Fund within 60 days. If the school district fails to make the required payment within 60 days, the department shall notify the Controller and the school district in writing, and the Controller shall deduct an amount equal to the amount received by the school district under this subdivision, from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained by the Controller shall be deposited into the 1998 State School Facilities Fund.

(d) If a school district has received an apportionment, but has not met the criteria to have funds released pursuant to Section 17072.32 or 17074.15 within a period established by the board, but not to exceed 18 months, the board shall rescind the apportionment and deny the district's application.

SEC. 14. Section 100420 of the Education Code is amended to read:

100420. (a) Of the proceeds from the sale of bonds, issued and sold pursuant to this chapter, as specified in subdivision (a) of Section 100410, not more than three billion three hundred fifty million dollars (\$3,350,000,000) shall be allocated beginning in the 1998-99 fiscal year in accordance with the following schedule:

- (1) Not less than one billion three hundred fifty million dollars (\$1,350,000,000) for project funding related to the growth in enrollment of applicant school districts under Chapter 12 and Chapter 12.5 that have incurred or will incur enrollment increases.

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any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

SEC. 18. The Legislature finds and declares that the modifications to the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 made by this act further the purposes of, and are consistent with, that act.

SCHOOLS AND SCHOOL DISTRICTS—SCHOOL
FACILITIES—SITE CONTAMINATION

CHAPTER 992

A.B. No. 387

AN ACT to amend Sections 17070.50 and 17268 of, and to add Sections 17072.13, 17213.2, and 17213.3 to, the Education Code, relating to school facilities.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 387, Wildman. School facilities: site contamination.

Under Leroy F. Greene School Facilities Act of 1998, an eligible school district may receive funding for new construction of school facilities.

This bill would provide that in addition to this funding for new construction and subject to certain limitations, that funding may be provided for 50% of the cost of the evaluation of hazardous materials, as defined, at a site to be acquired by the school district and for 50% of the response cost of removal of hazardous waste or solid waste, the removal of hazardous

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substance, or other remedial action in connection with hazardous substances at that site and up to 100% of these costs in the case of financial hardship assistance, as defined. This bill would permit a school district with a site that meets an environmental hardship criteria, as described, to apply to the State Allocation Board for site acquisition funding for that site prior to having construction plans for that site approved by the Division of the State Architect and the State Department of Education. The bill would require the State Allocation Board to develop regulations that allow school districts with financial hardship site acquisition funding prior to ownership of the site or evidence that the site is in escrow.

Existing law prohibits the governing board of a school district from approving a project involving the acquisition of a schoolsite or the construction of a school by the school district unless specified actions are taken with regard to potential contamination of the site, including a determination by the lead agency, as defined, that the property purchased or to be built upon is not the site of a current or former hazardous waste disposal site or solid waste disposal site, or a hazardous substance release site.

The bill would require a school district that owns a proposed schoolsite as a condition of receiving state funds to enter into an agreement with the Department of Toxic Substances Control to oversee response action if a preliminary endangerment assessment discloses the presence of a hazardous material release, or threatened release, or the presence of naturally occurring hazardous materials, at a proposed schoolsite at concentrations that could pose a significant risk to children or adults, and the school district owns the proposed schoolsite. The bill would also require the school district to take response action pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act as may be required by the Department of Toxic Substances Control.

This bill would make certain prohibitions inapplicable to schoolsites acquired prior to January 1, 2000.

The bill would require the State Department of Education to monitor the performance of the Department of Toxic Substances Control in meeting timeframes under its provisions and would require a report of findings to the Department of General Services and the Department of Finance. The bill would also require the State Department of Education to report to the Department of General Services and the Department of Finance every 6 months for a period of 2 years, the amount of fees or other charges of any state agency review paid by school districts regarding schoolsites, and any concerns about those fees or charges.

This bill would provide that it would not become operative unless and until SB 162 is chaptered and becomes operative.

The people of the State of California do enact as follows:

SECTION 1. Section 17070.50 of the Education Code is amended to read:

17070.50. The board shall not apportion funds to any school district, unless the applicant school district has certified to the board that the services of any architect, structural engineer, or other design professional for any work under the project have been obtained pursuant to a competitive process that is consistent with the requirements of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and has * * * obtained the written approval of the State Department of Education that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251.

* * *

SEC. 2. Section 17072.13 is added to the Education Code, to read:

17072.13. In addition to the amounts provided pursuant to Sections 17072.10 and 17072.12, the board may provide funding as follows:

(a) For 50 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and for 50 percent of the other response costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other remedial action in connection with hazardous substances at that site. Except as provided in subdivision (b), the funding provided pursuant to this section may not exceed 50 percent of a number

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when the Department of Toxic Substances Control certifies that all necessary response actions have been completed at a schoolsite.

(h) The school district shall reimburse the Department of Toxic Substances Control for all response costs incurred by the department.

(i) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

SEC. 4. Section 17213.3 is added to the Education Code, to read:

17213.3. (a) The State Department of Education shall monitor the performance of the Department of Toxic Substances Control in meeting the timeframes applicable to the Department of Toxic Substances Control specified in subdivision (a) of Section 17213.1 and shall report its findings to the Department of General Services and the Department of Finance on a quarterly basis.

(b) The State Department of Education shall also report to the Department of General Services and the Department of Finance every six months for a period of two years, the amount of fees or other charges of any state agency review paid by school districts pursuant to this chapter, and any concerns about those fees or charges.

SEC. 5. Section 17268 of the Education Code is amended to read:

17268. (a) The governing board of a school district * * * that elects not to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) may not approve a project for the construction of a new school building, as defined in Section 17283, unless the project and its lead agency comply with the same requirements specified in subdivision (a) of Section 17213 for schoolsite acquisition.

(b) As a condition to receiving state funds pursuant to Chapter 12.5 (commencing with Section 17070.10, the governing board of a school district may not approve a project for the construction of a new school building or schoolsite on leased or acquired land unless the project and the school district comply with the requirements specified in Sections 17213.1 and 17213.2.

(c) The project shall not be subject to subdivision (b) for a minor addition to a school if the project is eligible for a categorical or statutory exemption under guidelines issued pursuant to Section 21083 of the Public Resources Code, as set forth in the California Environmental Quality Act.

(d) "School building," as used in this section, means any building designed and constructed to be used for elementary or secondary school purposes by a school district.

(e) The requirements of Sections 17213, 17213.1 and 17213.2 shall not apply to a schoolsite if the acquisition occurred prior to January 1, 2000, to the extent a school district is subject to the requirements set forth in those sections pursuant to a judicial order or an order issued by, or an agreement with the Department of Toxic Substances Control regarding that site, and the school district is in full compliance with that order or agreement.

(f) For purposes of this section, the acceptance of construction bids shall constitute approval of the project.

SEC. 6. If a task force is created in Assembly Bill 1207 of the 1999-2000 Regular Session by the addition of Section 105515 to the Health and Safety Code, that task force shall evaluate the effectiveness of this act in ensuring that the health and learning abilities of children attending California's schools are adequately protected. Among its recommendations to the Governor, the task force shall include any changes and improvements to the provisions of this act that would be necessary to protect the health and learning abilities of children attending California's schools.

SEC. 7. Sections 1 to 6, inclusive, of this act shall not become operative unless and until Senate Bill 162 of the 1999-2000 Regular Session is chaptered and becomes operative.

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ELECTIONS—REFERENDUMS—SCHOOL BONDS

CHAPTER 44

A.B. No. 1908

AN ACT to amend Sections 15102, 15106, 35233, and 72533 of, and to add Chapter 1.5 (commencing with Section 15264) to Part 10 of, the Education Code, relating to school bonds.

[Filed with Secretary of State June 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1908, Lempert. School bonds.

Existing law authorizes the governing board of any school district or community college to order an election and submit to the electors of the district the question of whether the bonds of the district shall be issued and sold to raise money for specified purposes. Existing law generally requires $\frac{2}{3}$ of the votes cast on the proposition of issuing bonds to be in favor of issuing the bonds to pass the measure.

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This bill would provide that, contingent upon the passage of the "Smaller Classes, Safer Schools and Financial Accountability Act" at the November 7, 2000, general election, as an alternative, the governing board of a school district or community college district, may, pursuant to a $\frac{2}{3}$ vote of the governing board, pursue the authorization and issuance of bonds by a 55% vote of the electorate, at a primary or general election, a regularly scheduled local election, or a statewide special election, subject to certain additional requirements.

The bill would require the ballot to be printed with a statement that the governing board will appoint a citizens' oversight committee and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes. The bill would require that after a successful election, the board appoint an independent citizens' oversight committee, as specified. The bill would state that the purpose of the citizens' oversight committee is to inform the public concerning the expenditure of bond revenues.

The bill would authorize, as specified, an action to be maintained to restrain and prevent expenditures of bond funds under certain circumstances.

The people of the State of California do enact as follows:

SECTION 1. Section 15102 of the Education Code is amended to read:

15102. The total amount of bonds issued pursuant to this chapter and Chapter 1.5 (commencing with Section 15264) shall not exceed 1.25 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

SEC. 2. Section 15106 of the Education Code is amended to read:

15106. Any unified school district or community college district may issue bonds * * * that, in aggregation with bonds issued pursuant to Section 15270, may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located.

In computing the outstanding bonded indebtedness of any unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

(a) For the purposes of the State School Building Aid Law of 1952 (Chapter 6 (commencing with Section 16000) of Part 10) with respect to applications for apportionments and apportionments filed or made prior to September 15, 1961, and to the repayment thereof, Chapter 6 (commencing with Section 15700) of this part, inclusive, only, any unified school district shall be considered to have a bonding capacity in the amount permitted by law for an elementary school district and a bonding capacity in the amount permitted by law for a high school district.

(b) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more

school districts or community college districts subsequent to the 1987-88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district or community college district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15102.

SEC. 3. Chapter 1.5 (commencing with Section 15264) is added to Part 10 of the Education Code, to read:

Chapter 1.5. Strict Accountability in Local School Construction Bonds Act of 2000

Article 1. General Provisions

15264. It is the intent of the Legislature that all of the following are realized:

(a) Vigorous efforts are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, are in strict conformity with the law.

(b) Taxpayers directly participate in the oversight of bond expenditures.

(c) The members of the oversight committees appointed pursuant to this chapter promptly alert the public to any waste or improper expenditure of school construction bond money.

(d) That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures.

15266. (a) As an alternative to authorizing and issuing bonds pursuant to Chapter 1 (commencing with Section 15100), the governing board of a school district or community college district may decide, pursuant to a two-thirds vote and subject to Section 15100, to pursue the authorization and issuance of bonds pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution. An election may only be ordered on the question of whether bonds of a school district or community college district shall be issued and sold pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution at a primary or general election, a regularly scheduled local election, or a statewide special election.

(b) Upon adopting a resolution to incur bonded indebtedness pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution and after the question has been submitted to the voters, if approved at the election, the bonds shall be issued pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and this chapter, and the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under Chapter 1 (commencing with Section 15100). Where not inconsistent, the provisions of Chapter 1 (commencing with Section 15100) shall apply to this chapter.

15268. The total amount of bonds issued pursuant to this section and Section 15102 shall not exceed 1.25 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred by a school district pursuant to this chapter, at a single election, shall not exceed thirty dollars (\$30) per one hundred thousand dollars (\$100,000) of taxable property. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

15270. (a) Notwithstanding Sections 15102 and 15268, any unified school district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Section

15106, may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, shall not exceed sixty dollars (\$60) per one hundred thousand dollars (\$100,000) of taxable property.

(b) Notwithstanding Sections 15102 and 15268, any community college district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Section 15106, may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a community college district, shall not exceed twenty-five dollars (\$25) per one hundred thousand dollars (\$100,000) of taxable property.

(c) In computing the outstanding bonded indebtedness of any unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

(d) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts subsequent to the 1987-88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15268.

15272. In addition to the ballot requirements of Section 15122 and the ballot provisions of this code applicable to governing board member elections, for bond measures pursuant to this chapter, the ballot shall also be printed with a statement that the board will appoint a citizens' oversight committee and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes.

15274. If it appears from the certificate of election results that 55 percent of the votes cast on the proposition of issuing bonds pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution are in favor of issuing bonds, the governing board shall cause an entry of that fact to be made upon its minutes. The governing board shall then certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the district, all proceedings had in the premises. The county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county.

15276. Notwithstanding any other provision of law, a county board of education may not order an election to determine whether bonds may be issued under this article to raise funds for a county office of education.

Article 2. Citizens' Oversight Committee

15278. (a) If a bond measure authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution is approved, the governing board of the school district or community college shall establish and appoint members to an independent citizens' oversight committee, pursuant to Section 15282, within 60 days of the date that the governing board enters the election results on its minutes pursuant to Section 15274.

(b) The purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues. The citizens' oversight committee shall actively review and report on the proper expenditure of taxpayers' money for school construction. The citizens' oversight committee shall advise the public as to whether a school district or community college district is in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution. The citizens' oversight committee shall convene to provide oversight for, but not be limited to, both of the following:

(1) Ensuring that bond revenues are expended only for the purposes described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Ensuring that, as prohibited by subparagraph (A) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, no funds are used for any teacher or administrative salaries or other school operating expenses.

(c) In furtherance of its purpose, the citizens' oversight committee may engage in any of the following activities:

(1) Receiving and reviewing copies of the annual, independent performance audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Receiving and reviewing copies of the annual, independent financial audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) Inspecting school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(4) Receiving and reviewing copies of any deferred maintenance proposals or plans developed by a school district or community college district, including any reports required by Section 17584.1.

(5) Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures, including, but not limited to, all of the following:

(A) Mechanisms designed to reduce the costs of professional fees.

(B) Mechanisms designed to reduce the costs of site preparation.

(C) Recommendations regarding the joint use of core facilities.

(D) Mechanisms designed to reduce costs by incorporating efficiencies in schoolsite design.

(E) Recommendations regarding the use of cost-effective and efficient reusable facility plans.

15280. (a) The governing board of the district shall, without expending bond funds, provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee.

(b) All committee proceedings shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board. The citizens' oversight committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year. Minutes of the proceedings of the citizens' oversight committee and all documents received and reports issued shall be a matter of public record and be made available on an Internet website maintained by the governing board.

15282. (a) The citizens' oversight committee shall consist of at least seven members to serve for a term of two years without compensation and for no more than two consecutive terms. While consisting of a minimum of at least seven members, the citizens' oversight committee shall be comprised, as follows:

(1) One member shall be active in a business organization representing the business community located within the district.

(2) One member shall be active in a senior citizens' organization.

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(3) One member shall be active in a bona fide taxpayers' organization.

(4) For a school district, one member shall be the parent or guardian of a child enrolled in the district. For a community college district, one member shall be a student who is both currently enrolled in the district and active in a community college group, such as student government. The community college student member may, at the discretion of the board, serve up to six months after his or her graduation.

(5) For a school district, one member shall be both a parent or guardian of a child enrolled in the district and active in a parent-teacher organization, such as the Parent Teacher Association or schoolsite council. For a community college district, one member shall be active in the support and organization of a community college or the community colleges of the district, such as a member of an advisory council or foundation.

(b) No employee or official of the district shall be appointed to the citizens' oversight committee. No vendor, contractor, or consultant of the district shall be appointed to the citizens' oversight committee. Members of the citizens' oversight committee shall, pursuant to Sections 35233 and 72533, abide by the prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code.

Article 3. Bond Accountability

15284. (a) An action to obtain an order restraining and preventing any expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution may be maintained against any officer, agent, or other person acting on behalf of, that school district or community college district, by a citizen residing in the school or community college district who is assessed and is liable to pay an ad valorem tax on real property within the school or community college district, or who has paid an ad valorem tax on real property within the school or community college district within one year before the commencement of the action if it appears by the complaint or affidavits that any of the following conditions are present:

(1) An expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter is for purposes other than those specified in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) The expenditure is not in compliance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) That an expenditure in violation of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution will be made or will continue to be made during the litigation that would produce waste or great or irreparable injury.

(4) The governing board of a school district or community college has willfully failed to appoint the citizens' oversight committee in violation of the requirements of Section 15278.

(b) An action brought pursuant to this section shall take special precedence over all civil matters on the calendar of the court except those matters granted equal precedence by law.

(c) The rights, remedies, or penalties established by this section are cumulative to the rights, remedies, or penalties established under other laws, including subdivision (a) of Section 526 of Chapter 3 of Title 7 of Part 2 of the Code of Civil Procedure.

(d) If an order is obtained to restrain and prevent an expenditure of funds pursuant to subdivision (a), a court may award attorneys' fees pursuant to Chapter 6 (commencing with Section 1021.5) of Title 14 of Part 2 of the Code of Civil Procedure.

(e) The action authorized by this section shall be known as a "School Bond Waste Prevention Action."

15288. It is the intent of the Legislature that upon receipt of allegations of waste or misuse of bond funds authorized in this chapter, appropriate law enforcement officials shall

expeditiously pursue the investigation and prosecution of any violation of law associated with the expenditure of those funds.

SEC. 4. Section 35233 of the Education Code is amended to read:

35233. The prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code are applicable to members of governing boards of school districts and to members of citizens' oversight committees appointed by those governing boards pursuant to Chapter 1.5 (commencing with Section 15264) of Part 10.

SEC. 5. Section 72533 of the Education Code is amended to read:

72533. The prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code are applicable to members of governing boards of community college districts and to members of citizens' oversight committees appointed by those governing boards pursuant to Chapter 1.5 (commencing with Section 15264) of Part 10.

SEC. 6. This act shall only become operative upon the passage of the "Smaller Classes, Safer Schools and Financial Accountability Act" which is contained in a proposition at the November 7, 2000, general election.

Ch. 192

STATUTES OF 2000

POSTSECONDARY EDUCATION—SCHOOL FINANCE AUTHORITY
ACT—SECURED OR UNSECURED LOANS

CHAPTER 193

A.B. No. 2586

AN ACT to amend Sections 17180 and 17199.1 of the Education Code, relating to school facilities.

[Filed with Secretary of State July 24, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2586, Campbell. School facilities: funding.

Existing law, the California School Finance Authority Act, establishes the California School Finance Authority for the purpose of assisting school districts and community college districts by providing financing for working capital and capital improvements. Existing law authorizes the authority, pursuant to an agreement between the authority and the purchasing district, to make secured or unsecured loans to, or purchase secured or unsecured loans from a participating district for any of the purposes prescribed in the act. The act also authorizes

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electors but not yet issued. Loans or purchases completed pursuant to this section may be used for either of the following purposes:

(1) To finance a project or provide working capital. No loan to finance a project shall exceed the total cost of the project, as determined by the participating district and approved by the authority.

(2) To refinance indebtedness incurred by the participating district in connection with projects undertaken, educational facilities acquired, or working capital financed.

(j) Upon the terms and conditions the authority deems proper, lease a project being financed pursuant to this chapter to a participating district, and charge and collect rent therefor. The authority may terminate a lease pursuant to this subdivision upon the lessee's failure to comply with any of its obligations under the lease. The lease may include any of the following provisions:

(1) That the lessee shall have the option to renew the term of the lease for the period or periods, and at the rent, determined by the authority, or to purchase any or all of the project.

(2) That upon payment by the participating district of all of the indebtedness incurred by the authority for the financing of the project or for the refinancing of the district's outstanding indebtedness, the authority may convey any or all of the project to the lessee or lessees, with or without further consideration.

(k) Charge and equitably apportion among participating districts its administrative costs and expenses incurred pursuant to this chapter.

(l)(1) Obtain, or aid in obtaining, from any state or federal agency or any private company, any insurance, guarantee, letter, or line of credit regarding, or of, or for, the payment or repayment of all or part of the interest, principal, or both, on any loan, lease, or obligation, or any instrument evidencing or securing the same, made or entered into pursuant to this chapter, or on any bonds issued pursuant to this chapter.

(2) Notwithstanding any other provision of this chapter, enter into any agreement, contract, or any other instrument regarding any insurance, guarantee, letter, or line of credit specified in paragraph (1), and accept payment in the manner and form provided therein in the event of default by a participating district.

(3) Assign any insurance, guarantee, letter, or line of credit specified in paragraph (1) as security for bonds issued by the authority.

(m) Enter into any agreements or contracts, including, but not limited to, agreements for liquidity or credit enhancement, execute any instruments, and any other act or thing necessary, convenient, or desirable for the purposes of the authority or to carry out any express power granted the authority pursuant to this chapter.

(n) At the discretion of the authority, invest any moneys held in reserve or in sinking funds, or any moneys not required for immediate use or disbursement, in obligations authorized by the resolution authorizing the bonds secured by the investment, or by law governing the investment of trust funds in the custody of the Treasurer.

SEC. 2. Section 17199.1 of the Education Code is amended to read:

17199.1. (a) Any participating district, exclusively for the purpose of securing financing or refinancing of projects or working capital pursuant to this chapter through the issuance, by the authority, of revenue bonds, certificates of participation, or other means, and notwithstanding any other provision of law, may: (1) sell to the authority all or part of any rights to or possibilities regarding the state's share of funding for school facilities approved by the State Allocation Board pursuant to Chapter 12.5 (commencing with Sec. 17070.10) including amounts apportioned and funded and amounts approved but not yet funded by the State Allocation Board from proceeds of state bonds already authorized by the electors but not yet issued; (2) issue bonds to the authority; or (3) borrow money or purchase or lease educational facilities from the authority, and in connection therewith, sell or lease property to the authority, in each case at any interest rate or rates, rental provisions, with any maturity date or dates or term, and with any other transfer, assignment, payment, security, default, remedy, and other terms or provisions as may be specified in the sale of rights agreement or the bonds of the participating district or a loan, loan purchase, installment sale, lease, or other

the authority to purchase the rights to and possibilities regarding funding for school facilities approved by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998, including amounts apportioned and funded and amounts approved but not yet funded.

This bill would, for purposes of those provisions, limit the authorization of the authority to make or purchase those secured or unsecured loans or to purchase those rights and possibilities to those loans and rights and possibilities regarding the state's share of funding, for school facilities provided under the Greene Act. The bill would also limit those amounts included in those purchases to amounts approved and funded or amounts approved but not yet funded from proceeds of state bonds already authorized by the electors but not yet issued.

The people of the State of California do enact as follows:

SECTION 1. Section 17180 of the Education Code is amended to read:

17180. The authority is hereby authorized to do all of the following:

- (a) Adopt bylaws for the regulation of its affairs and the conduct of its business.
- (b) Adopt an official seal.
- (c) Sue and be sued in its own name.
- (d) Receive and accept gifts, grants, or donations of money for any of the purposes of this chapter from any of the following:
 - (1) A federal agency.
 - (2) A state agency.
 - (3) A municipality, county, or other political subdivision of the state.
 - (4) An individual, association, or corporation.
- (e) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this chapter.
 - (f)(1) Determine the location and character of any project to be financed under this chapter, and acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, or regulate the same.
 - (2) Designate a participating district as its agent, with authority to enter into contracts, for any of the purposes specified in paragraph (1).
 - (3) Enter into contracts for any of the purposes specified in paragraph (1).
 - (4) Enter into contracts for the management and operation of a project owned by the authority.
- (g) Acquire, directly or by and through a participating district as its agent, by purchase solely from funds provided pursuant to this chapter, or by gift or devise, and sell, by installment or otherwise, property, rights, rights-of-way, franchises, easements, and other interests in lands, including, but not limited to, lands lying under water, and riparian rights, located within the state which the authority deems necessary or convenient for the acquisition, construction, financing, or operation of a project. The authority may do so upon the terms, and at the prices, it considers reasonable and upon which it can agree with the owner, and may take the title to the interest in the name of the authority or in the name of a participating district as its agent.
- (h) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of all or part of a project, in the form of money, property, labor, or other things of value.
- (i) Pursuant to an agreement between the authority and the participating district, make, directly or through a lending institution, secured or unsecured loans to, or purchase secured or unsecured loans from, or purchase all or part of any rights to or possibilities regarding the state share of funding for school facilities approved by the State Allocation Board pursuant to Chapter 12.5 (commencing with Section 17070.10)* * *. The purchase of all or part of any rights to, or possibilities regarding, the state contribution for funding for school facilities approved by the State Allocation Board shall be limited to amounts approved and funded or amounts approved but not yet funded from proceeds of state bonds already authorized by the

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agreement between the authority and the participating district, subject to the following conditions:

(A) The sum of the amount borrowed to finance working capital and the interest payable thereon at the initial interest rate if interest is variable, shall not exceed 85 percent of the estimated amount of uncollected taxes, income, revenue, cash receipts, and other district funds which will be available in any fiscal year for the repayment of the loan and the interest thereon. For purposes of this paragraph, "revenue" includes, but is not limited to, federal and state funds received by the district.

(B) In computing the maximum amount which may be borrowed in any fiscal year pursuant to subparagraph (A), the district may exclude the amount of any principal or interest which is secured by a pledge of the amount in any inactive or term deposit of the district which has a term scheduled to terminate during that fiscal year.

(C) A participating district that borrows money to finance working capital pursuant to this subdivision shall be required to repay and discharge the loan, including interest, within 15 months of the loan date.

(D) In enacting this chapter, it is the intent of the Legislature to provide financing of working capital needed to cover temporary or cash-flow deficits and needs for working capital and not long-term budget deficits or shortfalls in funding. The participating school district must demonstrate to the satisfaction of the authority that, during the term of any working capital loan received pursuant to this chapter, the participating district will receive or otherwise have (without additional borrowing) sufficient funds to repay and discharge the loan. The participating district may take into account all district funds and may base future projections upon historical experience or reasonable expectations, or a combination thereof.

(b) Notwithstanding Sections 700, 703, and 1045 of the Civil Code, the rights and possibilities that a participating district may have or obtain in the future to * * * an approved state contribution to funding for school facilities pursuant to Chapter 12.5 (commencing with Sec. 17070.10) * * * that remains unfunded pending the issuance of state bonds already authorized by the electors shall constitute property for all purposes and may be transferred as provided in subdivision (a). In the case of any transfer or assignment of rights or possibilities relating to funds for which bonds have been approved by the voters but are not yet available, the transfer or assignment shall be approved by resolution of the State Allocation Board prior to becoming effective.

(c) Any participating district may enter into any agreement for liquidity or credit enhancement, with any reimbursement, payment, interest, security, default, remedy, and other terms it may deem necessary or appropriate in connection with the issuance of bonds, the borrowing of money or the lease or purchase of educational facilities, whichever is applicable. Any participating district or districts may also do all things and execute all documents as may be necessary or desirable in connection with the issuance of certificates of participation, or other interests, in any bond, loan, installment sale, lease, or other agreement of the district.

(d) A school district may by resolution authorize any county or city board of education or superintendent of schools, and a community college district may by resolution authorize the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges, to act as its agent in the performance of any of the matters permitted by this section or any other provision of this chapter. Notwithstanding any other provision of law, the agent shall have the powers granted by the resolution for purposes of this chapter. The resolution shall be deemed to bind the school district or community college district, as the case may be, to any contract, agreement, instrument, or other document executed by the agent on behalf of the school district or community college district, and all duties, obligations, or responsibilities contained therein on the part of the school district or community college district, to the same extent as if duly authorized, executed, and delivered by the school district or community college district.

(e) This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this section, and the sale or transfer of any rights to or possibilities regarding * * * the state share of funding for school facilities approved by the State Allocation Board including amounts apportioned and funded and amounts approved but not yet funded * * * from proceeds of state bonds already authorized by the electors but not

Ch. 193, § 2

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yet issued, issuance of bonds to, borrowing of money from, or sale or purchase or lease of educational facilities from or to, the authority. Any agreement entered into in connection with the transfer of any rights to or possibilities regarding * * * the state contribution for funding for school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10), including amounts apportioned and funded and amounts approved but not yet funded by the State Allocation Board from proceeds of state bonds already authorized by the electors but not yet issued, or the issuance of bonds, the borrowing of money or the sale, purchase, or lease of educational facilities, including, without limitation, any agreement for liquidity or credit enhancement under this section, need not comply with the requirements of any other law applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge, encumbrance, or credit, as the case may be, by a school district or community college district, or by a county or city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges.

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Additions or changes indicated by underline; deletions by asterisks * * *

REAL PROPERTY—LEASES—SCHOOL FACILITIES

CHAPTER 530

A.B. No. 2408

An act to add Section 17070.71 to the Education Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 19, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2408, Firebaugh. School facilities.

Existing law, the Leroy F. Greene School Facilities Act of 1998, requires a school district to which funding is made available under that act to hold title to all property acquired, constructed, or improved with those funds, including any leasehold interest if the project qualified for and received approval by the board prior to November 4, 1998.

This bill would authorize new construction or modernization on real property leased to a school district if certain conditions are met.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 17070.71 is added to the Education Code, to read:

17070.71. (a) Notwithstanding subdivision (a) of Section 17070.70, new construction or modernization funded pursuant to this chapter may be upon real property leased to the applicant school district if all of the following conditions are met:

- (1) The property is leased from another governmental entity.
- (2) The term of the lease is for at least 40 years after approval of the project under this chapter, or the school district has a lease for at least 25 years on federal property. The board may authorize a lesser term, of not less than 30 years only if the board finds that granting an exception to this requirement would be in the state's best interest.
- (b) The applicant school district, and the facility on leased land, if any, shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, schoolsites and school buildings.
- (c) Lease costs are not eligible project or site acquisition costs under this chapter.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To expedite new construction or modernization of school facilities on leased property, it is necessary that this act take effect immediately as an urgency statute.

Ch. 579, § 1

EDUCATION—AUTHORIZATION AND ISSUANCE
OF BONDS—PROPERTY TAXES

CHAPTER 580

A.B. No. 2659

AN ACT to amend Sections 15268, 15270, and 47605 of the Education Code, relating to education.

[Filed with Secretary of State September 23, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2659, Lempert. Education.

(1) Existing law, if the "Smaller Classes, Safer Schools and Financial Accountability Act" is passed at the November 7, 2000, general election, authorizes a school district or community college district to pursue the authorization and issuance of bonds by a 55% vote of the electorate and restricts the rate at which property taxes may be levied to service the debt incurred.

This bill would instead prohibit the issuance of the bonds unless the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of an indebtedness incurred by a school district, unified school district, or community college district at a single election would not exceed a specified amount per year per \$100,000 of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution. The bill would define, for specified purposes, a "general obligation bond."

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Additions or changes indicated by underline; deletions by asterisks * * *

(2) Existing law prohibits the governing board of a school district or county board of education from denying a petition for the establishment of a charter school unless it sets forth specific findings, including findings that the petition does not contain reasonably comprehensive descriptions of certain criteria. Existing law authorizes the State Board of Education to grant a petition for the establishment of a charter school when the petition has been submitted to and denied by the governing board of a school district or a county board of education.

This bill would require the State Board of Education to develop criteria to be used for review and approval of charter school petitions presented to the board. The bill would require the board to adopt the criteria on or before June 30, 2001.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) Paragraph (1) of subdivision (j) of Section 47605 of the Education Code allows a charter school petitioner to submit a petition for the establishment of a charter school directly to the State Board of Education if the governing board of a school district denies the petition.

(2) Under current law, the governing board of a school district or county board of education is prohibited from denying a petition for the establishment of a charter school unless it sets forth specific findings, including findings that the petition does not contain reasonably comprehensive descriptions of certain criteria. Use of the term "reasonably comprehensive" is somewhat subjective and should be defined, consistent with the intent of existing charter school law, and within the context of a rubric that will be used for the evaluation of charter school petitions under review by the State Board of Education.

(3) In order to ensure implementation of the appeal process established in law, clear criteria must be established for the review and approval of charter petitions.

(b) It is the intent of the Legislature that the State Board of Education shall review a petition for the establishment of a charter school pursuant to subdivision (b) of Section 47605 of the Education Code, which prescribes the reasons why a charter can be denied, provided it makes written factual findings, specific to the particular petition.

SEC. 2. Section 15268,¹ as added by Chapter 44 of the Statutes of 2000 is amended to read:

15268. The total amount of bonds issued, including bonds issued pursuant to * * * Chapter 1 (commencing with Section 15100), shall not exceed 1.25 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred by a school district pursuant to this chapter, at a single election, would not exceed thirty dollars (\$30) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

SEC. 3. Section 15270,² as added by Chapter 44 of the Statutes of 2000, is amended to read:

15270. (a) Notwithstanding Sections 15102 and 15268, any unified school district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to * * * Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable

¹ This Chapter amends Section 15268 of the Education Code.

² This Chapter amends Section 15270 of the Education Code.

property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars (\$60) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

(b) Notwithstanding Sections 15102 and 15268, any community college district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to * * * Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a community college district, would not exceed twenty-five dollars (\$25) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

(c) In computing the outstanding bonded indebtedness of any unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

(d) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts subsequent to the 1987-88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15268.

(e) For the purposes of this article, "general obligation bonds," as that term is used in Section 18 of Article XVI of the California Constitution, means bonds of a school district or community college district the repayment of which is provided for by this chapter and Chapter 1 (commencing with Section 15100) of Part 10.

SEC. 4. Section 47605 of the Education Code is amended to read:

47605. (a)(1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title * * * 1 of the Government Code).

(c)(1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(d)(1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2)(A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

SCHOOLS AND SCHOOL DISTRICTS—FACILITIES—FUNDING

CHAPTER 590

S.B. No. 2066

AN ACT to amend Section 17092 of, and to add Sections 17070.51 and 17088.2 to, the Education Code, to amend Section 14615.1 of the Government Code, and to amend Section 12 of Chapter 1601 of the Statutes of 1988, relating to school facilities, and making an appropriation therefor.

[Filed with Secretary of State September 23, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2066, O'Connell. School facilities.

(1) Existing law, the Leroy F. Greene School Facilities Act of 1998 (Greene Act of 1998), establishes a program for allocation by the State Allocation Board of state per-pupil funding

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Additions or changes indicated by underline; deletions by asterisks * * *

to school districts for new construction and modernization of school facilities, including hardship funding and supplemental funding for site development and acquisition. Existing law requires the allocation to be based upon existing and projected unmet pupil capacity based upon existing teaching stations, as defined. Existing law requires the board to apportion funds only upon compliance with prescribed requirements relating to seismic safety approvals and certification of the availability of local matching funds.

This bill would require the board to impose certain penalties, to be deposited into the continuously appropriated 1998 State School Facilities Fund, and conditions upon school districts that submit applications with material inaccuracies. By depositing the penalties in a continuously appropriated fund, this bill would make an appropriation.

(2) Existing law, the State Relocatable Classroom Law of 1979, authorizes the board to lease portable classrooms to eligible school districts and provides funding for this purpose.

This bill would, notwithstanding contrary provisions of law, authorize the board to transfer certain funds from the State School Building Aid Fund to the 1998 State School Facilities Fund or to the State School Deferred Maintenance Fund for allocation by the board for purposes of those funds, and would make conforming changes.

(3) Existing law adopts the federal model contractors accreditation plan for contracts relating to identification of, and action regarding, asbestos-containing materials in school buildings, and requires that any person seeking accreditation register with the Office of Local Assistance.

This bill would delete the requirement of registration with the Office of Local Assistance.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 17070.51 is added to the Education Code, to read:

17070.51. (a) If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a material inaccuracy, the Office of Public School Construction shall notify the board.

(b) The board shall impose the following penalties if an apportionment and fund release has been made based upon information in the project application or related materials that constitutes a material inaccuracy.

(1) Pursuant to a repayment schedule approved by the board of no more than five years, the school district shall repay to the board, for deposit into the 1998 State School Facilities Fund, an amount proportionate to the additional funding received as a result of the material inaccuracy including interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater.

(2) The board shall prohibit the school district from self-certifying certain project information for any subsequent applications for project funding for a period of up to five years following the date of the finding of a material inaccuracy or until the district's repayment of the entire amount owed under paragraph (1). Although a school district that is subject to this paragraph may not self-certify, the school district shall not be prohibited from applying for state funding under this chapter. The board shall establish an alternative method for state or independent certification of compliance that shall be applicable in these cases. The process shall include, but shall not be limited to, procedures for payment by the school district of any increased costs associated with the alternative certification process.

(c) For school districts found to have provided material inaccuracies when a funding apportionment has occurred, but no fund release has been made, the board shall direct its staff to reduce the apportionment as necessary to reflect the actual nature of the project and to disregard the inaccurate information or material, and paragraph (2) of subdivision (b) shall apply.

(d) For those school districts found to have provided material inaccuracies when no funding apportionment or fund release has been made, the inaccurate information or materials shall

Additions or changes indicated by underline; deletions by asterisks * * *

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not be considered, and paragraph (2) of subdivision (b) shall apply. The project may continue if the application, minus the inaccurate materials, is still complete.

SEC. 2. Section 17088.2 is added to the Education Code, to read:

17088.2. Notwithstanding any provision of law to the contrary, including, but not limited to, Section 17587, the board may transfer any funds within the State School Building Aid Fund that are in excess of the amounts needed by the board for the maintenance of portable buildings or for the purchase of new portable buildings, for that fiscal year, to either of the following:

(a) The 1998 State School Facilities Fund for allocation by the board for any purpose authorized pursuant to that fund.

(b) The State School Deferred Maintenance Fund for allocation by the board for any purpose authorized pursuant to that fund. The board may utilize up to 100 percent of the funds transferred by the board to the State School Deferred Maintenance Fund pursuant to this section for funding extreme hardship critical projects.

SEC. 3. Section 17092 of the Education Code is amended to read:

17092. (a) No portable classrooms shall be made available to any school district unless the district furnishes evidence, satisfactory to the board, that the district has no available bond proceeds that could be used for the purchase of classroom facilities.

(b) Notwithstanding any other provision of law, a school district or county superintendent of schools that has received approval for a project that includes a justified number of new teaching stations pursuant to Chapter 12 (commencing with Section 17000) or Chapter 12.5 (commencing with Section 17070.15) shall be eligible for at least the same number of emergency portable classrooms as approved new teaching stations.

(c) Subdivision (a) does not apply to leases or subleases under this chapter for the purpose of providing facilities, pursuant to subdivision (c) of Section 17091, for licensed child day care programs or any recreation or enrichment activities or programs for schoolage children.

SEC. 4. Section 14615.1 of the Government Code is amended to read:

14615.1. Where the Legislature directs or authorizes the department to maintain, develop, or prescribe processes, procedures, or policies in connection with the administration of its duties under this chapter, Chapter 2 (commencing with Section 14650), or * * * Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code * * *, the action by the department shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500)). This section shall apply to actions taken by the department with respect to the State Administrative Manual and the State Contracting Manual.

SEC. 5. Section 12 of Chapter 1601 of the Statutes of 1988 is amended to read:

Sec. 12. All provisions of the federal model contractors accreditation plan (40 C.F.R. Appendix C, Subpart E, Part 763), as it became effective June 1, 1987, are hereby adopted as the contractor accreditation plan of this state, and are hereby incorporated in Chapter 9 (commencing with Section 49400) of Part 27 of the Education Code as though set forth in full therein.

Ch. 752, § 3

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SCHOOLS AND SCHOOL DISTRICTS—FACILITIES—
JOINT-USE PROJECTS

CHAPTER 753

S.B. No. 1795

AN ACT to amend Section 17009.5 of, and to add Section 17052 to, the Education Code, relating to school facilities.

[Filed with Secretary of State September 27, 2000.]

3882

Additions or changes indicated by underline; deletions by asterisks * * *

LEGISLATIVE COUNSEL'S DIGEST

SB 1795, Alpert. School facilities: joint-use project.

Existing law, the Leroy F. Greene School Facilities Act of 1998, (hereafter the Greene Act of 1998) establishes a program in which the State Allocation Board is required to provide state per-pupil funding, including hardship funding, for new school facilities construction and school facilities modernization to applicant school districts. Existing law requires the State Allocation Board to apportion funds only upon compliance with prescribed requirements relating to seismic safety approvals and with certification of the availability of local matching funds. Pursuant to existing law, on and after November 4, 1998, the board may only approve and fund school facilities projects under the Greene Act of 1998.

This bill would, notwithstanding these provisions, authorize the board to fund joint-use projects to construct libraries, multipurpose rooms, and gymnasiums if certain conditions are met and would authorize the board to adopt related funding priority regulations.

The people of the State of California do enact as follows:

SECTION 1. Section 17009.5 of the Education Code is amended to read:

17009.5. (a) * * * Except as set forth in Section 17052, on and after November 4, 1998, the board shall only approve and fund school facilities construction projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(b) A school district with a first priority project that has received a construction approval by the Department of General Services, Division of the State Architect, or a joint-use project approval by the board, prior to November 4, 1998, for growth or modernization pursuant to this chapter shall receive funding pursuant to this chapter for all unfunded approved project costs as it would have received under this chapter, and the increased capacity assigned to the project shall be included in calculating the district's capacity pursuant to Chapter 12.5 (commencing with Section 17070.10). Funds received for projects described in this subdivision shall constitute the state's final and full contribution to these projects. The board shall not consider additional project funding except when otherwise authorized under Chapter 12.5 (commencing with Section 17070.10).

(c) A school district with a second priority project that has received a construction approval by the Department of General Services, Division of the State Architect prior to November 4, 1998, for growth or modernization pursuant to this chapter shall elect to do either of the following:

(1) Withdraw the application under this chapter, submit an initial report and application pursuant to Chapter 12.5 (commencing with Section 17070.10), and receive per pupil allocations as set forth in Chapter 12.5 (commencing with Section 17070.10). If the district withdraws the application, any funds previously allocated under this chapter for the project shall be offset from the first grant to the district under Chapter 12.5 (commencing with Section 17070.10).

(2) Convert the second priority project approved under this chapter to a first priority status and receive funds in accordance with this chapter.

(d) Notwithstanding priorities established pursuant to Chapter 12.5 (commencing with Section 17070.10), projects authorized for funding as set forth in this section shall be funded by the board pursuant to this chapter prior to funding other projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(e) For purposes of funding priority for modernization grants under Chapter 12.5 (commencing with Section 17070.10), a district that applies under subdivision (b) or paragraph (1) of subdivision (c) shall retain its original project approval date.

(f) Notwithstanding Section 17017.1, West Contra Costa Unified School District shall be eligible for state facilities funds beginning November 4, 1998.

(g) The State Allocation Board shall adopt regulations to ensure that an appropriate offset is made from funds approved pursuant to this chapter, for funds awarded to school districts pursuant to Chapter 12 (commencing with Section 17000) prior to November 4, 1998.

SEC. 2. Section 17052 is added to the Education Code, to read:

Additions or changes indicated by underline; deletions by asterisks * * *

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17052. (a) Notwithstanding any other provision of law, the State Allocation Board may fund joint-use projects to construct libraries, multipurpose rooms, and gymnasiums, on school campuses where these facilities are used jointly for both school and community purposes.

(b) A school district may apply to the State Allocation Board for funding under this section if it meets all of the following requirements:

- (1) The school does not have the type of facility for which it seeks funding.
- (2) The school district agrees to provide local matching funds for 50 percent of the eligible cost of the facility as set forth in subdivision (c), and 100 percent local or joint-use funding for all costs that exceed that standard, as required by subdivision (d).
- (3) The school district has obtained approval of the plans for the facility from the Division of the State Architect and the State Department of Education.
- (4) The school district has entered into a joint-use agreement with its joint-use partner that specifies the method for sharing capital and operating costs, specifies relative responsibilities for the operation and staffing of the facility, and specifies the manner in which the safety of school pupils will be maintained during school hours.
- (5) The school district demonstrates that the facility will be used to the maximum extent possible for school and community purposes after regular school hours.

(c) The State Allocation Board shall establish standards for the amount of funding to be made available for each project under this section. The funding standards may be expressed as per-square-foot cost limits or per-pupil cost limits or both.

(d) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards set forth in subdivision (c) if the excess is paid completely by local or joint-use partnership sources.

(e) On July 1 of each year the board shall apportion to qualifying applicant school districts those funds that it determines are available for the purposes of this section.

(f) The board may establish priority standards to govern the order of funding projects. If applications exceed available funding, the board shall give priority to applications where the size of the project is increased by at least 30 percent beyond minimum essential facilities through the use of additional funding from a joint-use partner.

SCHOOL BONDS—FACILITIES—IMPROVEMENT DISTRICT

CHAPTER 132

S.B. No. 1129

AN ACT to amend Sections 15266, 15270, 15340, and 15348 of, and to add Sections 15271 and 15359.3 to, the Education Code, relating to school facilities improvement districts.

[Filed with Secretary of State July 31, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1129, O'Connell. School bonds: school facility improvement districts.

Existing law authorizes the governing board of a school district or community college district, pursuant to a 2/3 vote of the governing board, to pursue the authorization and issuance of bonds by a 55% vote of the electorate, at a primary or general election, a regularly scheduled local election, or a statewide special election, subject to certain additional requirements.

Existing law authorizes school districts and community college districts to form school facilities improvement districts consisting of a portion of the territory within a school district and authorizes the school facilities improvement district to issue general obligation bonds for school facilities construction purposes.

This bill would expressly authorize the governing board of a school district or community college district to proceed on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district upon approval by 55% of the votes cast by voters voting on the proposition of issuing bonds of the school facilities improvement district, subject to specified requirements.

The people of the State of California do enact as follows:

SECTION 1. Section 15266 of the Education Code is amended to read:

15266. (a) As an alternative to authorizing and issuing bonds pursuant to Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), the

Additions or changes indicated by underline; deletions by asterisks * * *

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governing board of a school district or community college district may decide, pursuant to a two-thirds vote and subject to Section 15100 or 15302, as appropriate, to pursue the authorization and issuance of bonds pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution. An election may only be ordered on the question of whether bonds of a school district or community college district shall be issued and sold pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution at a primary or general election, a regularly scheduled local election, or a statewide special election.

(b) Upon adopting a resolution to incur bonded indebtedness pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution and after the question has been submitted to the voters, if approved at the election, the bonds shall be issued pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and this chapter, and the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under Chapter 1 (commencing with Section 15100) or under Chapter 2 (commencing with Section 15300), as appropriate. Where not inconsistent, the provisions of Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), as appropriate, shall apply to this chapter.

SEC. 2. Section 15270 of the Education Code is amended to read:

15270. (a) Notwithstanding Sections 15102 and 15268, any unified school district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars (\$60) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

(b) Notwithstanding Sections 15102 and 15268, any community college district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a community college district, would not exceed twenty-five dollars (\$25) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

(c) In computing the outstanding bonded indebtedness of any unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

(d) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts subsequent to the 1987-88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district shall be deemed to be the total of the

assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15268.

(e) For the purposes of this article, "general obligation bonds," as that term is used in Section 18 of Article XVI of the California Constitution, means bonds of a school district or community college district the repayment of which is provided for by this chapter and Chapter 1 (commencing with Section 15100) of Part 10, and includes bonds of a school facilities improvement district the repayment of which is provided for by this chapter and Chapter 2 (commencing with Section 15300).

SEC. 3. Section 15271 is added to the Education Code, to read:

15271. The governing board of a school district or community college district may proceed pursuant to this chapter on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district and act on behalf of the school facilities district as provided pursuant to Chapter 2 (commencing with Section 15300).

SEC. 4. Section 15340 of the Education Code is amended to read:

15340. (a) After adopting the resolution ordering the formation of the school facilities improvement district, the governing board may provide for and call a special bond election within the school facilities improvement district to, or may at the next statewide election, submit to the voters of the school facilities improvement district a proposition of whether or not an indebtedness of the district shall be incurred and bonds issued therefor in an amount not exceeding the estimate stated in the resolution ordering the school facilities improvement district formed. Notwithstanding any other provision of law, any special election called pursuant to this section may be called for any date except as set forth in Section 1100 of the Elections Code, and except as provided in subdivision (a) of Section 15266 for bonds authorized and issued under the authority of subdivision (b) of Section 15348 and Chapter 1.5 (commencing with Section 15264).

(b) The indebtedness and the bonds shall be payable from taxes to be levied and collected upon lands located within the school facilities improvement district.

SEC. 5. Section 15348 of the Education Code is amended to read:

15348. (a) The proposition shall be deemed approved upon approval by two-thirds of the votes cast by voters voting on the proposition of issuing bonds of the school facilities improvement district unless subdivision (b) is applicable.

(b) Alternatively, for a governing board of a school district or community college district that proceeds pursuant to Chapter 1.5 (commencing with Section 15264) and subject to the requirements therein on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district, as specified in Section 15359.3, the proposition shall be deemed approved upon approval by 55 percent of the votes cast by voters voting on the proposition of issuing bonds of the school facilities improvement district.

SEC. 6. Section 15359.3 is added to the Education Code, to read:

15359.3. The governing board of a school district or community college district may proceed pursuant to Chapter 1.5 (commencing with Section 15264) and subject to the requirements therein on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district under this chapter.

Additions or changes indicated by underline; deletions by asterisks * * *

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MAINTENANCE OF CODES

CHAPTER 159

S.B. No. 662

AN ACT to amend Sections 27, 113, 130, 144, 350, 1647.11, 2570.6, 2570.8, 2570.19, 2995, 3059, 3364, 3403, 4059, 4312, 4980.80, 4980.90, 4996.6, 5111, 5536, 6403, 6716, 6730.2, 6756, 7092, 7583.11, 8027, 8773.4, 10167.2, and 21702 of the Business and Professions Code, to amend Sections 1748.10, 1748.11, 1810.21, 2954.4, 2954.5, and 3097 of, and to amend and renumber Section 1834.8 of, the Civil Code, to amend Sections 403.020, 645.1, 674, and 699.510 of the Code of Civil Procedure, to amend Sections 9323, 9331, and 9408 of the Commercial Code, to amend Sections 2200, 6810, 17540.3, 25102, 25103, and 25120 of the Corporations Code, to amend Sections 313, 406, 426, 427, 11700, 17071.46, 17210, 17317, 17610.5, 22660, 22950, 25933, 33126.1, 37252, 37252.2, 37619, 41329.1, 42239, 44114, 45023.1, 48664, 52054, 52270, 52485, 54749, 56045, 56845, 69432.7, 69434.5, 69437.6, 69439, 69613.1, 87164, and 92901 of, and to amend and renumber Sections 45005.25 and 45005.30 of, the Education Code, to amend Sections 1405, 8040, 9118, and 15375 of the Elections Code, to amend Section 17504 of the Family Code, to amend Sections 761.5, 4827, 16024, 16501, and 18586 of the Financial Code, to amend Sections 1506, 2921, and 8276.3 of the Fish and Game Code, to amend Sections 492, 6046, and 75131 of the Food and Agricultural Code, to amend Sections 3543.4, 3562.2, 3583.5, 6254, 6516.6, 6599.2, 7074, 18935, 20028, 20300, 20392, 21006, 21547.7, 30064.1, 31461.3, 31681.55, 31835.02, 38773.6, 55720, 65584, 65585.1, and 75059.1 of the Government Code, to amend Sections 444.21, 1358.11, 11836, 11877.2, 17922, 25358.6.1, 39619.6, 104170, 105112, 111656.5, 111656.13, 114145, 123111, and 124900 of, to amend and renumber Section 104320 of, and to amend and renumber the heading of Article 10.5 (commencing with Section 1399.801) of Chapter 2.2 of Division 2 of, the Health and Safety Code, to amend Sections 789.8, 1215.1, 1871, 1872.83, 10123.135, 10178.3, 10192.11, 10231.2, 10236, 10506.5, 11621.2, 11784, 11786, 11787, and 12698 of the Insurance Code, to amend Sections 90.5, 129, 230.1, 4455, and 4609 of the Labor Code, to amend Section 1048 of the Military and Veterans Code, to amend Sections 272, 417.2, 646.94, and 3058.65 of the Penal Code, to amend Sections 1813 and 16062 of the Probate Code, to amend Sections 10129 and 20209.7 of the Public Contract Code, to amend Sections 5090.51, 14581, 36710, and 42923 of the Public Resources Code, to amend Sections 383.5, 2881.2, 7943, 9608, 9610, and 12702.5 of, and to amend and renumber Section 399.15 of, the Public Utilities Code, to amend Sections 75.11, 75.21, 97.3, 214, 23622.8, 23646, 44006, and 45153 of the Revenue and Taxation Code, to amend Section 1110 of the Unemployment Insurance Code, to amend Section 4000.37 of the Vehicle Code, to amend Sections 1789.5, 4098.1, 5614, 8102, 10082, 14005.28, 14005.35, 14008.6, 14087.32, and 14105.26 of the Welfare and Institutions Code, and to amend Section 511 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992), Section 1 of Chapter 352 of the Statutes of 2000, Section 1 of Chapter 661 of the Statutes of 2000, Section 2 of Chapter 693 of the Statutes of 2000, Sections 5 and 6 of the Naval Training Center San

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426. (a) The State Librarian, with input from the Legislative Analyst's office, the office of the Secretary for Education, and the Department of Finance, shall contract with an independent evaluator to evaluate the portion of the English Language and Intensive Literacy Program that is administered by the State Library, as listed in Item 6120-212-0001 of Section 2.00 of the Budget Act of 2000. The evaluation shall determine the effectiveness of this program, including, but not limited to, improving English language proficiency and identifying the most effective practices for teaching English language learners and their families in improving English language proficiency.

(b) The State Librarian shall provide interim reports to the Legislature that include, but are not limited to, the following:

- (1) The amount of funding allocated.
- (2) The number of libraries or schools participating in the program.
- (3) The number of English language learners participating in this program.
- (4) The number of parents participating in the program.

(c) The first report is due March 1, 2001. The second report is due March 1, 2002. The final interim report is due March 1, 2003. However, these reports shall be required only if funds are available for allocation for this program.

SEC. 53. Section 427 of the Education Code is amended to read:

427. (a) It is the intent of the Legislature that data developed through the English Language and Intensive Literacy Program be used to inform curriculum, instruction, assessment, research, and teacher preparation programs regarding use of the most effective practices for teaching English language learners.

(b) It is the intent of the Legislature that, once the most effective programs and processes have been identified, schools be required to incorporate those effective practices into the regular classroom instruction as a condition of receiving funds pursuant to Section 404.

(c) It is further the intent of the Legislature that this program be administered consistent with research-based strategies for teaching English language learners, as well as * * * Chapter 3 (commencing with Section 300), as applicable.

SEC. 54. Section 11700 of the Education Code is amended to read:

11700. (a) It is the intent of the Legislature that the Center for International Education Synergy be established through a joint powers agreement, entered into pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, between the Sweetwater Union High School District, the Southwestern Community College District, and San Diego State University. It is the intent of the Legislature that a joint powers agency created pursuant to the joint powers agreement own and maintain the land and facilities for the Center for International Education Synergy at the Otay Mesa Off-Campus Center.

(b) In addition to funding appropriated by the Legislature for purposes of the Center for International Education Synergy, entities participating in the establishment and operation of the center are encouraged to seek supplemental funding, including, but not limited to, funding from foundations, corporations, and other public entities.

(c) Any postsecondary education facilities and programs developed pursuant to this section shall be subject to the requirements of Section 66903 as they apply to the governing boards of public postsecondary educational institutes.

(d) The Center for International Education Synergy shall be established only upon approval by the California Postsecondary Education Commission based on a needs study and subsequent approval from the Department of Finance.

SEC. 55. Section 17071.46 of the Education Code is amended to read:

17071.46. (a) When an applicant school district proposes to demolish a single story building and replace it with a multistory building on the same site, the State Allocation Board shall provide a supplemental grant for 50 percent of the replacement cost of the single story building to be demolished, if all of the following conditions are met:

(1) The school at which the building demolition and replacement is to occur is operating on a multitrack year-round education schedule.

(2) The cost of the demolition and replacement is less than the total cost of providing a new school facility, including land, on a new site for the additional number of pupils housed as a result of the replacement building, as determined by the State Allocation Board.

(3) The school district will maximize the increase in pupil capacity on the site when it builds the replacement building, subject to the limits imposed on it pursuant to paragraph * * * (4).

(4) The State Department of Education has determined that the demolition of an existing single story building and replacement with a multistory building at the site is the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site, as determined by the State Department of Education.

(b) The State Allocation Board shall establish additional requirements it deems necessary to ensure that the economic interests of the state and the educational interests of the children of the state are protected.

SEC. 56. Section 17210 of the Education Code is amended to read:

17210. As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code, a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, any person who conducts phase I environmental assessments shall have at least two years' experience in the preparation of those assessments and any person who conducts a preliminary endangerment assessment shall have at least three years' experience in conducting those assessments.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action," and "site" have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the phase I environmental assessment. A phase I environmental assessment conducted

(e) The meetings of the Bipartisan California Commission on Internet Political Practices shall be open and public. The commission members shall receive one hundred dollars (\$100) per diem for each day of attendance at a meeting of the commission, not to exceed 10 meetings.

(f) The Bipartisan California Commission on Internet Political Practices shall report its findings and recommendations to the Legislature not later than December 1, 2001. The commission shall cease to exist on January 1, 2002.

SEC. 207. Section 3 of Chapter 975 of the Statutes of 2000 is amended to read:

Sec. 3. The sum of two hundred twenty thousand dollars (\$220,000) is hereby appropriated from the General Fund to the Controller for allocation to the Bipartisan California Commission on Internet Political Practices to defray the costs of the commission in conducting the study and preparing the report required by this act.

SEC. 208. Any section of any act enacted by the Legislature during the 2001 calendar year that takes effect on or before January 1, 2002, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2001 calendar year and takes effect on or before January 1, 2002, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

SCHOOLS AND SCHOOL DISTRICTS—MAINTENANCE
AND REPAIRS—FUNDS

CHAPTER 194

A.B. No. 1558

AN ACT to add Section 17070.77 to the Education Code, relating to school facilities.

[Filed with Secretary of State August 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1558, Leach. School facilities: maintenance.

Existing law, the Leroy F. Greene School Facilities Act 1998 (Greene Act), provides funding to school districts to finance the construction and modernization of school facilities. The Greene Act requires applicants to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair. Existing law requires an applicant to establish a restricted account within the school district's general fund for the exclusive purpose of providing moneys for ongoing and major maintenance, and to agree to deposit prescribed amounts into the account for this purpose. Existing law requires the applicant school district to certify that it has publicly approved an ongoing and major maintenance plan.

This bill would define major maintenance for this purpose, would require, commencing January 1, 2002, any school district applying for funding pursuant to the Greene Act to annually review the plan, update it as needed, and certify that it is in compliance with the plan. The bill would require applicants to certify that the plan includes prescribed criteria, including, but not limited to, identification of the major maintenance needs of the project, and specification of a schedule for completion of the major maintenance.

The people of the State of California do enact as follows:

SECTION 1. Section 17070.77 is added to the Education Code, immediately following Section 17070.75, to read:

17070.77. (a) For each project funded after January 1, 2002, the board shall require the applicant school district governing board to certify, as part of the school district's annual budget process and beginning in the fiscal year in which the project is funded by the state, that it is in compliance with the plan adopted pursuant to paragraph (3) of subdivision (b) of Section 17070.75 for completing major maintenance requirements for the project.

(b) For purposes of this chapter, the term "major maintenance" means all actions necessary to keep roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and other items designated by the governing board of the school district in good repair.

(c) The board shall require the school district's governing board to certify that the plan includes and is being implemented with all of the following components:

(1) Identification of the major maintenance needs for the project.

(2) Specification of a schedule for completing the major maintenance.

(3) Specification of a current cost estimate for the scheduled major maintenance needs.

(4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance needs.

(5) Review of the plan annually, as a part of the school district's annual budget process, and update, as needed, the major maintenance needs, the estimates of expected costs, and any adjustments in funding the reserve.

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(6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district.

(7) Provision in the school district's annual budget for the reserve that contains the total funding available for scheduled major maintenance needs as specified in the updated plan, and an explanation if this amount of the reserve is less than that specified in the updated plan.

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Additions or changes indicated by underline; deletions by asterisks * * *

(e) The comprehensive school safety plan shall be evaluated and amended, as needed, by the school safety planning committee no less than once a year to ensure that the comprehensive school safety plan is properly implemented. An updated file of all safety-related plans and materials shall be readily available for inspection by the public.

(f) The comprehensive school safety plan, as written and updated by the schoolsite council or school safety planning committee, shall be submitted for approval under subdivision (a) of Section 35294.8.

(g) The State Department of Education shall develop model policies on the prevention of bullying and on conflict resolution and make the model policies available to school districts. A school district may adopt one or both of these policies for incorporation into its school safety plan.

SCHOOL BUILDINGS AND GROUNDS—FUNDS—
CONSTRUCTION AND MODERNIZATION

CHAPTER 647

A.B. No. 401

AN ACT to amend Section 17072.12 of the Education Code, relating to school facilities.

[Filed with Secretary of State October 10, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 401, Cardenas. School facilities.

Existing law, the Leroy F. Greene School Facilities Act of 1998 (Greene Act), makes funding available to eligible school districts for various purposes related to school facilities, including construction and modernization. Under existing law, the State Allocation Board is required to determine the eligibility of school districts to receive apportionments under the Greene Act and to apportion funds only upon the completion of certain requirements by the applicant school district.

Existing law authorizes the board to provide additional funding for assistance in site development and acquisition if the amount of the site acquisition and development assistance does not exceed 50% of the cost of site development to the school district, plus the lesser of 50% of the site cost to the school district or 50% of the appraised value of the site at the time the complete application is submitted.

This bill would alter the calculation involving the appraised value of the site for the purposes of calculating this assistance and would authorize the board to provide funding for this assistance to a school district that uses land previously acquired by the school district in an amount equal to 50% of the cost of site development to the school district, plus 50% of the site's appraised value if certain conditions are met.

The people of the State of California do enact as follows:

SECTION 1. Section 17072.12 of the Education Code is amended to read:

17072.12. (a) In addition to the amount provided in Section 17072.10, the board may provide funding for assistance in site development and acquisition if all of the following are met:

(1) The amount of the site acquisition and development assistance does not exceed 50 percent of the cost of site development to the school district, plus the lesser of the following:

(A) 50 percent of the site cost to the school district * * *;

(B) 50 percent of the appraised value of the site * * * within six months of the time the complete application is submitted * * *.

Additions or changes indicated by underline; deletions by asterisks * * *

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(2) The school district certifies that there is no alternative available site, or that the district plans to sell an available site in order to use the proceeds of the sale for the purchase of the new site.

(b) Notwithstanding subdivision (a), the board may provide funding for assistance in site development and acquisition to a school district that uses land previously acquired by the school district in an amount equal to 50 percent of the cost of site development to the school district, plus 50 percent of the site's appraised value at the time the application for site acquisition and development is submitted, provided all of the following are met:

(1) The site was acquired no less than five years prior to the date the application is submitted.

(2) The site had been productively used by the school district as other than a schoolsite for the five years immediately preceding the date the application is submitted.

(3) The board determines that the nonschool function currently taking place on the site must be discontinued or relocated in order to utilize the site as a schoolsite.

(c) A school district that receives assistance pursuant to subdivision (b) shall, within one year after the completion of the project, certify in writing to the board that the nonschool function was in fact relocated as set forth in paragraph (4) of subdivision (b).

(d) Pursuant to subdivision (b), an applicant school district shall include in its application to the board a cost-benefit analysis performed by the school district demonstrating how utilizing existing nonschoolsite district property pursuant to this section would be a more effective method of solving the school district's pupil housing problems than any other method of funding under this chapter. The board shall review and approve the analysis if the board agrees with the findings and shall consider the analysis and findings in approving the project pursuant to this section.

SOCIAL SERVICES—HEALTH INSURANCE—CHILDREN'S HEALTH INITIATIVE MATCHING FUND

CHAPTER 648

A.B. No. 495

AN ACT to add Part 6.4 (commencing with Section 12699.50) to Division 2 of the Insurance Code, relating to health care coverage, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State October 10, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 495, Diaz. Health care coverage.

Existing law provides for health care coverage for children in low-income households through the Healthy Families Program and for the provision of health benefits to qualifying individuals through Medi-Cal. Existing law also provides for services for handicapped persons under 21 years of age pursuant to the California Children's Services Program. Under existing law, a county may organize a prepaid health plan, which is designated as a local initiative, to provide health care to eligible Medi-Cal beneficiaries.

This bill would create the Children's Health Initiative Matching Fund in the State Treasury, which would be administered by the Managed Risk Medical Insurance Board, in collaboration with the State Department of Health Services, for the purpose of providing matching state funds and local funds received by the fund through intergovernmental transfers to a county agency, a local initiative, or a county organized health system to provide health insurance coverage to certain children in low-income households who do not qualify for health care benefits through the Healthy Families Program or Medi-Cal. The bill would also provide for the referral of eligible children to the California Children's Services Program, as specified.

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SCHOOLS AND SCHOOL DISTRICTS—BUILDINGS—
FIRE DETECTION ALARMS AND SPRINKLERS

CHAPTER 725

S.B. No. 575

AN ACT to amend Section 32001 of, to add Article 7.5 (commencing with Section 17074.50) to Chapter 12.5 of Part 10 of, and to repeal Sections 32000, 32002, 32003, and 32004 of, the Education Code, relating to school facilities.

[Filed with Secretary of State October 11, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 575, O'Connell. School facilities: automatic fire detection alarm and sprinklers.

Existing law, the Leroy F. Greene School Facilities Act of 1998 (the Greene Act of 1998), requires the State Allocation Board to administer the allocation of school facilities funds for public education.

Existing law, relating to the construction of school buildings, requires the Department of General Services to pass upon and approve or reject all plans for the construction of, or if the estimated cost exceeds \$25,000, the alteration of, any school building.

This bill would, with certain exceptions relating to portable buildings, require new construction projects under the Greene Act of 1998, which require approval of the Department of General Services, to comply with prescribed automatic fire detection, alarm, and sprinkler system requirements, would require modernization projects having an estimated total cost in excess of \$200,000 to comply with the automatic fire detection and alarm system requirements, and would require inclusion of amounts necessary to cover the costs of the system. The bill would require the State Allocation Board to review the adequacy of the per pupil eligibility amounts for new construction grants and modernization funding and make any adjustments determined to be necessary by July 1, 2003.

Existing law requires every public, private, or parochial school building to be provided with a dependable and operative fire warning system and requires every person and public officer managing, controlling, or in charge of the school to sound the fire alarm signal upon the discovery of fire.

This bill would exempt these persons from this requirement if the public, private, or parochial school building is equipped with an automatic fire detection and alarm system,

Additions or changes indicated by underline; deletions by asterisks * * *

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which for this purpose may or may not include a sprinkler system, and would repeal related provisions regarding the California uniform fire code signal.

Existing law requires the alarm to be sounded at least once every calendar month at the elementary and intermediate levels and at least twice a year at the secondary level. Existing law requires fire drills to be held at the secondary level at least twice every school year.

This bill would, instead, require that the alarm be sounded at least once every month, and would require that fire drills be conducted at the elementary level at least once every calendar month and at the intermediate and secondary level at least twice every school year.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Presently, schools rely solely on school staff or on pupils to detect a fire, activate the fire alarm, evacuate the school buildings, and notify the fire department, all in a timely manner. Many of the school buildings in use in this state are 20 to 30 years old or older and do not provide sufficient fire protection in the building construction, nor do these schools have an adequate fire detection system, alarm system, or automatic fire sprinkler system.

(2) Without an early detection system comprised of smoke and heat detectors that can immediately and automatically detect a fire, an automatic warning system that can sound an alarm, and notify the fire department, and a suppression system that can initiate sprinklers to commence fighting the fire, fires, like the one at the Green Oaks Family Academy Elementary School, are silent killers that can move quickly through open attic space above classrooms full of children until the classrooms are suddenly ignited into inescapable infernos.

(3) An early warning system would give protection to pupils and school personnel by giving them immediate warning at the earliest stage of a fire, by letting school staff focus on the immediate evacuation of the school buildings and by letting staff rely on the automatic system to immediately inform the fire department and commence suppression of the fire.

(4) When school buildings are unoccupied, an automatic fire alarm system can notify the fire department and an automatic fire sprinkler system can help contain the fire within the area of origin until firefighters arrive to extinguish the fire.

(5) Moreover, during times of disaster, schools are often utilized as community relocation centers for displaced persons or families. It is essential, therefore, that schools be adequately protected from fire in order to enhance their ability to survive the disaster and be available for use by the community in those times of need.

(b) This act shall be known, and may be cited, as the Green Oaks Family Academy Elementary School Fire Protection Act.

SEC. 2. Article 7.5 (commencing with Section 17074.50) is added to Chapter 12.5 of Part 10 of the Education Code, to read:

Article 7.5. Automatic Fire Detection, Alarm, and Sprinkler Systems

17074.50. (a) On and after July 1, 2002, all new construction projects submitted to the Division of the State Architect pursuant to this chapter, including, but not limited to, hardship applications, that require the approval of the Department of General Services shall include an automatic fire detection, alarm, and sprinkler system as set forth in Section 17074.52 and approved by the State Fire Marshal. These provisions shall entitle the school district to all applicable reductions in code requirements, as provided in the California Building Standards Code (Title 24 of the California Code of Regulations).

(b) On and after July 1, 2002, all modernization projects that have an estimated total cost in excess of two hundred thousand dollars (\$200,000) submitted to the Division of the State Architect pursuant to this chapter, including, but not limited to, hardship applications, that require the approval of the Department of General Services shall include an automatic fire detection and alarm system as set forth in Section 17074.52 and approved by the State Fire Marshal. For a modernization project that is to be completed in more than one phase, the school district may defer installation of the system until the final phase of the modernization

project. Solely for purposes of this section, "modernization" means any modification of a permanent structure or construction of a new building on an existing campus.

(c) The Department of General Services shall administer this section based upon the standards adopted by the State Fire Marshal pursuant to Section 17074.52.

17074.52. (a) For modernization projects, the automatic fire detection and alarm system required pursuant to subdivision (b) of Section 17074.50 shall consist of smoke or heat detectors, or a combination thereof, as determined by the State Fire Marshal, installed in the school building. The alarm, upon activation of an initiating device, shall alert all occupants and shall transmit the alarm signal to an approved supervising station.

(b) For new construction projects, the automatic fire detection, alarm, and sprinkler system required pursuant to subdivision (a) of Section 17074.50, shall in addition to compliance with subdivision (a), include an automatic fire sprinkler system installed in the school building including, but not necessarily limited to, attic spaces.

(c) Notwithstanding Section 17074.50 or subdivisions (a) or (b) of this section, for a stand alone portable building, the system required pursuant to this article shall consist of an automatic fire detection and alarm system. For the purposes of this subdivision a "stand alone portable building" means a portable building that is used as a single classroom and that is sited more than 25 feet from any other building, including, but not limited to, any other portable building.

(d) Except as required for automatic fire detectors and waterflow detection devices, manual fire alarm boxes shall not be required throughout the school building.

(e) The entire system shall be installed, tested, and maintained in accordance with the regulations of the State Fire Marshal.

17074.54. (a) A portable building that is sited with the intent that it be at the site for less than three years and is sited upon a temporary foundation in a manner that is designed to permit easy removal, is exempt from Sections 17074.50 and 17074.52 for a period of three years from the date of siting.

(b) After the three-year exemption set forth in subdivision (a), a school district may request an extension of the exemption for an additional period not to exceed three additional years. The board shall grant the request if the school district presents convincing evidence demonstrating to the satisfaction of the board that the extension is necessary.

(c) For purposes of this section, "portable building" means a classroom building of modular design and construction that meets all of the following criteria:

- (1) It is designed and constructed to be relocatable and transportable over public streets.
- (2) It is designed and constructed for relocation without detaching the roof or the floor from the building.
- (3) It has a floor area of 2,000 square feet or less when measured at the most exterior walls.

17074.56. (a) The State Allocation Board shall adjust the per-pupil grant amount set forth in Section 17072.10 as necessary to accommodate 50 percent of the increased costs due to the automatic fire detection, alarm, and sprinkler system required pursuant to subdivision (a) of Section 17074.50. The board shall adjust the per-pupil grant amount set forth in Section 17074.10 as necessary to accommodate 80 percent of the increased costs due to the automatic fire detection and alarm system required pursuant to subdivision (b) of Section 17074.50. The board shall establish a method to provide up to 100 percent of the increased costs of the automatic fire detection, alarm, and sprinkler, if applicable, systems for school districts which qualify for hardship assistance pursuant to paragraph (1) of subdivision (b) of Section 17075.10.

(b) By July 1, 2003, the board shall review the adequacy of the per-pupil grant adjustments made pursuant to subdivision (a) and shall increase or decrease those adjustments as determined to be necessary.

(c) Any project submitted to the Division of the State Architect on or after September 1, 2001, that includes a qualifying fire detection, alarm, and sprinkler, if applicable, system, and

Additions or changes indicated by underline; deletions by asterisks * * *

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that has not been fully funded prior to July 1, 2002, shall be eligible for grant or eligibility adjustments as set forth in this article.

SEC. 3. Section 32000 of the Education Code is repealed.

SEC. 4. Section 32001 of the Education Code is amended to read:

32001. Every public, private, or parochial school building having an occupant capacity of * * * 50 or more pupils or students or more than one classroom shall be provided with a dependable and operative fire alarm system. Every person and public officer managing, controlling, or in charge of any public, private, or parochial school shall cause the fire alarm signal to be sounded upon the discovery of fire, unless the school is equipped with an automatic fire detection, and alarm system, which may include, but for the purposes of this section is not required to include, a sprinkler system, as described in Section 17074.52. Every person and public officer managing, controlling, or in charge of any public, private, or parochial school, other than a two-year community college, shall cause the fire alarm signal to be sounded not less than once every calendar month * * * and shall conduct a fire drill at least once every calendar month at the elementary level and at least four times every school year at the intermediate levels.

A fire drill shall be held at the secondary level not less than twice every school year.

SEC. 5. Section 32002 of the Education Code is repealed.

SEC. 6. Section 32003 of the Education Code is repealed.

SEC. 7. Section 32004 of the Education Code is repealed.

SCHOOLS AND SCHOOL DISTRICTS—FUNDS—
GENERAL AMENDMENTS

CHAPTER 734

A.B. No. 804

AN ACT to amend Sections 8208, 8264.5, 8278.3, 8951, 10901, 11023, 11024.5, 17070.75, 17150, 17582, 17694, 22303.5, 32228, 32228.1, 33533, 37220.6, 41374, 41409, 42238.44, 42239.15, 42650, 42850, 44503, 44673, 48264.5, 51210, 51220, 51224.5, 51511, 51810, 51874, 52066, 52067, 52334, 52523, 52761, 53029, 54743, 54749, 56026, 56029, 56200, 56207, 56366.1, 56391, 56836.02, 60061, 60240, 60313, 60400, 63051, 69995, 69996, 69997, 69998, 78300, 89230, and 99223 of, to amend and renumber the heading of Chapter 17 (commencing with 53081) of Part 28 of, to amend and renumber Sections 53081,

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within the meaning of this chapter whether or not they may be used primarily for other purposes.

SEC. 8. Section 11023 of the Education Code is amended to read:

11023. The Superintendent of Public Instruction, shall recommend, and the State Board of Education shall approve, a plan for the comprehensive evaluation of the program authorized in this chapter. The Superintendent of Public Instruction shall complete the evaluation and submit it to the State Board of Education by July 1, 2004. The State Board of Education shall submit the final evaluation and report to the Legislature by December 31, 2004, on all of the following:

(a) Changes in the number and percent of pupils who took nationally-normed, standardized tests used for college admission decisions.

(b) Changes in the school-wide average score on nationally-normed, standardized tests used for college admission decisions.

(c) Changes in the number and percentage of pupils who complete the A-F or college preparatory course requirements with at least a "C" grade.

(d) Changes in the number and percentage of pupils who complete advanced placement courses and received a score of "3" or above.

(e) Changes in the number of advanced placement courses taken by pupils.

(f) Changes in the number and percentage of parents or guardians of 8th grade pupils who were notified of the course requirements that are a prerequisite for admission to the California State University or the University of California.

(g) The college participation rates at qualifying schools before and after the implementation of program activities pursuant to this chapter.

(h) Recommendations for changes to this chapter that could further increase the percentage of high school pupils eligible for admission to the California State University or the University of California upon graduation from high school.

SEC. 9. Section 11024.5 of the Education Code is amended to read:

11024.5. This chapter shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10. Section 17070.75 of the Education Code is amended to read:

17070.75. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and to encourage school districts to maintain all buildings under their control, the board shall require an applicant school district to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the school district's general fund for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings, according the highest priority to funding for the purposes set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for 20 years after receipt of funds under this chapter, a minimum amount equal to or greater than 3 percent of the applicant school district's total general fund * * * expenditures, including other financing uses, for that fiscal year. For the 1998-99 fiscal year and the 1999-2000 fiscal year, a school district may phase in this requirement by agreeing to certify the deposit of no less than 2 percent for the 1998-99 fiscal year and no less than 2½ percent for the 1999-2000 fiscal year. Annual deposits to the fund established pursuant to paragraph (1) in excess of 2½ percent of the district general fund budget may count towards the district's matching funds requirement necessary to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 17584 to the extent that funds are used for purposes that qualify for funding under that section. In addition, any district contribution to this fund may be provided in lieu of meeting the ongoing maintenance requirements pursuant to Section 17014 to the extent the funds are used for purposes established in that section. A

school district that serves as the administrative unit for a special education local plan area may elect to exclude from its total general fund expenditures, for purposes of this paragraph, the distribution of revenues that are passed through to participating members of the special education local plan area. This paragraph is applicable only to the following school districts:

- (A) High school districts with an average daily attendance greater than 300 pupils.
- (B) Elementary school districts with an average daily attendance greater than 900 pupils.
- (C) Unified school districts with an average daily attendance greater than 1,200 pupils.

(3) Certify that it has publicly approved an ongoing and major maintenance plan that outlines the use of the funds deposited, or to be deposited, pursuant to paragraph (2). The plan may provide that the district need not expend all of its annual allocation for ongoing and major maintenance in the year in which it is deposited if the cost of major maintenance requires that the allocation be carried over into another fiscal year. However, any state funds carried over into a subsequent year shall not be counted toward the annual minimum contribution by the district. A plan developed in compliance with this section shall be deemed to meet the requirements of Section 17585.

(c) A district to which paragraph (2) of subdivision (b) does not apply shall certify to the board that it can reasonably maintain its facilities with a lesser level of maintenance.

(d) For the purposes of calculating a county office of education requirement pursuant to this section, the 3 percent maintenance requirement shall be calculated based upon the county office of education general fund less any restricted accounts.

SEC. 11. Section 17150 of the Education Code is amended to read:

17150. (a) Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 18 (commencing with Section 17170), the school district shall notify the county superintendent of schools and the county auditor. The superintendent of the school district shall provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools and the county auditor may comment publicly to the governing board of the school district regarding the capability of the school district to repay that debt obligation.

(b) Upon the approval by the county board of education to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing pursuant to Chapter 18 (commencing with Section 17170), the county superintendent of schools or superintendent of a school district for which the county board serves as governing board shall notify the Superintendent of Public Instruction. The county superintendent of schools or the superintendent of a school district for which the county board serves as the governing board shall provide the repayment schedules for that debt obligation and evidence of the ability of the county office of education or school district to repay that obligation, to the Superintendent of Public Instruction, the governing board, and the public. Within 15 days of the receipt of the information the Superintendent of Public Instruction may comment publicly to the county board of education regarding the capability of the county office of education or school district to repay that debt obligation.

(c) Prior to delivery of the notice required by subdivision (a) neither the county nor any of its officers shall have any responsibility for the administration of the school district's indebtedness. Failure to comply with the requirements of this section will not affect the validity of the indebtedness.

SEC. 12. Section 17582 of the Education Code is amended to read:

17582. (a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, and any other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance

Additions or changes indicated by underline; deletions by asterisks * * *

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Ch. 734, § 82

STATUTES OF 2001

K-3, Class Size Reduction Program pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 of the Education Code for the 1999-2000 fiscal year shall be an amount equal to nine million six hundred ninety-five thousand twenty-eight dollars (\$9,695,028).

SEC. 83. Notwithstanding any other provision of law, school agency administrative costs and salary-driven benefit costs, including the employer's share of Medicare, unemployment insurance, and workers' compensation, incurred as a result of implementation of Section 40 of Chapter 71 of the Statutes of 2000, shall be paid from funds appropriated for the schoolsite portion of the Academic Performance Index Schoolsite Employees Performance Bonus. School districts, county offices of education, and charter schools may not reduce the amount of Academic Performance Index Schoolsite Employees Performance Bonuses provided to employees to recover the employer's salary-driven benefit costs or administrative costs incurred by the school district as a result of this award.

SEC. 84. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the various programs affected by this act are properly implemented, pursuant to the clarifying, technical, and other changes made by this act, it is necessary that this act take effect immediately.

4608

Additions or changes indicated by underline; deletions by asterisks * * *

STATE AGENCIES—REPORTS—REQUIREMENTS

CHAPTER 745

S.B. No. 1191

AN ACT to amend Sections 4425, 6086.15, 6094.5, 7011.8, and 7017 of, and to repeal Sections 1616.1 and 12029 of, the Business and Professions Code, to amend Section 116.950 of the Code of Civil Procedure, to amend Sections 30.5, 8215, 8358, 8451, 32237, 32239.5, 35179.2, 44252.9, 44259.5, 44279.2, 44784, 49413, 52052, 52656, 54696, 56885, 58523, 60810, 66015, 66755, 67301, 67359.20, 71028, 87104, 89753, 89761, and 99306 of, and to repeal Sections 15750, 17001.5, 44329, 49590.5, 58922, 66293, 69733, 72681, 78217, and 99105 of, the Education Code, to amend Section 7571 of the Family Code, to repeal Sections 256, 8052, and 32955 of the Financial Code, to amend Sections

4710

Additions or changes indicated by underline; deletions by asterisks * * *

Vehicle Code relating to parking exemptions for disabled persons, as defined by Section 295.5 of the Vehicle Code, and disabled veterans, as defined by Section 295.7 of the Vehicle Code. The rules and regulations shall include authorization to park for unlimited periods in time-restricted parking zones and to park in any metered parking space without being required to pay any parking meter fee or to display a parking permit other than pursuant to Section 5007 or 22511.55 of the Vehicle Code, provided those spaces are otherwise available for use by the general public. The adopted regulations shall authorize parking at campus facilities and grounds by students with disabilities and by persons providing transportation services to students with disabilities. Except as otherwise provided in this section, students with disabilities and persons providing transportation to students with disabilities shall be required to display a valid parking permit, if applicable, for the campus attended. Nothing in this section prohibits the adoption of rules and regulations providing greater accessibility for students with disabilities and persons providing transportation services to those students.

The adopted rules and regulations shall exempt students with disabilities and persons providing transportation services to these persons from any applicable parking restrictions in areas including, but not limited to, metered parking spaces and parking facilities designated for use by students, faculty, administrators, and employees.

(b) The Regents of the University of California may provide, and the Trustees of the California State University shall provide, and the Board of Governors of the California Community Colleges shall adopt rules and regulations requiring the governing board of each community college district to provide, visitor parking at each campus of the university or district at no charge for a disabled person, as defined by Section 295.5 of the Vehicle Code, or disabled veteran, as defined by Section 295.7 of the Vehicle Code, or as defined by each segment's policy concerning the provision of services to students with disabilities, whichever is more inclusive, and for persons providing transportation services to individuals with disabilities. Whenever parking designated for a disabled person is provided on any campus of the University of California, the California State University, or a community college district in a facility controlled by a mechanical gate, that university or district shall also provide accommodations for any person whose disability prevents him or her from operating the gate controls. These accommodations may be provided by making arrangements for disabled persons to be assisted in the operation of the gate controls, or through other effective and reasonable means the university or district may devise. Nothing in this subdivision shall be construed to require the replacement or elimination of special parking facilities restricted for the use of disabled persons located on the campuses of these universities or districts.

It is the intent of the Legislature that community college districts shall utilize the proceeds from parking fees charged to community college students and employees to offset costs incurred by these districts in accommodating disabled persons pursuant to the requirements of this section.

(c) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, establish procedures for the purpose of conducting biennial audits to determine whether individual campuses are in compliance with all state building code requirements relating to the location and the designation of minimum percentages of available campus parking spaces for use by students with disabilities, as determined by guidelines of Section 14679 of the Government Code, Section 2-7102 of Title 24 of the California Code of Regulations, Part 40 (commencing with Section 40.1) of Title 24 of the Code of Federal Regulations, Section 1190.31 of Title 36 of the Code of Federal Regulations, or their successor provisions, or any other applicable provisions of law, whichever provides the greater accessibility for disabled persons.

* * *

SEC. 34. Section 67359.20 of the Education Code is amended to read:

67359.20. Any funds from the 1988 Higher Education Capital Outlay Bond Fund, the June 1990 Higher Education Capital Outlay Bond Fund, and the 1992 Higher Education Capital Outlay Bond Fund, not to exceed a combined total of seventy-five million dollars (\$75,000,000), are hereby appropriated to the Director of Finance for allocation to the University of California, the California State University, and the California Community Colleges to meet the timely allocation of matching grants to repair, replace, reconstruct, renovate, or retrofit

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Additions or changes indicated by underline; deletions by asterisks * * *

on-campus buildings or facilities, including utilities, and streets and roads that were damaged in the Northridge earthquake of January 17, 1994.

* * *

SEC. 35. Section 69733 of the Education Code is repealed.

SEC. 36. Section 71028 of the Education Code is amended to read:

71028. * * * The board of governors shall adopt regulations to ensure that the California Community Colleges, as a system, establish and apply the statewide participation goals for contracting with minority business enterprises and women business enterprises specified in Section 10115 of the Public Contract Code. The statewide participation goal for the California Community Colleges shall be based upon the total dollar amount of contracts awarded, with not less than 15 percent being awarded to minority business enterprises, and not less than 5 percent being awarded to women business enterprises. The regulations adopted by the board of governors shall be adapted from and consistent with the provisions of Article 1.5 (commencing with Section 10115) of Chapter 1 of Part 1 of the Public Contract Code.

* * *

SEC. 37. Section 72681 of the Education Code is repealed.

SEC. 38. Section 78217 of the Education Code is repealed.

SEC. 39. Section 87104 of the Education Code is amended to read:

87104. (a) The Board of Governors of the California Community Colleges, out of funds appropriated for these purposes, (1) shall provide assistance to local community colleges in adopting and maintaining high-quality affirmative action programs; (2) * * * develop and disseminate to public community college districts guidelines to assist these agencies in developing and implementing affirmative action employment programs; and (3) shall establish a technical assistance team to review the affirmative action plan of each community college district which fails to make measurable progress in meeting the goals and timetables of its adopted plan. The technical assistance team shall recommend appropriate actions to assure reasonable progress in improving success rates. The board of governors shall prescribe those conditions necessary to assure reasonable progress and otherwise meet the legal requirements of affirmative action. The conditions may include the withholding of allowances made pursuant to Sections 87482.6 and 87107.

(b) The board of governors shall establish, by July 1, 1989, within the chancellor's office or through other means as deemed necessary, a major service function to assist community college districts in identifying, locating, and recruiting qualified members of underrepresented groups, and in establishing and maintaining effective affirmative action hiring procedures.

(c) The board of governors shall, by March 15, 1989, develop and adopt a systemwide plan for strengthening faculty and staff affirmative action policies and programs in the California Community Colleges.

SEC. 40. Section 89753 of the Education Code is amended to read:

89753. All appropriations for the support of the California State University and the trustees shall be subject to Section 13320 of the Government Code and applicable Budget Act restrictions, with the following exceptions:

(a) The trustees may, with regard to funds appropriated for the support of the California State University, approve any transfer of funds between general fund appropriations, unless restricted by the Budget Act or any other act, and within and between any category designated in any schedule set forth for the appropriation. In addition, the trustees may authorize the augmentation of the amount available for a category designated in any schedule set forth for the appropriation by transfer from any of the other designated categories, including additional reimbursements and amounts receivable within the same schedule, and shall furnish the Joint Legislative Budget Committee and appropriate legislative fiscal committees a report of the authorizations given during the preceding quarter.

(b) The trustees may approve travel, both within and outside the state, and the payment of allowances and expenses related to travel, moving, and the relocation of employees in accordance with the allowances established by the trustees.

Additions or changes indicated by underline; deletions by asterisks * * *

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2001-2002 REGULAR SESSION

Ch. 746, § 1

(c) Of the funds appropriated for the purpose authorized in paragraphs (1) and (2) of subdivision (a), no more than two hundred seventy thousand dollars (\$270,000) may be expended in any fiscal year for costs of administering the programs authorized thereby.

SEC. 276. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that state and local agencies may be relieved of the burden of preparing unessential reports at the earliest possible time, it is necessary that this act take effect immediately.

Additions or changes indicated by underline; deletions by asterisks * * *

4817

2001-2002 REGULAR SESSION

Ch. 33

EDUCATION—KINDERGARTEN-UNIVERSITY PUBLIC
EDUCATION FACILITIES BOND ACT

CHAPTER 33

A.B. No. 16

AN ACT to amend Sections 17070.15, 17070.35, 17070.40, 17070.43, 17070.51, 17070.65, 17070.70, 17071.33, 17071.75, 17072.10, 17072.25, 17074.10, 17074.15, 17075.10, 17075.15, 17076.10, 17088.2, 17262, and 17280 of, to add Sections 17070.95, 17074.16, 17074.26, 17077.35, 17251.5, and 17280.5 to, to amend and renumber Section 17077.10 of, to amend and renumber the heading of Article 10 (commencing with Section 17077.10) of Chapter 12.5 of Part 10 of, to add Article 10.6

Additions or changes indicated by underline; deletions by asterisks * * *

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The bill would specify that 2 of the Senators would belong to the majority party and one of the Senators would belong to the minority party, and that 2 of the Members of the Assembly would belong to the majority party and one of the Members of the Assembly would belong to the minority party.

(4) Existing law authorizes a school district to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the school district for the purpose of funding the construction or reconstruction of school facilities. The law authorizes a school district to increase the levy, as prescribed, if state funds for new school facility construction are not available, as defined.

This bill would suspend the operation of the provision authorizing the increased levy until the 2002 statewide general election, or if bonds are approved at the 2002 statewide general election, until the 2004 direct primary election. This bill would exclude the availability of certain funds for the purpose of making the determination as to whether state school facility funds are available. The bill would also establish the Homebuyer Down Payment Assistance Program to provide assistance in payment of the school facilities fee on affordable housing development.

(5) This bill would appropriate the sum of \$651,289,000, from the Public Buildings Construction Fund to the California State Library, the University of California, the California State University and the California Community Colleges for construction of education facilities, including, but not limited to, library facilities, pursuant to a prescribed schedule, and would authorize the State Public Works Board to issue related lease-revenues bonds.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 17070.15 of the Education Code is amended to read:

17070.15. The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

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

(b) "Attendance area" means the geographical area serving an existing * * * high school and those junior high schools and elementary schools included therein.

(c) "Board" means the State Allocation Board as established by Section 15490 of the Government Code.

(d) "Department" means the Department of General Services.

(e) "Committee" means the State School Building Finance Committee established pursuant to Section 15909.

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

(g) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(h) "School district" means a school district or a county office of education. For purposes of determining eligibility under this chapter, "school district" may also mean a high school attendance area.

(i) "Fund" means the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, established pursuant to Section 17070.40.

(j) "County fund" means a county school facilities fund established pursuant to Section 17070.43.

(k) "Portable classroom" means a classroom building of one or more stories that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable classroom, is designed and constructed for relocation

Additions or changes indicated by underline; deletions by asterisks * * *

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without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

(l) "School building capacity" means the capacity of a school building to house pupils.

SEC. 2. Section 17070.35 of the Education Code is amended to read:

17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Determine the eligibility of school districts to receive apportionments under this chapter.

(4) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter to conform with the act that amended this section to add this subdivision. Regulations adopted pursuant to this subdivision shall be adopted by November 5, 2002, and shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

SEC. 3. Section 17070.40 of the Education Code is amended to read:

17070.40. (a)(1) A fund is hereby established in the State Treasury to be known as the 1998 State School Facilities Fund. All money in the fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated without regard to fiscal years for expenditure pursuant to this chapter.

(2) The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the 1998 State School Facilities Fund from any source.

(3) The board may make apportionments in amounts not exceeding those funds on deposit in the 1998 State School Facilities Fund, and any amount of bonds authorized by the * * * committee, but not yet sold by the Treasurer.

(4) The board may make disbursements pursuant to any apportionment made from any funds in the 1998 State School Facilities Fund, irrespective of whether there exists at the time of the disbursement an amount in the 1998 State School Facilities Fund sufficient to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

(b)(1) A fund is hereby established in the State Treasury to be known as the 2002 State School Facilities Fund. All money in the fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated without regard to fiscal years for expenditure pursuant to this chapter.

(2) The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the 2002 State School Facilities Fund from any source.

(3) The board may make apportionments in amounts not exceeding those funds on deposit in the 2002 State School Facilities Fund, and any amount of bonds authorized by the committee, but not yet sold by the Treasurer.

(4) The board may make disbursements pursuant to any apportionment made from any funds in the 2002 State School Facilities Fund, irrespective of whether there exists at the time of the disbursement an amount in the 2002 State School Facilities Fund sufficient to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

(c)(1) A fund is hereby established in the State Treasury to be known as the 2004 State School Facilities Fund. All money in the fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated without regard to fiscal years for expenditure pursuant to this chapter.

(2) The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the 2004 State School Facilities Fund from any source.

(3) The board may make apportionments in amounts not exceeding those funds on deposit in the 2004 State School Facilities Fund, and any amount of bonds authorized by the committee, but not yet sold by the Treasurer.

(4) The board may make disbursements pursuant to any apportionment made from any funds in the 2004 State School Facilities Fund, irrespective of whether there exists at the time of the disbursement an amount in the 2004 State School Facilities Fund sufficient to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

SEC. 4. Section 17070.43 of the Education Code is amended to read:

17070.43. (a) A county school facilities fund is hereby established in the county treasury within each county for each school district in the county.

(b) The board may from time to time authorize the Controller to transfer any funds that the board may deem necessary from the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, to the corresponding county fund in the county treasury. Interest on all funds deposited in the county fund shall be retained in that fund.

(c) Funds may be expended from the county fund by the recipient school district for qualifying school facilities expenditures set forth in Sections 17072.35 and 17074.25.

SEC. 5. Section 17070.51 of the Education Code is amended to read:

17070.51. (a) If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a material inaccuracy, the Office of Public School Construction shall notify the board.

(b) The board shall impose the following penalties if an apportionment and fund release has been made based upon information in the project application or related materials that constitutes a material inaccuracy.

(1) Pursuant to a repayment schedule approved by the board of no more than five years, the school district shall repay to the board, for deposit into the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, an amount proportionate to the additional funding received as a result of the material inaccuracy including interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater.

(2) The board shall prohibit the school district from self-certifying certain project information for any subsequent applications for project funding for a period of up to five years following the date of the finding of a material inaccuracy or until the district's repayment of

the entire amount owed under paragraph (1). Although a school district that is subject to this paragraph may not self-certify, the school district shall not be prohibited from applying for state funding under this chapter. The board shall establish an alternative method for state or independent certification of compliance that shall be applicable in these cases. The process shall include, but shall not be limited to, procedures for payment by the school district of any increased costs associated with the alternative certification process.

(c) For school districts found to have provided material inaccuracies when a funding apportionment has occurred, but no fund release has been made, the board shall direct its staff to reduce the apportionment as necessary to reflect the actual nature of the project and to disregard the inaccurate information or material, and paragraph (2) of subdivision (b) shall apply.

(d) For those school districts found to have provided material inaccuracies when no funding apportionment or fund release has been made, the inaccurate information or materials shall not be considered, and paragraph (2) of subdivision (b) shall apply. The project may continue if the application, minus the inaccurate materials, is still complete.

SEC. 6. Section 17070.65 of the Education Code is amended to read:

17070.65. From any moneys in * * * one of the funds established pursuant to Section 17070.40, as appropriate, and approved for this purpose in the annual Budget Act, the board shall make available to the Director of General Services the amounts that the board determines necessary for the Department of General Services to provide the assistance, pursuant to this chapter, required pursuant to Section 15504 of the Government Code to facilitate the construction, modernization, reconstruction, or alteration of, or addition to, school buildings.

SEC. 7. Section 17070.70 of the Education Code is amended to read:

17070.70. (a) Title, including, but not limited to, any leasehold interest as set forth in subdivision (c), to all property acquired, constructed, or improved with funds made available under this chapter shall be held by the school district to which the board grants the funds. Title, as defined solely for the purpose of a school district's eligibility to receive funds from the board pursuant to this chapter shall include an order for prejudgment possession issued by a court in an eminent domain proceeding.

(b) The applicant school district shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school buildings.

(c) Notwithstanding Section 17009.5, construction or modernization funds made available pursuant to this chapter may be expended upon property that is leased to the applicant school district only if the project qualified for and received approval by the board, prior to November 4, 1998, pursuant to Article 4 (commencing with Section 17055), of Chapter 12.

SEC. 8. Section 17070.95 is added to the Education Code, to read:

17070.95. As a part of its application for large construction and modernization projects, a school district shall certify, in consultation with the career technical education advisory committee established pursuant to Section 8070, that it has considered the need for vocational and career technical facilities to adequately meet its program needs consistent with Section 51224, subdivision (b) of Section 51225.3, and Section 52336.1. The board shall adopt regulations necessary for administration of this section.

SEC. 9. Section 17071.33 of the Education Code is amended to read:

17071.33. (a) For the purposes of determining existing school building capacity, the calculation shall be adjusted as required for first priority status pursuant to Section 17017.7 as that calculation would have been made under the policies of the board in effect immediately preceding September 1, 1998.

(b) Notwithstanding subdivision (a), with respect to a high school district, the existing school building capacity shall be calculated without regard to multitrack year-round school considerations.

SEC. 10. Section 17071.75 of the Education Code is amended to read:

17071.75. After a one-time initial report of existing school building capacity has been completed, a school district's ongoing eligibility for new construction funding shall be determined by making all of the following calculations:

(a) Each school district that applies to receive funding for new construction shall calculate enrollment projections for the fifth year beyond the fiscal year in which the application is made. Projected enrollment shall be determined by utilizing the cohort survival enrollment projection system, as defined and approved by the board. The board may supplement the cohort survival enrollment projection by the number of unhoused pupils that are anticipated as a result of dwelling units proposed pursuant to approved and valid tentative subdivision maps.

(b) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for which facilities were provided from any state or local funding source after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10). For this purpose, the total number of pupils for which facilities were provided shall be determined using the pupil loading formula set forth in Section 17071.25.

(c) Subtract the number of pupils pursuant to subdivision (b) from the number of pupils determined pursuant to subdivision (a).

(d) The calculations required to establish eligibility under this article shall result in a distinction between the number of existing unhoused pupils and the number of projected unhoused pupils.

(e) Apply the increase or decrease resulting from the difference between the most recent report made pursuant to Section 42268, and the report used in determining the school district's baseline capacity pursuant to subdivision (a) of Section 17071.25.

(f) For a school district with fewer than 2,501 units of average daily attendance, the eligibility determined pursuant to this section shall be fixed for a period of three years from the date of the approval of eligibility by the board.

SEC. 11. Section 17072.10 of the Education Code is amended to read:

17072.10. (a) The board shall determine the applicant's maximum total new construction grant eligibility by multiplying the number of unhoused pupils calculated pursuant to Article 3 (commencing with Section 17071.75) in each school district with an approved application for new construction, by the per-unhoused-pupil grant as follows:

- (1) Five thousand two hundred dollars (\$5,200) for elementary school pupils.
- (2) Five thousand five hundred dollars (\$5,500) for middle school pupils.
- (3) Seven thousand two hundred dollars (\$7,200) for high school pupils.

(b) The board shall annually adjust the per-unhoused-pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) The board may establish a single supplemental per-unhoused-pupil grant in addition to the amounts specified in subdivision (a) based on the statewide average marginal difference in costs in instances where a project requires multilevel school facilities due to limited acreage. The district's application shall demonstrate that a practical alternative site is not available.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to seven thousand five hundred dollars (\$7,500) for any new construction project assistance. The amount of the supplemental apportionment authorized pursuant to this subdivision shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction.

* * *

SEC. 12. Section 17072.25 of the Education Code is amended to read:

Additions or changes indicated by underline; deletions by asterisks * * *

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17072.25. (a) The board shall adopt regulations to develop a mechanism to rank approved applications for new construction funding. This mechanism shall be used to determine the priority of approved applications when either of the following conditions are met:

(1) The total state funds necessary for funding all approved projects pursuant to this chapter exceed the total state funds in the fund for allocation pursuant to this chapter.

(2) The actual amount of unallocated proceeds of state bonds available on or after July 1, 2000, for new construction for the purposes of this chapter is at three hundred million dollars (\$300,000,000).

(b) The ranking mechanism shall allocate priority points based upon the percentages of currently and projected unhoused pupils relative to the total population of the applicant district or attendance area and the total number of currently and projected unhoused pupils in an applicant district or attendance area.

(c) The board may award priority points based on other factors that in its judgment result in the most equitable distribution of resources among applicants. The additional factors may not constitute greater than a 10-percent weight in the overall priority ranking.

(d) This section shall apply only to projects funded with the proceeds of state bonds approved by the voters prior to January 1, 2002.

SEC. 13. Section 17074.10 of the Education Code is amended to read:

17074.10. (a) The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level housed in permanent school buildings that are at least 25 years old or portable classrooms that are at least 20 years old, and that have not been previously modernized with state funding:

(1) Two thousand two hundred forty-six dollars (\$2,246) for each elementary pupil.

(2) Two thousand three hundred seventy-six dollars (\$2,376) for each middle school pupil.

(3) Three thousand one hundred ten dollars (\$3,110) for each high school pupil.

(b) The board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) It is the intent of the Legislature that the amounts provided pursuant to this article for school modernization do not include funding for administrative and overhead costs.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to two thousand five hundred dollars (\$2,500) for any modernization project assistance. The amount of the supplemental apportionment shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction. * * *

SEC. 14. Section 17074.15 of the Education Code is amended to read:

17074.15. (a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 80-percent share, and the school district has provided its 20-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required 20-percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) This section shall apply only to an application filed on or before March 15, 2002, regardless of the source of state bond funding.

SEC. 15. Section 17074.16 is added to the Education Code, to read:

17074.16. (a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 60-percent share, and the school district has provided its 40-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required 40-percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) This section shall apply only to an application that was filed after March 15, 2002.

SEC. 16. Section 17074.26 is added to the Education Code, to read:

17074.26. The board shall adopt regulations to adjust the per-pupil amounts set forth in Section 17074.14 for modernization projects for school buildings that are 50 years old or older based upon the higher costs associated with modernizing older buildings.

SEC. 17. Section 17075.10 of the Education Code is amended to read:

17075.10. (a) A school district may apply for hardship assistance in cases of extraordinary circumstances.

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

(1) Demonstrate both of the following:

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

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

(2) Demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities.

(c) The board shall review the increased costs that may be uniquely associated with urban construction and shall adjust the per-pupil grant for new construction, or modernization, hardship applications as necessary to accommodate those costs. The board shall adopt regulations setting forth the standards, methodology, and a schedule of allowable adjustments, for the urban adjustment factor established pursuant to this subdivision.

SEC. 18. Section 17075.15 of the Education Code is amended to read:

17075.15. (a) From funds available from any bond act for the purpose of funding facilities for school districts with a financial hardship, the board may provide other construction, modernization, or relocation assistance as set forth in this chapter or Chapter 14 (commencing with Section 17085) to the extent that severe circumstances may require, and may adjust or defer the local financial participation, as pupil health and safety considerations require to the extent that bond act funds are provided for this purpose.

(b) The board shall adopt regulations for determining the amount of funding that may be provided to a district, and the eligibility and prioritization of funding, under this article.

(c) The regulations shall * * * define the amount, and sources, of financing that the school district could reasonably provide for school facilities * * * as follows:

Additions or changes indicated by underline; deletions by asterisks * * *

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(1) Unencumbered funds available in all facility accounts in the school district including, but not limited to, fees on development, redevelopment funds, sale proceeds from surplus property, funds generated by certificates of participation for facility purposes, bond funds, federal grants, and other funds available for school facilities, as the board may determine.

(2) The board may exclude from consideration all funds encumbered for a specific capital outlay purpose, a reasonable amount for interim housing, and other funds that the board may find are not reasonably available for the project.

(d) Further, the regulations shall also specify a method for determining required levels of local effort to obtain matching funds. The regulations shall include consideration of at least all of the following factors:

(1) Whether the school district has passed a bond measure within the two-year period immediately preceding the application for funding under this article, the proceeds of which are substantially available for use in the project to be funded under this chapter, but remains unable to provide the necessary matching share requirement.

(2) Whether the school district has a current outstanding bonded indebtedness, which shall include general obligation bonds, Mello-Roos bonds, school facility improvement district bonds, certificates of participation, and other debt instruments upon which the school district is paying a debt service, of at least 60 percent of the school district's total bonding capacity, as determined by the board.

(3) Whether the total bonding capacity, as defined in Section 15102 or 15106, as applicable, is five million dollars (\$5,000,000) or less, in which case, the school district shall be deemed eligible for financial hardship.

(4) Whether the application for funding under this article is from a county superintendent of schools.

(5) Whether the school district submits other evidence of substantial local effort acceptable to the board.

(6) The value of any unused local general obligation debt capacity, and developer fees added to the needs analysis to reflect the district's financial hardship, available for the purposes of school facilities financing * * *.

SEC. 19. Section 17076.10 of the Education Code is amended to read:

17076.10. (a) A school district that has received any funds pursuant to this chapter shall submit a summary report of expenditure of state funds and of district matching funds annually until all state funds and district matching funds are expended, and shall then submit a final report to the board. The board may require an audit of these reports or other district records to ensure that all funds received pursuant to this chapter are expended in accordance with program requirements.

(b) If the board finds that a participating school district has made no substantial progress towards increasing its pupil capacity or modernizing its facilities within 18 months of the receipt of any funding pursuant to this chapter, the board shall rescind the apportionment in an amount equal to the unexpended funds.

(c) If the board, after the review of expenditures or audit has been conducted pursuant to subdivision (a), determines that a school district failed to expend funds in accordance with this chapter, the department shall notify the school district of the amount that must be repaid to the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, within 60 days. If the school district fails to make the required payment within 60 days, the department shall notify the Controller and the school district in writing, and the Controller shall deduct an amount equal to the amount received by the school district under this subdivision, from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained by the Controller shall be deposited into the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as appropriate.

(d) If a school district has received an apportionment, but has not met the criteria to have funds released pursuant to Section 17072.32 or 17074.15 within a period established by the

board, but not to exceed 18 months, the board shall rescind the apportionment and deny the district's application.

SEC. 20. The heading of Article 10 (commencing with Section 17077.10) of Chapter 12.5 of Part 10 of the Education Code, as added by Chapter 981 of the Statutes of 1999, is amended and renumbered to read:

Article 10.5. Energy * * * Efficiency

SEC. 21. Section 17077.10 of the Education Code, as added by Chapter 981 of the Statutes of 1999, is amended and renumbered to read:

17077.30. (a) As part of the requirements for submission of an application to the State Allocation Board for funding pursuant to this chapter for any new construction or modernization project, the applicant school district may, at the time of submission of the final drawings to the Division of the State Architect, certify that an energy analysis and report has been prepared that sets forth the utility savings that would be generated if the facilities were designed, constructed, and equipped, with the energy efficiency and renewable technologies that would make the facilities exceed the minimum building energy-efficiency standards mandated for new public buildings pursuant to the latest edition of the California Building Standards Code through the use of energy efficiency and renewable energy technologies.

(b) The energy analysis and report shall include a verifiable life-cycle cost analysis for each proposed energy conservation measure and renewable energy that may include, but need not be limited to, photovoltaic parking lot and security lighting, and solar swimming pool and domestic water heating, showing a return on investment of less than 15 years.

(c) The cost of the energy analyses and reports shall not exceed:

- (1) Seven thousand five hundred dollars (\$7,500) per project for elementary schools.
- (2) Ten thousand dollars (\$10,000) per project for middle schools.
- (3) Fifteen thousand dollars (\$15,000) per project for high schools.

(d) An applicant school district may count the following funds or expenditures toward meeting the local matching funds requirement under this chapter:

(1) The amount from any local sources actually expended on the project by the applicant school district for an energy audit.

(2) The amount actually applied to the project from any incentive, grant, or rebate, received by the applicant school district from a program funded pursuant to Section 381 of the Public Utilities Code.

SEC. 22. Section 17077.35 is added to the Education Code, to read:

17077.35. (a) An applicant school district may include plan design and other project components that seek school facility energy efficiency approaching the ultimate goal of school facility energy self-sufficiency, and may seek a grant adjustment for the state's share of the increased costs associated with those components.

(b) Energy efficiency components that are eligible for inclusion into a project pursuant to this section include, but are not limited to, conservation, load reduction technologies, peakload shifting, solar water heating technologies as described in subparagraph (A) of paragraph (2) of subdivision (b) of Section 25619 of the Public Resources Code and as rated and certified by the Solar Rating and Certification Corporation, the use of ground source temperatures for heating and cooling, photovoltaics, and technologies that meet the emerging technology eligibility criteria established by the State Energy Resources Conservation and Development Commission pursuant to Section 383.5 of the Public Utilities Code. A project that received funding from the renewable energy program administered by the State Energy Resources Conservation and Development Commission is not eligible for a grant adjustment under this section.

(c) In order to be eligible for the grant adjustment pursuant to this section, the building proposed for the project, including the energy-efficiency and renewable energy measures utilized pursuant to this section, shall exceed the nonresidential building energy-efficiency standards specified in Part 6 (commencing with Section 100) of Title 24 of the California Code

of Regulations by an amount not less than 15 percent for new construction projects and not less than 10 percent for modernization projects, and shall be shown to provide sufficient energy savings to return the cost of the initial investment in the project over a period not to exceed seven years. The applicant shall certify that the cost for the project exceeds the amount of funding otherwise available to the applicant under this chapter.

(d) The board shall provide an applicant for a new construction or modernization project with a grant adjustment to provide an increase not to exceed 5 percent of its state grants authorized by Sections 17072.10 and 17074.10 for the state's share of costs associated with design and other plan components related to school facility energy efficiency as set forth in this article.

SEC. 23. Article 10.6 (commencing with Section 17077.40) is added to Chapter 12.5 of Part 10 of the Education Code, to read:

Article 10.6. Joint-use Facilities

17077.40. (a) With funds made available for the purposes of this article, the board may provide a grant to fund joint-use projects to construct facilities on kindergarten to grade 12, inclusive, schoolsites.

(b) A school district may apply to the board for funding under this article for a project that meets any of the following criteria:

(1) The joint-use project is a part of an application for new construction funding under this chapter, and is for the purpose of providing facilities to be used for a kindergarten to grade 12/higher education collaborative effort for any of the following purposes:

- (A) To improve pupil academic achievement.
- (B) To provide teacher education.
- (C) To provide childcare facilities.

(2) The joint-use project is part of an application for new construction funding under this chapter, and will increase the size or extra cost associated with the joint use of the proposed multipurpose room, gymnasium, childcare facility, or library beyond that necessary for school use.

(3) The joint-use project is for a kindergarten to grade 12/higher education collaborative effort to improve academic achievement or provide teacher education, or a multipurpose room, gymnasium, library, or childcare facility, and the project will be located at a school that does not have the type of facility for which funds are requested or the existing facility is inadequate.

17077.42. In order to be approved for a grant under this article, the applicant district shall demonstrate that it has complied with all of the following:

(a) The school district has entered into a joint-use agreement with a governmental agency, public community college, public college or public university, or a nonprofit organization approved by the board.

(b) The joint-use agreement specifies the method of sharing capital and operating costs, specifies relative responsibilities for the operation and staffing of the facility, and specifies the manner in which the safety of the pupils will be ensured.

(c) The joint-use partner has agreed to provide matching funds for 50 percent of the eligible costs under this article.

(d) The school district demonstrates that the facility will be used to the maximum extent possible for both school and community purposes, or both school and higher education purposes, as applicable.

(e)(1) The project application qualifies for funding under paragraph (1) or (2) of subdivision (b) of Section 17077.40 and the school district has received all approvals necessary for apportionment under this chapter.

(2) The project qualifies for funding under paragraph (3) of subdivision (b) of Section 17077.40 and the school district has completed preliminary plans for the project and has received State Department of Education approval of the plans.

17077.45. (a) The board shall establish standards for determining the amount of the supplemental grant funding to be made available for each project under this article. For a project application qualifying for funding under paragraph (1) or (2) of subdivision (b) of Section 17077.40, the supplemental grant shall be in the form of an adjustment to the per-pupil eligibility of the project. For a project application qualifying under paragraph (3) of subdivision (b), the supplemental grant may be provided without regard to the existence of per-pupil eligibility pursuant to this chapter, and may be expressed on per-square-foot cost basis, on a per-pupil cost basis, or on a per-project cost basis.

(b) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards established pursuant to subdivision (a) only if the excess is paid completely by local or joint-use partner sources.

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

(d) If the total funding for the purposes of this article is not sufficient to fund all of the joint-use projects for funding under this article, the board shall fund projects eligible under paragraphs (1), (2), and (3) of subdivision (b) of Section 17077.40 in that order. The board may establish other priority standards within that order, as necessary.

(e) Except as expressly provided in this article, projects funded pursuant to this article shall comply with all other requirements of this chapter, except for Article 11 (commencing with Section 17078.10), which shall apply only to projects under this article if they also qualify for funding under Article 11 (commencing with Section 17078.10).

SEC. 24. Article 11 (commencing with Section 17078.10) is added to Chapter 12.5 of Part 10 of the Education Code, to read:

Article 11. Critically Overcrowded School Facilities

17078.10. (a) There is hereby established the Critically Overcrowded School Facilities Program to be administered by the board.

(b) For the purposes of this article, "preliminary application" means an application for a preliminary apportionment pursuant to this article.

(c) For the purposes of this article, "preliminary apportionment" means an apportionment made for eligible applicants with critically overcrowded schools in advance of full compliance with all of the application requirements otherwise required for an apportionment pursuant to this chapter.

(d) For the purposes of this article, "final apportionment" has the same meaning as "apportionment" as set forth in subdivision (a) of Section 17070.15.

(e) There is hereby established the 2002 Critically Overcrowded School Facilities Account within the 2002 State School Facilities Fund, and the 2004 Critically Overcrowded School Facilities Account within the 2004 State School Facilities Fund, for the purposes of this article. Funds reserved for the purposes of this article shall be placed in those accounts, as appropriate, and shall be available exclusively for projects eligible under this article until the funds are made available for other purposes of this chapter pursuant to Section 17078.30.

17078.15. (a) Unless this article expressly provides otherwise, the provisions contained in the other articles of this chapter shall apply with equal force to a project funded under this article. This article shall control over the provisions of this chapter contained in other articles only to the extent that this article expressly conflicts with those provisions.

(b) This article shall apply only to a project that is otherwise eligible under this chapter and that meets both of the following criteria:

(1) The project meets the criteria set forth in Section 17078.18.

(2) The project is to be funded from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election, or the 2004 direct primary election or the

2004 statewide general election, as the case may be, that were expressly reserved in the bond act or acts for the purposes set forth in this article.

(c) The state share of project costs and the state per-unhoused-pupil new construction apportionments for programs eligible under this article shall be equal to the share and amounts otherwise provided by the board pursuant to this chapter, including, but not limited to, any applicable adjustments or supplements otherwise authorized pursuant to this chapter.

(d) A school district that elects to utilize per-unhoused-pupil eligibility pursuant to this chapter to support a project pursuant to this article, shall not simultaneously utilize that same eligibility to support any other application pursuant to this chapter.

17078.18. Projects funded under this article shall meet all of the following criteria:

(a) The project is a new construction project to build new pupil capacity to relieve overcrowding.

(b) The proposed school facility shall be located in the proposed general location, as set forth in Section 17078.22, of the school or schools that have the conditions and pupils that establish the eligibility pursuant to this article as set forth in subdivision (c).

(c) At least 75 percent of the projected pupil occupancy of the project facilities shall come from a source school or source schools that have a site pupil population density greater than 115 pupils per acre in grades kindergarten to six, inclusive, or a site pupil population density greater than 90 pupils per acre in grades seven to 12, inclusive, as determined by the Superintendent of Public Instruction using enrollment data from the California Basic Educational Data System for the 2001-02 school year. For source schools with grades that include a combination of kindergarten to six, inclusive, and seven to 12, inclusive, the controlling source schoolsite pupil population density shall be the one applicable to the grade levels in which the majority of the pupils are enrolled at the source school.

17078.20. (a) The board shall disseminate information to school districts regarding the availability of funding pursuant to this article and the appropriate deadlines for applications.

(b) Applicants for funding pursuant to this article shall submit preliminary applications to the board.

(c) The preliminary applications shall be submitted by May 1, 2003, for projects to be funded with the proceeds of bonds approved by the voters at the November 5, 2002, statewide general election.

(d) Preliminary applications shall be accepted by the board during the period between 60 days before and 120 days after, the 2004 direct primary election, or the 2004 statewide general election, as appropriate for projects to be funded with the proceeds of bonds approved by the voters at the 2004 direct primary election.

(e) If funds are insufficient to fully fund all of the preliminary applicants, the board shall apportion first to those projects that would house pupils from source schools with the highest pupil density levels relative to the State Department of Education standards.

17078.22. (a) The preliminary applications shall do all of the following:

(1) Establish per-unhoused-pupil eligibility as set forth in Article 3 (commencing with Section 17071.75).

(2) Identify the unhoused pupil population that the proposed project will serve by determining the number of pupils to be served and the likely source school or schools from which the pupils population will be drawn.

(3) Identify the proposed general location of the needed new facilities pursuant to any of the following:

(A) Within that portion of the attendance area from which one or more elementary schools that would be a source of the per-pupil eligibility for the proposed facility draws its enrollment, or within a one-mile radius of a source school, or within a one-mile radius of any one of the source schools if there are more than one, whichever is greater.

(B) Within the attendance area of a high school, middle school, or junior high school that would be a source of the per-pupil eligibility for the proposed facility or within a three-mile radius of a source school, or within a three-mile radius of any one of the source schools if there are more than one, whichever is greater.

(4) Estimate the total facility cost on a per-pupil basis and estimate the total site acquisition and development costs pursuant to the regulations adopted pursuant to subdivision (c) of Section 17078.24.

(b) The State Department of Education may grant a variance from the distance maximums set forth in paragraph (3) of subdivision (a) if the school district demonstrates to the satisfaction of the department that the variance is necessary in order to adequately provide facilities for the identified source school pupils.

17078.24. (a) On the basis of the preliminary application and upon confirmation by the board of the applicant's eligibility, the board shall in a timely manner make a preliminary apportionment for applicants under this article exclusively from funds reserved expressly for the purposes of this article.

(b) Preliminary apportionments for site development and acquisition included in the preliminary application pursuant to subdivision (a) of Section 17078.22 shall be based either on the preliminary appraisal, if available, or on the median costs of appropriately sized parcels within the qualifying area, as determined by the board.

(c) Preliminary apportionments shall include the total estimated state costs of the project, including, but not limited to, site acquisition and development costs related to evaluations and elimination of hazardous materials, an inflation factor, any applicable excess cost allowances, and hardship costs, if any. The board shall adopt regulations establishing standards and methods for setting these costs and for making related estimates.

17078.25. (a) Within the maximum time period set forth in Section 17078.30, the applicant shall have a period of up to four years from the date of the preliminary apportionment in which to complete the application for final apportionment.

(b) The applicant may request a single one-year extension of the period set forth in subdivision (a). The board shall grant the request for the single one-year extension if it determines that the applicant has made substantial progress towards completing the requirements for filing an application for final apportionment. The board may grant only one one-year extension for the project and may only grant the extension if granting the extension would not, in total, cause the project to exceed the maximum time period set forth in Section 17078.30.

(c) The board shall adopt regulations setting forth standards for determining the existence of substantial progress within the meaning of subdivision (b).

(d) The governing board of a school district shall report annually to the State Allocation Board regarding the progress made toward completing the requirements for filing an application for final apportionment, and shall annually hold, at a regularly scheduled meeting of the governing board, a public hearing pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code) to discuss, and to receive public comment regarding, the report.

(e) In its first annual report the governing board of the school district shall certify that the State Department of Education has determined in writing that there is at least one approvable site within the proposed general location of the proposed facility identified pursuant to paragraph (3) of subdivision (a) of Section 17078.22, or within the variance location authorized pursuant to subdivision (b) of Section 17078.22.

(f) If the applicant for the one-year extension pursuant to subdivision (b) has not made substantial progress to complete the application process within the allotted time period, the preliminary apportionment shall be rescinded and shall be utilized by the board for funding of other projects that have received a preliminary apportionment pursuant to this article, or at the expiration of the maximum time allowed pursuant to Section 17078.30, the board shall use the funds for any other new construction purpose of this chapter.

17078.27. (a) Upon completion of the preliminary process authorized pursuant to this article, and when a preliminary applicant has complied with the conditions set forth in this chapter for a final apportionment, including, but not limited to, Section 17070.50, the board shall adjust the preliminary apportionment as set forth in subdivision (b) and as necessary to reflect the current eligible grant amounts for final apportionments pursuant to this chapter consistent with regulations adopted pursuant to subdivision (c) of Section 17078.24. The board shall then convert the adjusted preliminary apportionment to a final apportionment and

proceed to completion of the project in the same manner as for any project funded under provisions of this chapter other than this article.

(b) The board may adjust for cost increases only if uncommitted funds reserved expressly for the purposes of this article remain available for those purposes.

17078.30. (a)(1) A portion of the funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election that are not included in a preliminary apportionment for an application that is received by the deadline specified in subdivision (c) of Section 17078.20 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(2) The amount of funds that shall be made available to the board for purposes other than this article, pursuant to this subdivision, shall be calculated as follows:

(A) Add the total amount preliminarily apportioned to 15 percent of that amount.

(B) Take the number calculated pursuant to subparagraph (A) and subtract that number from the amount originally reserved for the purposes of this article.

(C) The number calculated pursuant to subparagraph (B) shall thereafter be available to the board for any new construction purpose under any other article of this chapter.

(3) All funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election pursuant to a preliminary apportionment that are not included within a final apportionment within the timeframes permitted by Section 17078.25 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(b)(1) A portion of the funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the 2004 direct primary election that are not included in a preliminary apportionment for an application that is received by the deadline specified in subdivision (d) of Section 17078.20 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(2) The amount of funds that shall be made available to the board for purposes other than this article, pursuant to this subdivision, shall be calculated as follows:

(A) Add the total amount preliminarily apportioned to 15 percent of that amount.

(B) Take the number calculated pursuant to subparagraph (A) and subtract that number from the amount originally reserved for the purposes of this article.

(C) The number calculated pursuant to subparagraph (B) shall thereafter be available to the board for any new construction purpose under any other article of this chapter.

(3) All funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the 2004 direct primary election pursuant to a preliminary apportionment that are not included within a final apportionment within the timeframes permitted by Section 17078.25 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

SEC. 25. Section 17088.2 of the Education Code is amended to read:

17088.2. Notwithstanding any provision of law to the contrary, including, but not limited to, Section 17587, the board may transfer any funds within the State School Building Aid Fund that are in excess of the amounts needed by the board for the maintenance of portable buildings or for the purchase of new portable buildings, for that fiscal year, to any of the following, as appropriate:

(a) The 1998 State School Facilities Fund for allocation by the board for any purpose authorized pursuant to that fund.

(b) The 2002 State School Facilities Fund for allocation by the board for any purpose authorized pursuant to that fund.

(c) The 2004 State School Facilities Fund for allocation by the board for any purpose authorized pursuant to that fund.

(d) The State School Deferred Maintenance Fund for allocation by the board for any purpose authorized pursuant to that fund. The board may utilize up to 100 percent of the

tives from the major professional associations representing architects, engineers, and school facilities designers, and other interested parties.

(b) The advisory committee shall convene by August 19, 2002, and shall study and report on whether a regulatory process may be developed that will allow the State Architect to determine whether a building not originally constructed in compliance with the Field Act, as defined in Section 17281, and its implementing regulations either meets, or can be retrofitted to meet, the equivalent pupil safety performance standard as a building constructed according to the Field Act and its implementing regulations. If the advisory committee finds that the regulatory process may be developed, the advisory committee, shall include within its report the facts and rationale supporting the finding and the essential steps required in that regulatory process. The advisory committee shall report its findings to the Seismic Safety Commission by December 31, 2002.

(c) By January 8, 2003, and after reviewing the advisory committee's findings, the Seismic Safety Commission shall make a determination as to whether the regulatory process described in subdivision (b) may be developed, and shall report that determination to the Governor and the Legislature.

(d) If the Seismic Safety Commission determines that the regulatory process may be developed, the State Architect shall draft regulations to establish that regulatory process and to delineate the required retrofitting, deconstructive testing, continuous inspection procedures, and other necessary certifications and requirements that must be completed for a building to ensure it meets the equivalent pupil safety performance standard as a building constructed according to the Field Act and its implementing regulations. The State Architect shall promulgate the regulations on or before April 1, 2003, as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) Notwithstanding any law, a leased or purchased building that is determined to have the equivalent pupil safety performance standard as a building constructed according to the Field Act and implementing regulations is hereby deemed to be in full compliance with the safety requirements of a school building as set forth in Section 17280, and is hereby deemed to be in full compliance with the Field Act.

SEC. 30. Part 68.1 (commencing with Section 100600) is added to the Education Code, to read:

PART 68.1. KINDERGARTEN-UNIVERSITY PUBLIC
EDUCATION FACILITIES BOND ACT OF 2002

Chapter 1. General

100600. This part shall be known and may be cited as the Kindergarten-University Public Education Facilities Bond Act of 2002.

100601. The incorporation of, or reference to, any provision of California statutory law in this part includes all acts amendatory thereof and supplementary thereto.

100603. Bonds in the total amount of thirteen billion fifty million dollars (\$13,050,000,000), not including the amount of any refunding bonds issued in accordance with Sections 100644 and 100755, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 or the Higher Education Facilities Finance Committee established pursuant to Section 67353, as the case may be, at any different times necessary to service expenditures required by the apportionments.

Chapter 2. Kindergarten Through 12th Grade

Article 1. Kindergarten Through 12th Grade School Facilities Program Provisions

100610. The proceeds of bonds issued and sold pursuant to Article 2 (commencing with Section 100625) shall be deposited in the 2002 State School Facilities Fund, which is established in Section 17070.40, and shall be allocated by the State Allocation Board pursuant to this chapter.

100615. All moneys deposited in the 2002 State Facilities Fund for the purposes of this chapter shall be available and, notwithstanding any other provision of law to the contrary, are hereby appropriated to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10), as set forth in Section 100620, to provide funds to repay any money advanced or loaned to the 2002 State School Facilities Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

100620. (a) The proceeds from the sale of bonds, issued and sold for the purposes of this chapter, shall be allocated in accordance with the following schedule:

(1) The amount of three billion four hundred fifty million dollars (\$3,450,000,000) for new construction of school facilities of applicant school districts under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school districts that file an application with the Office of Public School Construction after February 1, 2002, including, but not limited to, hardship applications.

(A) Of the amount allocated pursuant to this paragraph, up to one hundred million dollars (\$100,000,000) shall be available for providing school facilities to charter schools pursuant to a statute enacted after the effective date of the act enacting this section.

(B) If the Housing and Emergency Shelter Trust Fund Act of 2002 is submitted to the voters at the November 5, 2002, general election and fails passage by the voters, of the amount allocated pursuant to this paragraph, twenty-five million dollars (\$25,000,000) shall be available for the purposes of Sections 51451.5, 51453, and 51455 of the Health and Safety Code.

(2) The amount of one billion four hundred million dollars (\$1,400,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school districts that file an application with the Office of Public School Construction after February 1, 2002, including, but not limited to, hardship applications.

(3) The amount of two billion nine hundred million dollars (\$2,900,000,000) for new construction of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school districts that have filed an application with the Office of Public School Construction on or before February 1, 2002, including, but not limited to, hardship applications. If the amount made available for purposes of this paragraph is not needed and expended for the purposes of this paragraph, the State Allocation Board may allocate the remainder of these funds for purposes of paragraph (1).

(4) The amount of one billion nine hundred million dollars (\$1,900,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, for those school districts that have filed an application with the Office of Public School Construction on or before February 1, 2002, including, but not limited to, hardship applications. If the amount made available for purposes of this paragraph is not needed and expended for the purposes of this paragraph, the State Allocation Board may allocate these funds for purposes of paragraph (2).

(5) The amount of one billion seven hundred million dollars (\$1,700,000,000) for deposit into the 2002 Critically Overcrowded School Facilities Account established within the 2002 State School Facilities Fund pursuant to subdivision (e) of Section 17078.10, for the purposes set forth in Article 11 (commencing with Section 17078.10) of Chapter 12.5 of Part 10 relating to

critically overcrowded schools, including, but not limited to, hardship applications, and any other new construction or modernization projects as authorized pursuant to Section 17078.30.

(6) The amount of fifty million dollars (\$50,000,000) for the purposes set forth in Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10 relating to joint-use projects, including, but not limited to, hardship applications.

(b) School districts may use funds allocated pursuant to paragraphs (2) and (4) of subdivision (a) only for one or more of the following purposes in accordance with Chapter 12.5 (commencing with Section 17070.10) of Part 10:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10.

(c) Funds allocated pursuant to paragraphs (1) and (3) of subdivision (a) may, also, be utilized to provide new construction grants for eligible applicant county boards of education under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for funding classrooms for severely handicapped pupils, or for funding classrooms for county community school pupils.

(d)(1) The Legislature may amend this section to adjust the funding amounts specified in paragraphs (1) to (6), inclusive, of subdivision (a), only by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (6), inclusive, of subdivision (a), but may not increase or decrease the total amount to be expended pursuant to that subdivision.

(e) From the total amounts set forth in paragraphs (1) to (6), inclusive, of subdivision (a), a total of no more than twenty million dollars (\$20,000,000) shall be used for the costs of energy conservation adjustments authorized pursuant to Section 17077.35.

(f) Funds available pursuant to this section may be used for acquisition of school facilities authorized pursuant to Section 17280.5.

Article 2. Kindergarten Through 12th Grade School Facilities Fiscal Provisions

100625. (a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 100600), bonds in the total amount of eleven billion four hundred million dollars (\$11,400,000,000) not including the amount of any refunding bonds issued in accordance with Section 100644, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established pursuant to Section 15909 at any different times necessary to service expenditures required by the apportionments.

100627. The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is

continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers granted to, and duties imposed upon, those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee.

100630. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the 2002 State School Facilities Fund.

100632. Upon request of the State Allocation Board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Sections 100615 and 100620, the State School Building Finance Committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100634. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

100635. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100640, appropriated without regard to fiscal years.

100636. The State Allocation Board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

100638. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100640. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2002 State School Facilities Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

100642. All money deposited in the 2002 State School Facilities Fund, that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100644. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100646. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

Chapter 3. Higher Education Facilities

Article 1. General

100650. (a) The system of public higher education in this state includes the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, and their respective off-campus centers.

(b) The 2002 Higher Education Capital Outlay Bond Fund is hereby established in the State Treasury for deposit of funds from the proceeds of bonds issued and sold for the purposes of this chapter.

(c) The Higher Education Facilities Finance Committee established pursuant to Section 67353 is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of providing funds to aid the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges.

Article 2. Program Provisions Applicable to the University of California and the Hastings College of the Law

100652. (a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100700), the sum of four hundred eight million two hundred sixteen thousand dollars (\$408,216,000) shall be deposited in the 2002 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the University of California and the Hastings College of the Law.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment

of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the University of California and the Hastings College of the Law.

Article 3. Program Provisions Applicable to the California State University

100653. (a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100700), the sum of four hundred ninety-five million nine hundred thirty-two thousand dollars (\$495,932,000) shall be deposited in the 2002 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California State University.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California State University.

Article 4. Program Provisions Applicable to the California Community Colleges

100654. (a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100700), the sum of seven hundred forty-five million eight hundred fifty-three thousand dollars (\$745,853,000) shall be deposited in the 2002 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California Community Colleges.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California Community Colleges.

Article 5. Higher Education Fiscal Provisions

100700. (a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 100600), bonds in the total amount of one billion six hundred fifty million dollars (\$1,650,000,000), not including the amount of any refunding bonds issued in accordance with Section 100755, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) It is the intent of the Legislature that the University of California, the California State University, and the California Community Colleges annually consider, as part of their annual capital outlay planning process, the inclusion of facilities that may be used by more than one segment of public higher education (intersegmental), and, that on or before May 15th of each

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year, those entities report their findings to the budget committees of each house of the Legislature.

(c) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

100710. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For the purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 2002 Higher Education Capital Outlay Bond Fund is designated as the "board" for projects funded pursuant to this chapter.

(c) The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of funding aid to the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges, for the construction on existing or new campuses, and their respective off-campus centers and joint use and intersegmental facilities, as set forth in this chapter.

100720. The Higher Education Facilities Finance Committee established pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in this chapter that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the purposes described in this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100725. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

100730. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100745, appropriated without regard to fiscal years.

100735. The board, as defined in subdivision (b) of Section 100710, may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board, as defined in subdivision (b) of Section 100710, shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

100740. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other

action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100745. (a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2002 Higher Education Capital Outlay Bond Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in this chapter by the University of California, the Hastings College of the Law, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan. Requests forwarded by a university or college shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college. Requests forwarded by the California Community Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs and priorities of the community college system, prioritized on a statewide basis.

100750. All money deposited in the 2002 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100755. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100760. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 31. Part 68.2 (commencing with Section 100800) is added to the Education Code, to read:

PART 68.2. KINDERGARTEN-UNIVERSITY PUBLIC
EDUCATION FACILITIES BOND ACT OF 2004

Chapter 1. General

100800. This part shall be known and may be cited as the Kindergarten-University Public Education Facilities Bond Act of 2004.

100801. The incorporation of, or reference to, any provision of California statutory law in this part includes all acts amendatory thereof and supplementary thereto.

100803. (a) Bonds in the total amount of twelve billion three hundred million dollars (\$12,300,000,000), not including the amount of any refunding bonds issued in accordance with Sections 100844 and 100955, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is

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hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 or the Higher Education Facilities Finance Committee established pursuant to Section 67353, as the case may be, at any different times necessary to service expenditures required by the apportionments.

Chapter 2. Kindergarten Through 12th Grade

Article 1. Kindergarten Through 12th Grade School Facilities Program Provisions

100810. The proceeds of bonds issued and sold pursuant to Article 2 (commencing with Section 100825) shall be deposited in the 2004 State School Facilities Fund, which is established in Section 17070.40, and shall be allocated by the State Allocation Board pursuant to this chapter.

100815. All moneys deposited in the 2004 State Facilities Fund for the purposes of this chapter shall be available and, notwithstanding any other provision of law to the contrary, are hereby appropriated to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10), as set forth in Section 100820, to provide funds to repay any money advanced or loaned to the 2004 State School Facilities Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

100820. (a) The proceeds from the sale of bonds, issued and sold for the purposes of this chapter, as specified in subdivision (a) of Section 100810 shall be allocated in accordance with the following schedule:

(1) The amount of five billion two hundred sixty million dollars (\$5,260,000,000) for project funding for new construction of school facilities of applicant school districts under Chapter 12.5 (commencing with Section 17070.10) of Part 10, including, but not limited to, hardship applications.

(A) Of the amount allocated pursuant to this paragraph, up to three hundred million dollars (\$300,000,000) shall be available for providing school facilities to charter schools pursuant to a statute enacted after the effective date of the act enacting this section.

(B) If the Housing and Emergency Shelter Trust Fund Act of 2002 is submitted to the voters at the November 5, 2002, general election and fails passage by the voters, of the amount allocated pursuant to this paragraph, twenty-five million dollars (\$25,000,000) shall be available for the purposes of Sections 51451.5, 51453, and 51455 of the Health and Safety Code.

(2) The amount of two billion two hundred fifty million dollars (\$2,250,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, including, but not limited to, hardship applications.

(3) The amount of two billion four hundred forty million dollars (\$2,440,000,000) for deposit into the 2004 Critically Overcrowded School Facilities Account established within the 2004 State School Facilities Fund pursuant to subdivision (e) of Section 17078.10 for the purposes set forth in Article 11 (commencing with Section 17078.10) of Chapter 12.5 of Part 10 relating to critically overcrowded schools, including, but not limited to, hardship applications, and any other new construction or modernization projects as authorized pursuant to Section 17078.30.

(4) The amount of fifty million dollars (\$50,000,000) for the purposes set forth in Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10 relating to joint-use projects, including, but not limited to, hardship applications.

(b) School districts may use funds allocated pursuant to paragraph (2) of subdivision (a) only for one or more of the following purposes in accordance with Chapter 12.5 (commencing with Section 17070.10) of Part 10:

- (1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.
- (2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.
- (3) The identification, assessment, or abatement in school facilities of hazardous asbestos.
- (4) Project funding for high priority roof replacement projects.
- (5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10.
- (c) Funds allocated pursuant to paragraph (1) of subdivision (a) may, also, be utilized to provide new construction grants for eligible applicant county boards of education under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for funding classrooms for severely handicapped pupils, or for funding classrooms for county community school pupils.
- (d)(1) The Legislature may amend this section to adjust the funding amounts specified in paragraphs (1) to (4), inclusive, of subdivision (a), only by either of the following methods:
- (A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.
- (B) By a statute that becomes effective only when approved by the voters.
- (2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a), but may not increase or decrease the total amount to be expended pursuant to that subdivision.
- (e) From the total amounts set forth in paragraphs (1) to (6), inclusive, of subdivision (a), a total of no more than twenty million dollars (\$20,000,000) shall be used for the costs of energy conservation adjustments authorized pursuant to Section 17077.35.
- (f) Funds available pursuant to this section may be used for acquisition of school facilities authorized pursuant to Section 17280.5.

Article 2. Kindergarten Through 12th Grade School Facilities Fiscal Provisions

100825. (a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 100800), bonds in the total amount of ten billion dollars (\$10,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 100844, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established pursuant to Section 15909 at any different times necessary to service expenditures required by the apportionments.

100827. The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers granted to, and duties imposed upon, those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide assistance to the

committee as it may require. The Attorney General of the state is the legal adviser of the committee.

100830. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the 2004 State School Facilities Fund.

100832. Upon request of the State Allocation Board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Sections 100815 and 100820, the State School Building Finance Committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100834. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

100835. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100840, appropriated without regard to fiscal years.

100836. The State Allocation Board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

100838. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100840. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2004 State School Facilities Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

100842. All money deposited in the 2004 State School Facilities Fund, that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100844. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100846. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

Chapter 3. Higher Education Facilities

Article 1. General

100850. (a) The system of public higher education in this state includes the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, and their respective off-campus centers.

(b) The 2004 Higher Education Capital Outlay Bond Fund is hereby established in the State Treasury for deposit of funds from the proceeds of bonds issued and sold for the purposes of this chapter.

(c) The Higher Education Facilities Finance Committee established pursuant to Section 67353 is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of providing funds to aid the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges.

Article 2. Program Provisions Applicable to the University of California and the Hastings College of the Law

100852. (a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100900), the sum of six hundred ninety million dollars (\$690,000,000) shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the University of California and the Hastings College of the Law.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the University of California and the Hastings College of the Law.

Article 3. Program Provisions Applicable to the California State University

100853. (a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100900), the sum of six hundred ninety million dollars (\$690,000,000) shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California State University.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California State University.

Article 4. Program Provisions Applicable to the California Community Colleges

100854. (a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100900), the sum of nine hundred twenty million dollars (\$920,000,000) shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California Community Colleges.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California Community Colleges.

Article 5. Higher Education Fiscal Provisions

100900. (a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 100800), bonds in the total amount of two billion three hundred million dollars (\$2,300,000,000), not including the amount of any refunding bonds issued in accordance with Section 100955, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) It is the intent of the Legislature that the University of California, the California State University, and the California Community Colleges annually consider, as part of their annual capital outlay planning process, the inclusion of facilities that may be used by more than one segment of public higher education (intersegmental), and, that on or before May 15th of each year, those entities report their findings to the budget committees of each house of the Legislature.

(c) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

100910. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For the purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 2004 Higher Education Capital Outlay Bond Fund is designated as the "board" for projects funded pursuant to this chapter.

(c) The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of funding aid to the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges, for the construction on existing or new campuses, and their respective off-campus centers and joint use and intersegmental facilities, as set forth in this chapter.

100920. The Higher Education Facilities Finance Committee established pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in this chapter that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the purposes described in this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100925. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

100930. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100945, appropriated without regard to fiscal years.

100935. The board, as defined in subdivision (b) of Section 100910, may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board, as defined in subdivision (b) of Section 100910, shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

100940. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100945. (a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled

Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in this chapter by the University of California, the Hastings College of the Law, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan. Requests forwarded by a university or college shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college. Requests forwarded by the California Community Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs and priorities of the community college system, prioritized on a statewide basis.

100950. All money deposited in the 2004 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100955. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100960. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 31.5. Part 68.2 (commencing with Section 100800) is added to the Education Code, to read:

PART 68.2. KINDERGARTEN-UNIVERSITY PUBLIC
EDUCATION FACILITIES BOND ACT OF 2004

Chapter 1. General

100800. This part shall be known and may be cited as the Kindergarten-University Public Education Facilities Bond Act of 2004.

100801. The incorporation of, or reference to, any provision of California statutory law in this part includes all acts amendatory thereof and supplementary thereto.

100803. (a) Bonds in the total amount of twelve billion three hundred million dollars (\$12,300,000,000), not including the amount of any refunding bonds issued in accordance with Sections 100844 and 100955, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 or the Higher Education Facilities Finance Committee established pursuant to Section 67353, as the case may be, at any different times necessary to service expenditures required by the apportionments.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate school facilities to house the growing pupil population attending the California schools, to renovate existing facilities, to provide for the wiring and cabling of schools for education technology, to provide for joint-use facilities, and to provide adequate higher education facilities to accommodate the growing number of students, it is necessary that this act take effect immediately.

Additions or changes indicated by underline; deletions by asterisks * * *

2001-2002 REGULAR SESSION

Ch. 199

SCHOOLS AND SCHOOL DISTRICTS—SCHOOL BONDS—ELECTIONS

CHAPTER 199

A.B. No. 693

AN ACT to amend Section 15340 of, and to add Sections 15101 and 15341 to, the Education Code, relating to school facilities improvement districts.

[Filed with Secretary of State July 17, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 693, Longville. School facilities improvement districts: elections.

Existing law authorizes the governing board of a school facilities improvement district to provide for and call a special bond election within the district to submit to the voters a proposition on whether to incur debt and issue bonds. Existing law permits the election to be called for any date, with specified exceptions, including elections held on, or the day before or after, a state holiday, and elections for school bonds pursuant to specified provisions of law.

Additions or changes indicated by underline; deletions by asterisks * * *

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This bill would prohibit an election within a 45-day period before or after a statewide election, unless called for the same date as the statewide election or an established election date.

The people of the State of California do enact as follows:

SECTION 1. Section 15101 is added to the Education Code, to read:

15101. Notwithstanding any other law, an election may not be held pursuant to this chapter within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as the statewide election, subject to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code, or on an established election date pursuant to Section 1000 of the Elections Code.

SEC. 2. Section 15340 of the Education Code is amended to read:

15340. (a) After adopting the resolution ordering the formation of the school facilities improvement district, the governing board may provide for and call a special bond election within the school facilities improvement district to, or may at the next statewide election, submit to the voters of the school facilities improvement district a proposition of whether or not an indebtedness of the district shall be incurred and bonds issued therefor in an amount not exceeding the estimate stated in the resolution ordering the school facilities improvement district formed. * * *

(b) The indebtedness and the bonds shall be payable from taxes to be levied and collected upon lands located within the school facilities improvement district.

SEC. 3. Section 15341 is added to the Education Code, to read:

15341. Notwithstanding any other law, an election may not be held pursuant to this chapter within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as the statewide election, subject to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code, or on an established election date pursuant to Section 1000 of the Elections Code.

COUNTIES—CLERKS—REVISION

CHAPTER 221

S.B. No. 1019

AN ACT to amend Section 5499.4 of the Business and Professions Code, to amend Sections 1253.5, 1258, 5019, 5303, 5324, 5325, 5380, 5421, 15148, 15359.1, 19420, and 35001 of the Education Code, to amend Sections 307, 308, 8040, 9094, 10500, 10540, 11002, and 18546 of, and to repeal Section 311 of, the Elections Code, to amend Sections 6070, 6076, 6077, 6078, 6215, and 8456 of the Food and Agricultural Code, to amend Sections 4005, 23687, 23731, 25201, 25526, 25537, 26922, 27504.1, 29965, 30003, 36507, 65009, 66499.22, 71081, 76106, 81011.5, 84101, and 88001 of the Government Code, to amend Sections 5831, 5861, 5863, 5864, 5865, 5866, 5867, 5872, 5873, 5874, 6020, 6031, 6035, 6039, 6044, 6045, 6053, 6054, 6055, 6056, and 6230 of the Harbors and Navigation Code, to amend Section 5053 of the Insurance Code, to amend Sections 1170, 1174, 1176, 1179, 1180, 1181, 1182, 1185, 1191, and 1255 of the Military and Veterans Code, to amend Section 6005 of the Penal Code, to amend Section 1865 of the Probate Code, to amend Section 9977 of, and to repeal Sections 4876 and 13021 of, the Public Resources Code, to amend Sections 11825, 12816, 15702, 15703, 15704, 15705, 15706, 15794, 15796, 15842, 15956, 26405, 26654, 27405, 27424, 28746, 28747, 28747.4, 28750.4, 29664, 29714, 31405, 31411, 50033, 50039, 70033, 90773, 90933, 95163, 95194, 98043, 98100, 101170, 101285, 101286, 101287, and 101295 of the Public Utilities Code, to amend Sections 909, 1181, 1186, 3111, 3112.5, 3114, 5026, 8653, 9019, 11302, 19090, 19092, 19093, 19094, 25206, 27044, 27045, 27046, 27047, 27048, 27062, 27063, 27080, 27082, 27100, 27102, 27109, 27123, and 27322 of the Streets and Highways Code, to amend Sections 9368, 9386, 20740, 20911, 22970.10, 22970.20, 22970.25, 30230, 30778, 31133, 34053, 35005, 35048, 35049, 35050, 35051, 35052, 35053, 41303, 45274, 45275, 45276, 50752, 50805, 50816, 50817, 50954, 60080, 60082, 60083, 60095, 60211, 60212, 60213, 60430, 60431, 60434, 60440, 70033, 70041, 71120, 71125, 71126, 71127, 71128, 71129, 71130, 71132, 71133, 71461, and 71463 of, and to repeal Sections 30061, 60049, 71031, and 71135 of, the Water Code, and to amend Sections 4117, 4457, 4804, and 5110 of the Welfare and Institutions Code, relating to local government.

[Filed with Secretary of State August 16, 2002.]

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Additions or changes indicated by underline; deletions by asterisks * * *

5925. Any school district election or community college district election, except a bond measure election, ordered to be held in accordance with this code shall be called by the county superintendent of schools having jurisdiction of the election by doing both of the following:

(a) Printing or publication of notices of election.

(b) Delivery of a copy of the formal notice of election to the county * * * elections official at least 120 days prior to the date of the election in the case of an election for governing board members.

SEC. 8. Section 5380 of the Education Code is amended to read:

5380. Any election officer serving at any school district election or community college district election may be paid out of the funds of the district as compensation for his or her services as an election officer a sum * * * determined by the county * * * elections official and approved by the county board of supervisors, not to exceed the amount paid from the county treasury to officers of the preceding general election. In districts in which the polls are kept open less than 12 hours, the maximum compensation for election officers shall be the sum bearing the same relation to the amount paid to election officers of the last preceding general election as the number of hours the polls were open at the election bears to the number of hours the polls were open in the preceding general election.

SEC. 9. Section 5421 of the Education Code is amended to read:

5421. The cost of any election held within a single district shall be borne by the entire district, and shall be paid out of its funds. Election costs shall be determined by the county * * * elections official and approved by the county board of supervisors.

SEC. 10. Section 15148 of the Education Code is amended to read:

15148. If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder or bidders, and the * * * clerk of the board of supervisors shall prepare and certify to all of the proceedings on file in his or her office relative to the issuance and sale of the bonds, which transcript of proceedings shall be delivered to the successful bidder or bidders without charge. If no bids are received, or if the board determines that the bids received exceed either the maximum acceptable interest rate prescribed by the governing board or the maximum rate prescribed by Section 15143, or that they are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and without further authorization from the governing board, either readvertise or sell the bonds at private sale.

For the purpose of determining whether or not a bid exceeds the maximum acceptable interest rate, the interest rate of that bid shall be deemed to be the interest rate resulting from the total net interest cost arrived at by computing the total amount of interest which the district would be required to pay from the date of the bonds to the respective maturity dates thereof at the rate or rates specified in the bid and by deducting therefrom any premium bid.

SEC. 11. Section 15359.1 of the Education Code is amended to read:

15359.1. (a) If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder or bidders, and the * * * clerk of the board of supervisors shall prepare and certify to all of the proceedings on file in his or her office relative to the issuance and sale of the bonds, which transcript of proceedings shall be delivered to the successful bidder or bidders without charge. If no bids are received, or if the board determines that the bids received exceed either the maximum acceptable interest rate prescribed by the governing board or the maximum rate prescribed by Section 15353, or that they are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and without further authorization from the governing board of the school district or community college district in which the school facilities improvement district is located, either readvertise or sell the bonds at private sale.

(b) For the purpose of determining whether or not a bid exceeds the maximum acceptable interest rate, the interest rate of that bid shall be deemed to be the interest rate resulting from the total net interest cost arrived at by computing the total amount of interest that the school facilities improvement district would be required to pay from the date of the bonds to the respective maturity dates thereof at the rate or rates specified in the bid and by deducting therefrom any premium bid.

Additions or changes indicated by underline; deletions by asterisks * * *

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appeal, if any. The statement shall be certified by a judge of the superior court of the county. The statement shall then be sent to the county of residence of the person, which shall reimburse the county providing the services. If it is not possible to determine the actual county of residence of the person, the statement shall be sent to the county in which the person was originally detained, which shall reimburse the county providing the services.

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Additions or changes indicated by underline; deletions by asterisks * * *

SCHOOLS AND SCHOOL DISTRICTS—FACILITY
STANDARDS—FUNDING

CHAPTER 935

A.B. No. 14

AN ACT to amend Sections 17071.75, 17072.13, 17072.18, 17072.20, 17072.35, 17074.15, 17074.16, 17077.45, 17078.20, 17078.30, and 17213.1 of, to add Sections 17070.46, 17070.73, 17073.25, and 17180.5 to, and to add Article 12 (commencing with Section 17078.50) to Chapter 12.5 of Part 10 of, the Education Code, to add Section 53097.3 to the Government Code, and to amend Sections 51451.5, 51453, and 51455 of, and to add Section 51453.5 to, the Health and Safety Code, relating to school facilities, and making an appropriation therefor.

[Filed with Secretary of State September 27, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 14, Goldberg. School facilities.

(1) Existing law, the Leroy F. Greene School Facilities Act of 1998 (Greene Act of 1998), makes funding available to eligible school districts for various purposes related to school facilities, including construction and modernization.

Additions or changes indicated by underline; deletions by asterisks * * *

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(b) The application shall include, but shall not be limited to, the school district's determination of the amount of state funding that the district is otherwise eligible for relating to site acquisition, site development, new construction, and hardship funding provided pursuant to Article 8 (commencing with Section 17075.10), if any. The amount shall be reduced by the amount of the alternative fee collected pursuant to subdivision (a) of Section 65995.7 of the Government Code if a reimbursement election or agreement pursuant to Section 65995.7 of the Government Code is not in effect.

(c) The board shall verify and adjust, as necessary, and approve the district's application.

* * *

SEC. 7. Section 17072.35 of the Education Code is amended to read:

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

SEC. 8. Section 17073.25 is added to the Education Code, to read:

17073.25. (a) Notwithstanding any provision of law to the contrary, the State Department of Education shall be eligible for modernization grants pursuant to this article for facilities of the California School for the Deaf (Chapter 1 (commencing with Section 59000) of Part 32) and the California School for the Blind (Chapter 2 (commencing with Section 59100) of Part 32).

(b) The department shall be eligible for per-pupil funding under this article to the same extent and in the same manner as a school district, except that the hardship provisions shall not apply. However, notwithstanding the 60 percent maximum funding for modernization projects, as set forth in Section 17074.16, the project shall be funded at 100 percent of the project costs, subject to per-pupil eligibility.

(c) The board shall establish a process specifically tailored to consideration of the unique aspects of applications presented by of the department pursuant to this section.

(d) This section shall apply only to projects for expenditure of the proceeds of state bonds approved by the voters after January 1, 2002.

SEC. 9. Section 17074.15 of the Education Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

17074.15. (a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 80-percent share, and the school district has provided its 20-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required 20-percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) This section shall apply only to an application filed on or before April 29, 2002, regardless of the source of state bond funding.

SEC. 10. Section 17074.16 of the Education Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

17074.16. (a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 60-percent share, and the school district has provided its 40-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required 40-percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) This section shall apply only to an application that was filed after * * * April 29, 2002.

SEC. 11. Section 17077.45 of the Education Code is amended to read:

17077.45. (a) The board shall establish standards for determining the amount of the supplemental grant funding to be made available for each project under this article.

(1) For a project application qualifying for funding under paragraph (1) or (2) of subdivision (b) of Section 17077.40, the supplemental grant shall be in the form of an adjustment to the per-pupil eligibility of the project. This per-pupil eligibility adjustment shall be calculated to cover costs associated with the project that are uniquely related to the joint-use nature of the project, including, but not limited to, any increased costs associated with planning the joint-use aspect of the project.

(2) For a project application qualifying under paragraph (3) of subdivision (b), the supplemental grant may be provided without regard to the existence of per-pupil eligibility pursuant to this chapter, and may be expressed on per-square-foot cost basis, on a per-pupil cost basis, or on a per-project cost basis.

(b) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards established pursuant to subdivision (a) only if the excess is paid completely by local or joint-use partner sources.

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

(d) If the total funding for the purposes of this article is not sufficient to fund all of the joint-use projects for funding under this article, the board shall fund projects eligible under paragraphs (1), (2), and (3) of subdivision (b) of Section 17077.40 in that order. The board may establish other priority standards within that order, as necessary.

(e) Except as expressly provided in this article, projects funded pursuant to this article shall comply with all other requirements of this chapter, except for Article 11 (commencing with Section 17078.10), which shall apply only to projects under this article if they also qualify for funding under Article 11 (commencing with Section 17078.10).

SEC. 12. Section 17078.20 of the Education Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

17078.20. (a) The board shall disseminate information to school districts regarding the availability of funding pursuant to this article and the appropriate deadlines for applications.

(b) Applicants for funding pursuant to this article shall submit preliminary applications to the board.

(c) The preliminary applications shall be submitted by May 1, 2003, for projects to be funded with the proceeds of bonds approved by the voters at the November 5, 2002, statewide general election.

(d) Preliminary applications shall be accepted by the board during the period between 60 days before and 120 days after, the 2004 direct primary election, or the 2004 statewide general election, as appropriate for projects to be funded with the proceeds of bonds approved by the voters at the 2004 direct primary election, or the 2004 statewide general election, as appropriate.

(e) If funds are insufficient to fully fund all of the preliminary applicants, the board shall apportion first to those projects that would house pupils from source schools with the highest pupil density levels relative to the State Department of Education standards.

SEC. 13. Section 17078.30 of the Education Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

17078.30. (a)(1) A portion of the funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election that are not included in a preliminary apportionment for an application that is received by the deadline specified in subdivision (c) of Section 17078.20 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(2) The amount of funds that shall be made available to the board for purposes other than this article, pursuant to this subdivision, shall be calculated as follows:

(A) Add the total amount preliminarily apportioned to 15 percent of that amount.

(B) Take the number calculated pursuant to subparagraph (A) and subtract that number from the amount originally reserved for the purposes of this article.

(C) The number calculated pursuant to subparagraph (B) shall thereafter be available to the board for any new construction purpose under any other article of this chapter.

(3) All funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election pursuant to a preliminary apportionment that are not included within a final apportionment within the timeframes permitted by Section 17078.25 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(b)(1) A portion of the funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the 2004 direct primary election, or the 2004 statewide general election, as appropriate, that are not included in a preliminary apportionment for an application that is received by the deadline specified in subdivision (d) of Section 17078.20 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(2) The amount of funds that shall be made available to the board for purposes other than this article, pursuant to this subdivision, shall be calculated as follows:

(A) Add the total amount preliminarily apportioned to 15 percent of that amount.

(B) Take the number calculated pursuant to subparagraph (A) and subtract that number from the amount originally reserved for the purposes of this article.

(C) The number calculated pursuant to subparagraph (B) shall thereafter be available to the board for any new construction purpose under any other article of this chapter.

(3) All funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the 2004 direct primary election, or the 2004 statewide general election, as appropriate, pursuant to a preliminary apportionment that are not included within a final apportionment within the timeframes permitted by Section 17078.25 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

SEC. 14. Article 12 (commencing with Section 17078.50) is added to Chapter 12.5 of Part 10 of the Education Code, to read:

Article 12. Charter Schools

17078.50. (a) It is the intent of the Legislature that this article be implemented as a pilot program to determine the optimum method for providing school facilities funding for charter schools.

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Additions or changes indicated by underline; deletions by asterisks * * *

(b) This article shall apply only to projects that are funded from the proceeds of bonds authorized pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 100620, if approved by the voters.

(c) The State Allocation Board and the California School Finance Authority shall jointly report to the Legislature by July 1, 2003, regarding all of the following:

(1) The implementation of this article, including, but not limited to, a description of the projects funded pursuant to this article.

(2) A description of the process whereby the board provides funding for charter school facilities under provisions of this chapter other than this article.

(3) Recommendations, if any, regarding statutory changes needed to facilitate and streamline the process.

(4) The Legislature intends to consider the report pursuant to subdivision (c) when determining the best mechanism for providing future state financial assistance for charter school facilities, including, but not limited to, assistance funded with the proceeds of the state bonds authorized pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 100620.

17078.53 (a) There is hereby established the Charter Schools Facilities Program to provide funding to qualifying entities for the purpose of establishing school facilities for charter school pupils.

(b) The Charter School Facilities Account is hereby established within the 2002 State School Facilities Fund established pursuant to subdivision (b) of Section 17070.40. The proceeds of bonds as set forth in subparagraph (A) of paragraph (1) of subdivision (a) of Section 100620, as set forth in Chapter 33 of the Statutes of 2002, if approved by the voters, shall be deposited into the Charter School Facilities Account for the purposes of this article. Notwithstanding Section 13340 of the Government Code, funds deposited into the account are hereby continuously appropriated for the purposes of this article.

(c) As used in this article, the following terms have the following meanings:

(1) "Authority" means the California School Finance Authority established pursuant to Section 17072.

(2) "Account" means the Charter School Facilities Account established within the 2002 State School Facilities Fund pursuant subdivision (b).

(3) "Preliminary apportionment" means an apportionment made for eligible applicants under this article in advance of full compliance with all of the application requirements otherwise required for an apportionment pursuant to this chapter. The process for making preliminary apportionments under this article shall be substantially identical to the process established for critically overcrowded schools pursuant to Sections 17078.22 to 17078.30, inclusive.

(4) "Financially sound" means a charter school that has demonstrated, over a period of time determined by the authority, but not less than 24 months immediately preceding the submission of the application, that it is a financially capable concern, as measured by criteria established by the authority.

(d) The board shall, from time to time, transfer funds within the account to the California School Finance Authority Fund for the purposes of this article pursuant to the request of the authority as set forth in this article.

17078.54 (a) The initial preliminary applications for projects to be funded pursuant to this article shall be submitted to the board by March 31, 2003.

(b) Thereafter, the board may establish subsequent application periods as needed.

(c) Preliminary applications may be submitted by eligible applicants as set forth in this article by either of the following:

(1) A school district on behalf of a charter school that is physically located within the geographical jurisdiction of the school district.

(2) A charter school on its own behalf if the charter school has notified both the superintendent and the governing board of the school district in which it is physically located

of its intent to do so in writing at least 30 days prior to submission of the preliminary application.

(d) The board, after consideration of the recommendations of the authority regarding whether a charter school is financially sound, shall approve the preliminary application and shall make the preliminary apportionment for funding pursuant to this article.

(e) The board shall establish a process to ensure that pupil attendance in a charter school that is physically located within the geographical jurisdiction of a school district is counted as per-pupil eligibility for that school district and to ensure that the same per-pupil attendance is not so counted for any other school district or other applicant under this chapter.

17078.54. (a) An eligible project under this article shall include funding, as permitted by this chapter, for new construction of a school facility for charter school pupils, as set forth in this article. A new construction project may include, but is not limited to, the cost of purchasing and retrofitting an existing building, but shall not exceed the amounts set forth in subdivision (b).

(b) The maximum amount of the funding pursuant to this article shall be determined by calculating the charter school's per-pupil grant amount plus other allowable costs as set forth in this chapter. Funding shall be provided by the authority for new facility construction as set forth in Section 17078.58.

(c) To be funded under this article, a project shall comply with all of the following:

(1)(A) It shall meet all the requirements regarding public school construction, plan approvals, toxic substance review, site selection, and site approval, as would any noncharter school project of a school district under this chapter, including, but not limited to, regulations adopted by the State Architect pursuant to Section 17280.5 relating to the retrofitting of existing buildings, as applicable.

(B) Notwithstanding any provision of law to the contrary, including, but not limited to subparagraph (A), the board, after consulting with the relevant regulatory agencies, shall, to the extent feasible, adopt regulations establishing a process for projects to be subject to a streamlined method for obtaining regulatory approvals for all requirements described in subparagraph (A), except for the requirements of the Field Act as defined in Section 17281 which shall be complied within the same manner as any other project under this chapter.

(2) It shall fund only new construction to be physically located within the geographical jurisdiction of a school district that has demonstrated construction grant eligibility as determined pursuant to Section 17072.10, and subdivision (e) of Section 17078.53, for at least the number of pupils set forth in the per-pupil grant request contained in the application.

(d) Facilities funded pursuant to this article shall have a 50 percent local share matching obligation that may be paid by the applicant through lease payments in lieu of the matching share, or as otherwise set forth in this article, including, but not limited to, Section 17078.58.

(e) The authority may charge its administrative costs against the Charter School Facilities Account, which shall be subject to the approval of the Department of Finance and which shall not exceed 2.5 percent of the account.

17078.56. (a) The board, in consultation with the authority, shall approve projects pursuant to this article as otherwise set forth in this chapter, and shall make preliminary apportionments only to financially sound applicants in accordance with all of the following criteria:

(1) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of the various geographical regions of the state.

(2) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of urban, rural, and suburban regions of the state.

(3) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of large, medium, and small charter schools throughout the state.

(4) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of the various grade levels of pupils served by charter school applicants throughout the state.

(b) While ensuring that the requirements of subdivision (a) are met when considering all approved projects under this article as a whole, the board shall, within each factor of the criteria set forth in subdivision (a), give a preference to charter schools in overcrowded school districts, charter schools in low-income areas, and charter schools operated by not-for-profit entities.

17078.57. (a) The authority, in consultation with the board, shall adopt regulations establishing uniform terms and conditions that shall apply equally to all projects for funding in accordance with Section 17078.58, including, but not limited to, all of the following:

(1) The process for determining the manner in which the applicant will pay its local matching share, including the method for determining any lease payments to be made in lieu of the local matching share. The regulations shall comply with all of the following criteria:

(A) The payment process set forth in Section 17199.4 may be used.

(B) The payment process shall permit lump-sum local matching payments and shall permit establishment of a schedule for lease payments to be made in lieu of the local matching share.

(C) The lease payment schedule shall be calculated by amortizing one-half of the total approved project costs, minus any lump-sum payments, over the entire payment period as set forth in Section 17078.58.

(D) The payment schedule for lease payments in lieu of the local matching funds pursuant to this section shall be based upon payment, within a reasonable period of time not to exceed a 30-year period, of one-half of the total eligible project costs, and shall be calculated in a manner that is designed to result in full payment of that portion, together with interest thereon at the rate paid on moneys in the Pooled Money Investment Account as of the date of disbursement of the funding.

(2) The method for determining whether a charter school is financially sound. In the case of a charter school chartered by a school district that is located outside of the school district that chartered it, the method developed by the authority shall include, but shall not be limited to, a site visit to the school facility currently being used by the charter school during hours when pupils are present and instruction is being provided.

(3)(A) Security provisions, including, but not limited to, the requirement that title to project facilities be held by the school district in which the facility is to be physically located, in trust, for the benefit of the state public school system.

(B) The authority shall adopt a mechanism whereby a person or entity who provides a substantial contribution that is applied to the costs of the project in excess of the state share and the local matching share may be granted a security interest to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of as set forth in paragraph (5) of subdivision (b) of Section 17078.62.

(4) The method for integrating funding pursuant to this article with the authority's general procedures pursuant to subdivision (i) of Section 17180 for otherwise funding projects eligible for funding under this chapter, if appropriate.

(5) The process to be used for release of funds for approved projects pursuant to this article.

(b) The initial regulations shall be deemed to be emergency regulations.

17078.58. (a) Funding granted pursuant to this article may not exceed 100 percent of the total allowable project costs as determined by calculating double the per-pupil grant eligibility as set forth in Section 17072.10, and subdivision (e) of Section 17078.53, plus 100 percent of all other allowable construction project costs, as appropriate to the project, that would otherwise be available to school district projects as set forth in this chapter.

(b) The local share equivalent shall be collected in the form of lease payments or otherwise as set forth in this article.

(c) Lease payments in lieu of local share payments, and any other local share payments made pursuant to this article, shall be made to the State Allocation Board for deposit into the

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account. Funds deposited into the account pursuant to this section may be used by the board only for a purpose related to charter school facilities pursuant to this article.

17078.62. (a) As a first priority, the existing charter school shall be permitted to continue to use the facility until it is no longer needed by the charter school for charter school purposes.

(b) If the charter school occupying a facility funded pursuant to this article ceases to utilize the facility for a charter school purpose, all of the following apply:

(1) If the charter school is no longer using the facility because the school district in which the charter school is located has revoked or declined to renew the charter, the school district, as a necessary component of the first priority established in subdivision (a), shall not immediately occupy the facility, but shall allow a reasonable time, not to exceed six months, for completion of the review process contemplated in Section 47607 or 47607.5.

(2) As a second priority, any qualifying successor charter school shall be permitted to meet its facility needs by occupying the facility on equal terms as the prior charter school occupant.

(3) As a third priority, the school district in which the charter school is physically located may notify the authority and take possession of the facility and make the facility available for continued use as a public school facility.

(4) If the school district in which the charter school is physically located elects to take possession of a facility pursuant to paragraph (3), it shall pay the balance of the unpaid local matching share or demonstrate that it is willing and able to continue to make the lease payments in lieu of the local matching share on the same terms. However, the payments shall be reduced or eliminated, as appropriate, if the school district complies with all of the following:

(A) It demonstrates that it would have been eligible for hardship funding under Article 8 (commencing with Section 17075.10) at the time that the application for funding the facility under this article was originally submitted.

(B) It certifies to the board that it will utilize the facilities for public school purposes for a period of at least five years from the date that it occupies the facility.

(5) If the school district declines to take possession pursuant to paragraph (3), or if the facility is subsequently no longer needed for public school purposes, the school district shall dispose of the facilities in a manner otherwise applicable to the disposal of surplus public schoolsites. Any unpaid local matching share shall be paid from the net proceeds, if any, of the disposition and shall be deposited into the account. To the extent that funds remain from the proceeds of the disposition after repayment of the local matching share, any security interest granted to a person or entity pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 17078.57 shall be satisfied.

(6) If the lease payments in lieu of the local matching share are fully paid, the school district shall continue to hold title to the facility, in trust, for the benefit of the state public school system. The school district shall permit continued use of the facility for charter school purposes as long as the facility is needed for those purposes.

17078.64. (a) In lieu of applying for funding under this article, a school district may elect to include facilities for a charter school that would be physically located within its geographical jurisdiction within its application for funding pursuant to the general provisions of this chapter, other than this article. However, the project would be outside the scope of this article, would not be subject to its provisions, and shall comply with this chapter in the same manner as any noncharter project. Moreover, any per-pupil eligibility that is used for that project shall not, also, support any project under this article.

(b) Except for those provisions in which the authority is expressly required or authorized to adopt regulations pursuant to this article, the board in consultation with the authority shall adopt regulations to implement this article. The initial regulations shall be deemed to be emergency regulations.

(c) This article is not applicable to projects funded with the proceeds of state general obligation bonds approved by the voters prior to January 1, 2002.

SEC. 15. Section 17180.5 is added to the Education Code, to read:

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Additions or changes indicated by underline; deletions by asterisks * * *

17180.5. (a) In addition to the powers authorized pursuant to Section 17180, the authority shall perform its duties under the Charter School Facilities Program to provide funding for facilities for charter school pupils as set forth in Article 12 (commencing with Section 17078.50) of Chapter 12.5.

(b) Notwithstanding any provision of law to the contrary, including, but not limited to, Section 17197, with regard to the authority's implementation of funding for charter school facilities, Article 12 (commencing with Section 17078.50) shall control over conflicting provisions, if any, in this chapter.

SEC. 16. Section 17213.1 of the Education Code is amended to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12. 5 (commencing with Section 17070.10), the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite, the governing board shall contract with an environmental assessor to supervise the preparation of, and sign, a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the signed assessment, * * * proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210 * * *, and the renewal fee shall be submitted to the Department of Toxic Substances Control * * *. The Department of Toxic Substances Control * * * shall conduct its review and approval, * * * within 30 calendar days of its receipt of that assessment * * *, proof of qualifications, and the renewal fee. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 calendar days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify, in writing, the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4)(A) If the Department of Toxic Substances Control concludes after its review of a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the Department of Toxic Substances Control shall notify, in writing, the State Department of Education and the governing board of the school district of that decision and the basis for that decision. The school district shall submit to the State

fund from whatever source shall be returned to the fund and is available for allocation by the agency to the program established pursuant to Section 51451.5.

SEC. 20. Section 51453.5 is added to the Health and Safety Code, to read:

51453.5. Notwithstanding Section 51452, the sum of twenty-five million dollars (\$25,000,000) which is made available pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 100820 of the Education Code, shall be transferred to the School Facilities Fee Assistance Fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the department for allocation for the agency for administrative costs and to make payments to purchasers of newly constructed residential structures pursuant to Section 51451.5 from that fund, as follows:

(a) Twelve million five hundred thousand dollars (\$12,500,000) shall be available for the program set forth in subdivision (a) of Section 51451.5, except that if less than 50 percent of these funds are expended within 24 months, all or part of those funds shall be available for the program set forth in subdivision (b) of Section 51451.5 at the discretion of the executive director of the agency.

(b) Twelve million five hundred thousand dollars (\$12,500,000) shall be available for the program set forth in subdivision (b) of Section 51451.5, except that if less than 50 percent of these funds are expended within 24 months, all or part of those funds shall be available for the program set forth in subdivision (a) of Section 51451.5 at the discretion of the executive director of the agency.

(c) If after 48 months, more than 20 percent of the funds identified in subdivisions (a) and (b) are not expended, the executive director of the agency may make all or part of those funds available to the California Homebuyer's Downpayment Assistance Program, as authorized under Chapter 11 (commencing with Section 51500).

(d) All repayments of disbursed funds pursuant to this chapter or any interest earned from the investment in the Surplus Money Investment Fund or any other moneys accruing to the fund from whatever source shall be returned to the fund and is available for allocation by the agency to the program established pursuant to Section 51451.5.

SEC. 21. Section 51455 of the Health and Safety Code, as amended by Chapter 33 of the Statutes of 2002, is amended to read:

51455. (a) Except as provided in subdivision (b), Sections 51450, 51451, 51452, and 51454 shall not be operative on and after January 1, 2002.

(b) * * * Except as provided in Section 51453 and 51453.5, the School Facilities Fee Assistance Fund established by Section 51452 and the programmatic authority necessary to operate the programs authorized by Section 51451 shall continue on and after January 1, 2002, only with respect to any repayment obligation pertaining to that assistance or to any regulatory agreement imposed as a condition of that assistance.

SEC. 22. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 23. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

shelter from accepting payment vouchers provided through any other public or private program so long as no shelter beds are reserved beyond sundown for that purpose. Notwithstanding Section 11135 of the Government Code or any other provision of law, nothing in this section shall be construed to preclude a provider of emergency shelter or transitional housing from restricting occupancy on the basis of sex or, in the case of an emergency shelter or transitional housing offered exclusively to persons 24 years of age or younger pursuant to Section 11139.3 of the Government Code, on the basis of age. However, in the case of families, providers of emergency shelter or transitional housing shall provide, to the greatest extent feasible, adequate facilities within their range of services so that all members of a family may be housed together, regardless of age and gender.

SCHOOLS AND SCHOOL DISTRICTS—LEAD CONTAMINATION—FUNDS

CHAPTER 1075

S.B. No. 21

AN ACT to amend Section 17582 of, and to add Sections 17074.27, 17074.30, and 17584.2 to, the Education Code, relating to school facilities.

[Filed with Secretary of State September 29, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 21, Escutia. Lead-safe schools.

Under existing law, known as the Lead-Safe Schools Protection Act, the State Department of Health Services is required to conduct a sample survey of public elementary schools, public preschools, and public day care facilities for the purpose of developing risk factors to predict lead contamination in those public schools.

Existing law, the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, provides for the issuance, pursuant to the State General Obligation Bond Law, of state general obligation bonds in an amount not to exceed \$9,200,000,000, exclusive of refunding bonds, to provide aid to school districts, county superintendents of schools, and county boards of education in accordance with prescribed provisions, including, but not limited to, the Leroy F. Greene State School Facilities Act of 1998.

This bill would authorize state modernization funding for the identification, assessment, control, management, or abatement of lead. The bill would require any application for modernization funding after January 1, 2004, to certify that it has considered the potential for the presence of lead-containing materials in the modernization project and will follow all relevant standards.

The bill would authorize the use of school district deferred maintenance funds for the inspection, identification, sampling, analysis, control, management, and removal of lead-containing material.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) Despite the fact that the environmental and educational communities have known for years that lead paint still exists in school buildings in the state, many of these lead hazards have not been mitigated and continue to pose a danger to the health and well being of children.

(2) A survey of the State Department of Health Services found that, of 200 randomly selected California elementary schools, 77 percent have lead-based paint; 38 percent have lead-based paint that is deteriorating, exposing children to possible lead poisoning; 6 percent have soil lead levels greater than the Environmental Protection Agency's limit; and 18

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percent have lead levels in drinking water in excess of the action level set by the Environmental Protection Agency.

(3) Lead is a highly toxic heavy metal that adversely affects virtually every organ system in the body.

(4) Most children with lead poisoning have no overt symptoms, but can suffer permanent neurological deficits and behavioral problems, including attention deficit disorder and loss of IQ points.

(5) The United States Center for Disease Control and Prevention has found that "lead poisoning remains the most common and societally devastating environmental disease of young children."

(6) Childhood lead poisoning has a significant financial cost, as lead poisoned children incur high medical and special education costs and have reduced lifetime earning potential.

(b) Therefore, it is the intent of the Legislature to encourage all public schools to identify all lead hazards as quickly as possible.

SEC. 2. Section 17074.27 is added to the Education Code, to read:

17074.27. In addition to the uses specified in Section 17074.25, a modernization apportionment may also be used for the control, management, or abatement of lead.

SEC. 3. Section 17074.30 is added to the Education Code, to read:

17074.30. Commencing with applications submitted after January 1, 2004, any school district applying for funding pursuant to this article shall certify that it has considered the potential for the presence of lead-containing materials in the modernization projects and will follow all relevant federal, state, and local standards for the management of any identified lead.

SEC. 4. Section 17582 of the Education Code is amended to read:

17582. (a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials, and any other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance fund for purposes of this section. The term "school building" as used in this article includes a facility that a county office of education is authorized to use pursuant to Article 3 (commencing with Section 17280) of Chapter 3.

(b) Funds deposited in the district deferred maintenance fund shall only be expended for maintenance purposes as provided pursuant to subdivision-(a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 17584 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section.

SEC. 5. Section 17584.2 is added to the Education Code, to read:

17584.2. At the public hearing required pursuant to Section 17584.1, the governing board of the school district shall also address the use of deferred maintenance funds for the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials and the control, management, and removal of lead-containing materials.

subsequent legislation that accomplishes the intent of legislation I signed last year (Chapter 165, Statutes of 2001), which established a statewide equalization goal.

Let me be clear. I am fully committed to providing full funding for equalization in the 2003-04 Budget Year. However, I am opposed to the formula used to determine equalization funding in this bill. By splitting equalization into disparate allocation methods, as proposed by AB 2781, the State does not actually reach an equalized endpoint. Consequently, this bill creates continued pressure to fund further rounds of equalization in future years. It is estimated that an additional \$195 million to \$200 million would still be required to fully equalize revenue limits computed on the basis of current state policy. As mentioned above, I intend to sign subsequent legislation that appropriates up to \$203,000,000 to complete full equalization consistent with the current statutory goal. That subsequent legislation should also delete Section 7 and subdivision (c) of Section 42 of this statute to conform.

Further, I am reducing the appropriation for the Standardized Testing and Reporting (STAR) program by \$800,000 to correct an unintentional over appropriation of the item.

The effect of my actions are reflected as follows:

SEC. 44. The sum appropriated in Item 6110-113-0001 of Section 2.00 of the Budget Act of 2002 is hereby augmented by forty-five million eight hundred nine thousand dollars (\$45,809,000) and the amount appropriated in Schedule (4) of that item is augmented by forty-five million eight hundred nine thousand dollars (\$45,809,000).

SEC. 51. (a) The amount of two hundred three million dollars (\$203,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the 2003-04 fiscal year for the following purposes:

(1) Two hundred three million dollars (\$203,000,000) for purposes of Section 42238.44 of the Education Code, to be allocated to school districts on a pro rata basis.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be 'General Fund revenues appropriated to schools districts,' as defined in subdivision (c) of Section 41202 of the Education Code for the 2003-04 fiscal year and be included within the 'total allocations to schools district and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XVII B,' as defined in subdivision (e) of Section 41202 of the Education Code for the 2003-04 fiscal year.

Gray Davis, Governor

EDUCATION—GENERAL AMENDMENTS

CHAPTER 1168

A.B. No. 1818

AN ACT to amend Sections 2557.5, 2558, 17150, 33126, 33126.1, 33128, 35120, 38133, 41023, 41031, 41032, 41033, 41035, 41038, 41303, 41372, 41403, 41404, 42127, 42127.1, 42129, 42238.12, 42241.7, 42850, 44049, 46200, 46200.5, 46202, 52054, 52055.610, 52055.640, 52055.656, 52291, 52310.5, 52314, 54743, 54745, 54746, 54747, 56001, 56100, 56129, 56130, 56200, 56205, 56345, 56361, 56392, 56441.1, 56473, 56836.155, 56836.23, 59201, 59203, 59204.5, 59210, 60451, 60453, and 60642.5 of, to amend the heading of Article 3 (commencing with Section 41030) of Chapter 1 of Part 24 of, to amend and repeal Section 49553 of, to repeal and add Section 59220 of, to amend and renumber Section 42238.146 of, to add Sections 14002.3, 35735.3, and 41407 to, and to repeal Sections 41405, 56393, 59204, 59211, and 59223 of, and to repeal Article 3.7 (commencing with Section 32230) of Chapter 2 of Part 19 of, the Education Code, to amend Section 3540.2 of, and to amend the heading of Chapter 26.5 (commencing with Section 7570) of, the Government Code, to amend Section 62 of Chapter 78 of the Statutes of 1999, and to amend Section 12.40 of Chapter 106 of the Statutes of 2001, relating to education, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1818, Committee on Education. Education.

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received pursuant to subparagraph (C) of paragraph (3) of subdivision (a) of Section 33607.5 of the Health and Safety Code that is considered property taxes pursuant to that section.

(d) The remainder computed in subdivision (c) shall be distributed in the same manner as state aid to school districts from funds appropriated to Section A of the State School Fund.

(e) If the remainder determined pursuant to subdivision (c) is a negative amount, no state aid shall be distributed to that county superintendent of schools pursuant to subdivision (d), and an amount of funds of that county superintendent equal to that negative amount shall be deemed restricted and not available for expenditure during the current fiscal year. In the next fiscal year, that amount shall be considered local property tax revenue for purposes of the operation of paragraph (1) of subdivision (c) of this section.

(f) The calculations set forth in paragraphs (1) to (3), inclusive, of subdivision (b) exclude employer contributions for employees of charter schools funded pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

SEC. 3. Section 14002.3 of the Education Code is added to read:

14002.3. Notwithstanding any other provision of law, for purposes of Sections 14002, 14004, and 41301, for the 2000-01 fiscal year and each fiscal year thereafter, the Superintendent of Public Instruction shall certify to the Controller amounts that do not exceed the amounts needed to fund the revenue limits of school districts, as determined pursuant to Section 42238, and the revenue limits of county superintendents of schools, as determined pursuant to Section 2558.

(b) This section shall become operative on July 1, 2004.

SEC. 4. Section 17150 of the Education Code is amended to read:

17150. (a) Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 18 (commencing with Section 17170), the school district shall notify the county superintendent of schools and the county auditor. The superintendent of the school district shall provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools and the county auditor may comment publicly to the governing board of the school district regarding the capability of the school district to repay that debt obligation.

(b) Upon the approval by the county board of education to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing pursuant to Chapter 18 (commencing with Section 17170), the county superintendent of schools or superintendent of a school district for which the county board serves as governing board shall notify the Superintendent of Public Instruction. The county superintendent of schools or the superintendent of a school district for which the county board serves as the governing board shall provide the repayment schedules for that debt obligation and evidence of the ability of the county office of education or school district to repay that obligation, to the Superintendent of Public Instruction, the governing board, and the public. Within 15 days of the receipt of the information the Superintendent of Public Instruction may comment publicly to the county board of education regarding the capability of the county office of education or school district to repay that debt obligation.

(c) Prior to delivery of the notice required by subdivision (a) neither the county nor any of its officers shall have any responsibility for the administration of the school district's indebtedness. Failure to comply with the requirements of this section will not affect the validity of the indebtedness.

SEC. 4.5. Article 3.7 (commencing with Section 32230) of Chapter 2 of Part 19 of the Education Code is repealed.

SEC. 5. Section 33126 of the Education Code is amended to read:

33126. (a) The school accountability report card shall provide data by which parents can make meaningful comparisons between public schools enabling them to make informed decisions on which school to enroll their children.

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SEC. 78. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the educational programs affected by this act are properly implemented, pursuant to the clarifying, technical, and other changes made by this act, it is necessary that this act take effect immediately.

**COLLEGES AND UNIVERSITIES—COMMUNITY COLLEGES—
EQUAL EMPLOYMENT OPPORTUNITIES**

CHAPTER 1169

S.B. No. 2028

AN ACT to amend Section 87482.7 of, and to repeal and add Article 4 (commencing with Section 87100) of Chapter 1 of Part 51 of, the Education Code, relating to community colleges.

[Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2028, Vasconcellos. Community colleges: equal employment opportunity hiring.

Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law authorizes the establishment of community college districts under the administration of community college governing boards, and authorizes these districts to provide instruction at community college campuses throughout the state.

Existing statutes, relating to affirmative action hiring by the community colleges, that have been invalidated by order of the California Court of Appeal, require the board of governors, out of funds appropriated for that purpose, to provide assistance to local community colleges in maintaining high-quality affirmative action programs. The invalidated statutes also established the Faculty and Staff Diversity Fund in the State Treasury. Money in this fund was available to the board of governors, upon appropriation by the Legislature, for the purpose of enabling the community colleges as a system to address a goal of making the system's workforce reflect proportionately the adult population of the state.

This bill would repeal these invalidated provisions. The bill would instead enact provisions relating to equal employment opportunity hiring by the community colleges, and establish the Employment Opportunity Fund, to be administered by the board of governors, upon appropriation by the Legislature, for the purpose of promoting equal employment opportunities in hiring and promotion at the community colleges. The bill would make conforming changes.

The bill would require the governing board of each community college district that opts to participate under the bill to periodically submit to the board of governors an affirmation of compliance with the article. The bill would require the board of governors to adopt regulations to ensure that each participating community college district implements processes for ensuring equal employment opportunities. The bill would require the board of governors to develop systemwide strategies for encouraging community college students to become qualified for, and seek, employment as community college faculty or administrators. The bill would require the board of governors to develop and disseminate to community college districts a model equal employment opportunity plan.

The bill would require the board of governors to adopt regulations for the use of the fund, including outreach and recruitment, in-service training on equal employment opportunities, accommodations for applicants and employees with disabilities, and other activities to promote equal employment opportunities. The bill would prohibit the board of governors from using more than 25% of the revenues in the fund to provide technical assistance, service, monitor-

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EXHIBIT 3
EDUCATION CODE SECTIONS CITED

EDUCATION CODE

§ 15264. Legislative intent

It is the intent of the Legislature that all of the following are realized:

- (a) Vigorous efforts are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, are in strict conformity with the law.
- (b) Taxpayers directly participate in the oversight of bond expenditures.
- (c) The members of the oversight committees appointed pursuant to this chapter promptly alert the public to any waste or improper expenditure of school construction bond money.
- (d) That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures.

(Added by Stats.2000, c. 44 (A.B.1908), § 3.)

§ 15266. Alternative method of authorizing and issuing bonds

(a) As an alternative to authorizing and issuing bonds pursuant to Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), the governing board of a school district or community college district may decide, pursuant to a two-thirds vote and subject to Section 15100 or 15302, as appropriate, to pursue the authorization and issuance of bonds pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution. An election may only be ordered on the question of whether bonds of a school district or community college district shall be issued and sold pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution at a primary or general election, a regularly scheduled local election, or a statewide special election.

(b) Upon adopting a resolution to incur bonded indebtedness pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution and after the question has been submitted to the voters, if approved at the election, the bonds shall be issued pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and this chapter, and the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under Chapter 1 (commencing with Section 15100) or under Chapter 2 (commencing with Section 15300), as appropriate. Where not inconsistent, the provisions of Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), as appropriate, shall apply to this chapter.

(Added by Stats.2000, c. 44 (A.B.1908), § 3. Amended by Stats.2001, c. 132 (S.B.1129), § 1.)

EDUCATION CODE

§ 15268. Maximum amount of bonds

The total amount of bonds issued, including bonds issued pursuant to Chapter 1 (commencing with Section 15100), shall not exceed 1.25 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred by a school district pursuant to this chapter, at a single election, would not exceed thirty dollars (\$30) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

(Added by Stats.2000, c. 44 (A.B.1908), § 3. Amended by Stats.2000, c. 580 (A.B.2659), § 2.)

§ 15270. Exceptions to maximum amount of bonds

(a) Notwithstanding Sections 15102 and 15268, any unified school district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars (\$60) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

(b) Notwithstanding Sections 15102 and 15268, any community college district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a community college district, would not exceed twenty-five dollars (\$25) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

(c) In computing the outstanding bonded indebtedness of any unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

(d) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts subsequent to the 1987-88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15268.

(e) For the purposes of this article, "general obligation bonds," as that term is used in Section 18 of Article XVI of the California Constitution, means bonds of a school district or community college district the repayment of which is provided for by this chapter and Chapter 1 (commencing with Section 15100) of Part 10, and includes bonds of a school facilities improvement district the repayment of which is provided for by this chapter and Chapter 2 (commencing with Section 15300).

EDUCATION CODE

§ 15271. Authority of governing board of school district or community college to act on behalf of school facilities improvement district

The governing board of a school district or community college district may proceed pursuant to this chapter on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district and act on behalf of the school facilities district as provided pursuant to Chapter 2 (commencing with Section 15300).

(Added by Stats.2001, c. 132 (S.B.1129), § 3.)

§ 15272. Additional ballot requirement

In addition to the ballot requirements of Section 15122 and the ballot provisions of this code applicable to governing board member elections, for bond measures pursuant to this chapter, the ballot shall also be printed with a statement that the board will appoint a citizens' oversight committee and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes.

(Added by Stats.2000, c. 44 (A.B.1908), § 3.)

§ 15274. Approval by 55% of voters

If it appears from the certificate of election results that 55 percent of the votes cast on the proposition of issuing bonds pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution are in favor of issuing bonds, the governing board shall cause an entry of that fact to be made upon its minutes. The governing board shall then certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the district, all proceedings had in the premises. The county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county.

(Added by Stats.2000, c. 44 (A.B.1908), § 3.)

EDUCATION CODE

§ 15276. Authority to order election

Notwithstanding any other provision of law, a county board of education may not order an election to determine whether bonds may be issued under this article to raise funds for a county office of education.

(Added by Stats.2000, c. 44 (A.B.1908), § 3.)

§ 15278. Citizens' Oversight Committee; establishment; appointment of members; purposes

(a) If a bond measure authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution is approved, the governing board of the school district or community college shall establish and appoint members to an independent citizens' oversight committee, pursuant to Section 15282, within 60 days of the date that the governing board enters the election results on its minutes pursuant to Section 15274.

(b) The purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues. The citizens' oversight committee shall actively review and report on the proper expenditure of taxpayers' money for school construction. The citizens' oversight committee shall advise the public as to whether a school district or community college district is in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution. The citizens' oversight committee shall convene to provide oversight for, but not be limited to, both of the following:

(1) Ensuring that bond revenues are expended only for the purposes described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Ensuring that, as prohibited by subparagraph (A) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, no funds are used for any teacher or administrative salaries or other school operating expenses.

(c) In furtherance of its purpose, the citizens' oversight committee may engage in any of the following activities:

(1) Receiving and reviewing copies of the annual, independent performance audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Receiving and reviewing copies of the annual, independent financial audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) Inspecting school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(4) Receiving and reviewing copies of any deferred maintenance proposals or plans developed by a school district or community college district, including any reports required by Section 17584.1.

(5) Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures, including, but not limited to, all of the following:

(A) Mechanisms designed to reduce the costs of professional fees.

(B) Mechanisms designed to reduce the costs of site preparation.

(C) Recommendations regarding the joint use of core facilities.

(D) Mechanisms designed to reduce costs by incorporating efficiencies in schoolsite design.

(E) Recommendations regarding the use of cost-effective and efficient reusable facility plans.

(Added by Stats.2000, c. 44 (A.B.1908), § 3.)

§ 15280. Technical assistance; public meetings

(a) The governing board of the district shall, without expending bond funds, provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee.

(b) All committee proceedings shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board. The citizens' oversight committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year. Minutes of the proceedings of the citizens' oversight committee and all documents received and reports issued shall be a matter of public record and be made available on an Internet website maintained by the governing board.

(Added by Stats.2000, c. 44 (A.B.1908), § 3.)

EDUCATION CODE

§ 15282. Members

(a) The citizens' oversight committee shall consist of at least seven members to serve for a term of two years without compensation and for no more than two consecutive terms. While consisting of a minimum of at least seven members, the citizens' oversight committee shall be comprised, as follows:

(1) One member shall be active in a business organization representing the business community located within the district.

(2) One member shall be active in a senior citizens' organization.

(3) One member shall be active in a bona fide taxpayers' organization.

(4) For a school district, one member shall be the parent or guardian of a child enrolled in the district. For a community college district, one member shall be a student who is both currently enrolled in the district and active in a community college group, such as student government. The community college student member may, at the discretion of the board, serve up to six months after his or her graduation.

(5) For a school district, one member shall be both a parent or guardian of a child enrolled in the district and active in a parent-teacher organization, such as the Parent Teacher Association or schoolsite council. For a community college district, one member shall be active in the support and organization of a community college or the community colleges of the district, such as a member of an advisory council or foundation.

(b) No employee or official of the district shall be appointed to the citizens' oversight committee. No vendor, contractor, or consultant of the district shall be appointed to the citizens' oversight committee. Members of the citizens' oversight committee shall, pursuant to Sections 35233 and 72533, abide by the prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code.

(Added by Stats.2000, c. 44 (A.B.1908), § 3.)

§ 15284. Actions to restrain and prevent expenditure of funds

(a) An action to obtain an order restraining and preventing any expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution may be maintained against any officer, agent, or other person acting on behalf of, that school district or community college district, by a citizen residing in the school or community college district who is assessed and is liable to pay an ad valorem tax on real property within the school or community college district, or who has paid an ad valorem tax on real property within the school or community college district within one year before the commencement of the action if it appears by the complaint or affidavits that any of the following conditions are present:

(1) An expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter is for purposes other than those specified in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) The expenditure is not in compliance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) That an expenditure in violation of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution will be made or will continue to be made during the litigation that would produce waste or great or irreparable injury.

(4) The governing board of a school district or community college has willfully failed to appoint the citizens' oversight committee in violation of the requirements of Section 15278.

(b) An action brought pursuant to this section shall take special precedence over all civil matters on the calendar of the court except those matters granted equal precedence by law.

(c) The rights, remedies, or penalties established by this section are cumulative to the rights, remedies, or penalties established under other laws, including subdivision (a) of Section 526 of Chapter 3 of Title 7 of Part 2 of the Code of Civil Procedure.

(d) If an order is obtained to restrain and prevent an expenditure of funds pursuant to subdivision (a), a court may award attorneys' fees pursuant to Chapter 6 (commencing with Section 1021.5) of Title 14 of Part 2 of the Code of Civil Procedure.

(e) The action authorized by this section shall be known as a "School Bond Waste Prevention Action."

(Added by Stats.2000, c. 44 (A.B.1908), § 3.)

EDUCATION CODE

§ 15288. Criminal investigations and prosecutions

It is the intent of the Legislature that upon receipt of allegations of waste or misuse of bond funds authorized in this chapter, appropriate law enforcement officials shall expeditiously pursue the investigation and prosecution of any violation of law associated with the expenditure of those funds.

(Added by Stats.2000, c. 44 (A.B.1908), § 3.)

EDUCATION CODE

§ 15300. Formation of school facilities improvement districts

This chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district and for the issuance of general obligation bonds by a school facilities improvement district.

(Added by Stats.1997, c. 893 (S.B.161), § 6.)

EDUCATION CODE

§ 15301. Eligibility to proceed under chapter; boundaries; eligibility exemptions; filing requirements

(a) Any school district or community college district that has a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, that has as one of its purposes the construction of school facilities within a portion of the territory of the school district or community college district, may proceed under this chapter.

(b) The boundaries of any school facilities improvement district formed pursuant to this chapter shall include all of the portion of the territory within the boundaries of the school district or community college district that is not located within the boundaries of the community facilities district as described in subdivision (a).

(c) A school district or community college district may proceed under this chapter without meeting the requirements of subdivisions (a) and (b) if the governing board of the school district or community college district determines that it is necessary and in the best interest of the school district or community college district, respectively, to form a school facilities improvement district pursuant to this chapter to finance any or all of the improvements set forth in Section 15302. As a part of that determination, the governing board of the school district or community college district shall make a finding that the overall cost of financing the bonds issued pursuant to this chapter would be less than the overall cost of other school facilities financing options available to the school district or community college district, including, but not limited to, issuing bonds pursuant to the Mello-Roos Communities Facilities Act of 1982 (Ch. 2.5 (commencing with Sec. 53311), Pt. 1, Div. 2, Title 5, Gov. C.). The governing board of the school district or community college district proceeding under this subdivision shall define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the school district or community college district, except that the boundaries may not include all or a portion of the territory of the community facilities district described in subdivision (a).

(d) The governing body of a school district or community college district that proceeds under this chapter shall comply with the filing requirements established by Section 54902 of the Government Code. Any plat or map that is filed pursuant to this subdivision shall specifically identify any property, located within the school district or community college district, that is not located within the improvement district established by the school district or community college district pursuant to this chapter.

(Added by Stats.1994, c. 1005 (A.B.3747), § 1. Amended by Stats.1996, c. 1072 (S.B.1544), § 2; Stats.1997, c. 17 (S.B.947), § 20; Stats.1997, c. 940 (S.B.1105), § 1.)

EDUCATION CODE

§ 15302. Issuance of bonds; purposes

General obligation bonds of the school facilities improvement district may be issued for the following purposes, if the purpose of the bonds is to benefit the land within the school facilities improvement district consistent with any of the following:

- (a) To purchase real property upon which to construct school facilities.
 - (b) To build or purchase school facilities.
 - (c) To make alterations or additions to the school facilities other than those necessary for ordinary maintenance, operation, or repairs.
 - (d) To repair, restore, or rebuild any school facilities damaged, injured, or destroyed by fire or other public calamity.
 - (e) To supply playgrounds with furniture, equipment, or necessary apparatus of a permanent nature.
 - (f) To permanently improve school grounds.
 - (g) To refund any valid outstanding indebtedness of the school facilities improvement district that is evidenced by bonds.
 - (h) To carry out the projects or purposes authorized in Section 39613.
 - (i) To demolish or raze any school building with the intent to replace it with another school building, whether in the same location or in any other location.
- (Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15303. Adoption of chapter by resolution

This chapter shall not be operative in any county or counties until the board of supervisors of either the county in which the county superintendent of schools having jurisdiction over the school district or community college district in which the school facilities improvement district is located or, if a school facilities improvement district lies in two or more counties, the board of supervisors for those counties, by resolution adopted by a majority vote of the board of supervisors, makes this chapter applicable in the county or counties.

(Added by Stats.1997, c. 893 (S.B.161), § 10.)

§ 15320. Resolution of intention; necessity of school facilities improvement district

Whenever the governing board of a school district or community college district meeting the requirements set forth in Section 15301 determines that a school facilities improvement district is necessary, the governing board shall adopt a resolution of intention that states all of the following:

(a) The intention of the governing board to form the proposed school facilities improvement district.

(b) The purpose for which the proposed school facilities improvement district is to be formed, consistent with the requirements set forth in Section 15302.

(c) The estimated cost of the school facilities improvement project.

(d) That any taxes levied for the purpose of financing the general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities improvement district.

(e) That a map showing the exterior boundaries of the proposed school facilities improvement district is on file with the governing board of the school district or community college district and is available for inspection by the public. The boundaries of the school facilities improvement district shall meet the requirements set forth in subdivision (b) of Section 15301.

(f) The time and place for a hearing by the governing board on the formation of the proposed school facilities improvement district.

(h)¹ That any interested persons, including all persons owning lands in the school district or community college district, or in the proposed school facilities improvement district, may appear and be heard.

(Added by Stats.1997, c. 893 (S.B.161), § 12.)

EDUCATION CODE

§ 15321. Notice of hearing

Notice of the hearing shall be given by publishing a copy of the resolution of intention in a newspaper of general circulation published in each affected county, pursuant to Section 6066 of the Government Code, the first publication shall be at least 14 days prior to the time fixed for the hearing. The notice shall also be given by posting a copy of the resolution in three public places located within the proposed school facilities improvement district for at least 14 days prior to the time fixed for the hearing. No notice other than that required by this section need be given.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15322. Hearing on resolution of intention

The governing board of the school district or community college district shall hold the hearing provided for by resolution of intention at the time and place fixed by that resolution. Any interested person, including, but not limited to, all persons owning land in the school district, or in the proposed school facilities improvement district or community college district, may appear and be heard concerning any matters set forth in the resolution of intention.

(Added by Stats.1997, c. 893 (S.B.161), § 14.)

EDUCATION CODE

§ 15323. Adoption of resolution proposing modifications

At the hearing, the governing board of the school district or community college district may adopt a resolution proposing modifications, consistent with Section 15302, of the purpose stated in the resolution of intention. A resolution proposing modification shall describe the proposed modifications, state the change, if any, in the estimated cost of carrying out the purpose, and shall fix a time and place for hearing by the governing board.

(Added by Stats.1997, c. 893 (S.B.161), § 16.)

EDUCATION CODE

§ 15324. Publication of resolution proposing modifications

The governing board of the school district or community college district shall publish the resolution proposing the modifications to the resolution of intention once in the same newspaper in which the resolution of intention was published at least 14 days prior to the date of hearing on the proposed modifications.

(Added by Stats.1997, c. 893 (S.B.161), § 18.)

EDUCATION CODE

§ 15325. Hearing on proposed modifications

The hearing on any proposed modifications may be held at the same time and place as any continued hearing on the resolution of intention and both hearings may be held and conducted concurrently.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15326. Order to form school facilities district; estimated cost; designation

At the conclusion of the hearing on the resolution of intention and of the hearing, if any, upon proposed modifications, the governing board may by resolution order the school facilities improvement district formed for the purpose and with the boundaries described in the resolution of intention, and, if relevant, the resolution proposing modifications. The resolution ordering the school facilities improvement district formed shall state the estimated cost of carrying out the purpose described in the resolution. The resolution shall also number and designate the school facilities improvement district substantially as "School Facilities Improvement District of the _____ School District" or "School Facilities Improvement District of the _____ Community College District."

(Added by Stats.1997, c. 893 (S.B.161), § 20.)

EDUCATION CODE

§ 15327. Governing board; rights, powers and duties regarding formation

The governing board of the school district or community college district in which a school facilities improvement district has been formed shall have the same rights, powers, duties and responsibilities with respect to the formation and government of school facilities improvement district as the governing board has with respect to the school district or community college district.

(Added by Stats.1997, c. 893 (S.B.161), § 22.)

EDUCATION CODE

§ 15330. Amount of bonds; limitation; calculation of taxable property

The total amount of bonds issued shall not exceed 1.25 percent of the taxable property of the school facilities improvement district as shown by the last equalized assessment of the county or counties in which the school facilities improvement district is located. For purposes of this section, the taxable property of a school facilities improvement district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property located within the school facilities improvement district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property located within the school facilities improvement district for the fiscal year by the gross assessed value of all unitary and operating nonunitary property located within the county in which the school facilities improvement district is located for the fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. (Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15331. Taxable property determination; assessed value not reduced

Notwithstanding any other law, for the purpose of computing the limit on the amount of bonds that may be issued by a school facilities improvement district pursuant to the provisions of this chapter, the taxable property of the school facilities improvement district shall be determined upon the basis that the school facilities improvement district's assessed value has not been reduced by the exemption of the assessed value of business inventories in the school facilities improvement district or reduced by the homeowner's property tax exemption.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15332. Location of school facilities improvement district in unified school district; amount of bonds; limitation; outstanding bonded indebtedness; calculation of taxable property

Notwithstanding Section 15330, any school facilities improvement district that is located within the boundaries of a unified school district may issue bonds not to exceed 2.5 percent of the taxable property of the school facilities improvement district as shown by the last equalized assessment of the county or counties in which the school facilities improvement district is located.

In computing the outstanding bonded indebtedness of any school facilities improvement district that is located in any unified school district, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district to each of those purposes respectively.

For purposes of this section, the taxable property of a school facilities improvement district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property located within the school facilities improvement district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property located within the district for the fiscal year by the gross assessed value of all unitary and operating nonunitary property located within the county in which the district is located for the fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15333. Bonding district; limitation of indebtedness; computation

In computing the limitation of indebtedness of any school facilities improvement district, hereinafter in this section referred to as the "bonding district," the outstanding indebtedness of any previously existing district all or any part of which forms a component part of the bonding district and the outstanding indebtedness of any district for which any territory that has become a part of the bonding district is liable shall be excluded and shall not be deemed, for the purposes of computing the limitation of indebtedness under Sections 15330 and 15332, to constitute outstanding indebtedness of the bonding district, except to the extent that the outstanding indebtedness has been expressly assumed by the bonding district by vote of not less than two-thirds of the electors of the bonding district voting at an election at which the proposition of assuming the indebtedness is voted upon. Nothing in this section shall operate to release any property from liability for taxes to pay the principal and interest of indebtedness incurred by any component district or for which any territory that has become a part of the bonding district is liable and in which the taxable property is located at the time of the incurring of the indebtedness. It is the intent of the Legislature to provide in this section a special method of computing the limitation of indebtedness of school facilities improvement districts irrespective of liability of the area embraced within the school districts for the payment of any bonded indebtedness.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15334. Limitation of indebtedness; computation; bonded indebtedness of other districts or territories excluded

For the purpose of determining the limitation of indebtedness of a school facilities improvement district under Section 15330 or 15332, that portion of the bonded indebtedness of the school facilities improvement district for which another district or territory in another district is liable shall be excluded and shall not be deemed to constitute outstanding bonded indebtedness of the school facilities improvement district.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15334.5. Bonded indebtedness; restriction

Notwithstanding any other provision of law, no bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106. No bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school facilities improvement district to exceed the limitation of indebtedness specified in Sections 15330 and 15332.

(Added by Stats.1997, c. 893 (S.B.161), § 24.)

EDUCATION CODE

§ 15335. Validity of bonds; improvements or acquisitions ordered; actions commenced

An action to determine the validity of bonds and of the ordering of the improvement or acquisition may be commenced pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. In the action, all findings, conclusions and determinations of the legislative body that conducted the proceedings shall be conclusive in the absence of actual fraud.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15336. Report on election; contents

Within 30 days after the end of each fiscal year, the governing board of the school district or community college district in which the school facilities improvement district is located shall submit a report containing the information to an election held pursuant to Article 4 (commencing with Section 15340), to the county superintendent of schools who has jurisdiction over the school district or community college district:

(a) The total amount of the bond issue, bonded indebtedness, or other indebtedness involved.

(b) The percentage of qualified electors who are residents of the school facilities improvement district who voted at the election.

(c) The results of the election, with the percentage of votes cast for and against the proposition involved.

(Added by Stats.1997, c. 893 (S.B.161), § 26.)

§ 15340. Special bond election or proposition; indebtedness and bonds; taxes

(a) After adopting the resolution ordering the formation of the school facilities improvement district, the governing board may provide for and call a special bond election within the school facilities improvement district to, or may at the next statewide election, submit to the voters of the school facilities improvement district a proposition of whether or not an indebtedness of the district shall be incurred and bonds issued therefor in an amount not exceeding the estimate stated in the resolution ordering the school facilities improvement district formed. * * *

(b) The indebtedness and the bonds shall be payable from taxes to be levied and collected upon lands located within the school facilities improvement district.

(Amended by Stats.2002, c. 199 (A.B.698), § 2.)

§ 15341. Date of election

Notwithstanding any other law, an election may not be held pursuant to this chapter within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as the statewide election, subject to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code, or on an established election date pursuant to Section 1000 of the Elections Code. (Added by Stats.2002, c. 199 (A.B.693), § 3.)

EDUCATION CODE

§ 15342. Voting on purposes; single proposition

Any one or more of the purposes enumerated in Section 15302, except that of refunding any outstanding valid indebtedness of the school facilities improvement district evidenced by bonds, may, by order of the governing board of the school district or community college district in which the school facilities improvement district is located, be united and voted upon in a single proposition.

(Added by Stats.1997, c. 893 (S.B.161), § 28.)

EDUCATION CODE

§ 15343. Election procedures

The election shall be conducted as provided in Chapter 3 (commencing with Section 5300) of Part 4 except as provided by each of the following:

- (a) As otherwise provided in this chapter.
- (b) That the formal notice of the election shall contain and specify, in addition to the items specified in Section 5361:
 - (1) The purposes for which the bonds are to be issued.
 - (2) The amount of the bonds.
 - (3) The maximum rate of interest, not to exceed the maximum rate of interest allowed by Article 5 (commencing with Section 15350).
 - (4) The maximum number of years, not to exceed 25, not to exceed which the bonds or any series thereof are to run.
- (c) No election shall be held under the provisions of this section in any school facilities improvement district for a period of 90 days after an election in the same school facilities improvement district.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15344. Consolidated elections

Any election called pursuant to this chapter may be consolidated with any other election pursuant to the provisions of Part 2.5 (commencing with Section 23300) of Division 14 of the Elections Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15345. Qualified electors

Any qualified elector who is a resident of the territory of the school facilities improvement district may vote on the proposition of issuing bonds of the school facilities improvement district.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15346. Ballots; proposition statement

The words to appear upon the ballots shall be "Bonds—Yes" and "Bonds—No," or words of similar import. A brief statement of the proposition, setting forth the amount of the bonds to be voted upon, the maximum rate of interest, and the purposes for which the proceeds of the sale of the bonds are to be used, shall be printed upon the ballot. No defect in the statement other than in the statement of the amount of the bonds to be authorized shall invalidate the bonds election.

(Added by Stats.1996, c. 277 (S.B.1562); § 2, operative Jan. 1, 1998.)

§ 15347. Ballots; form and details

Unless otherwise specified in this chapter, the form and details of all ballots at school facilities improvement elections shall comply with ballot provisions of Part 4 (commencing with Section 2400) of the Government Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15348. Approval of proposition

(a) The proposition shall be deemed approved upon approval by two-thirds of the votes cast by voters voting on the proposition of issuing bonds of the school facilities improvement district unless subdivision (b) is applicable.

(b) Alternatively, for a governing board of a school district or community college district that proceeds pursuant to Chapter 1.5 (commencing with Section 15264) and subject to the requirements therein on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district, as specified in Section 15359.3, the proposition shall be deemed approved upon approval by 55 percent of the votes cast by voters voting on the proposition of issuing bonds of the school facilities improvement district.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998. Amended by Stats.2001, c. 132 (S.B.1129), § 5.)

§ 15349. Favorable vote; entry on minutes; certificate of election results

If it appears from the certificate of election results that two-thirds of the votes cast by the voters voting on the proposition of issuing bonds of the school facilities improvement district are in favor of issuing the bonds, the governing board of the school district or community college district in which the school facilities improvement district is located shall cause an entry of that fact to be made upon its minutes. The governing board of the school district or community college district shall then certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the school district or community college district, all proceedings had in the premises. The county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county.

(Added by Stats.1997, c. 893 (S.B.161), § 30.)

EDUCATION CODE

§ 15349.1. Authorization of bonds; proceedings; certification; issuance and sale

The proceedings relating to the authorization of bonds of a school facilities improvement district that is located within a joint school district of any type need be certified only to the board of supervisors of the county whose superintendent of schools has jurisdiction over the school district in which the school facilities improvement district exists. The board of supervisors may issue and sell the bonds and no action of the board of supervisors of any other county in which the school board is situated shall be required in connection with the issuance and sale of the bonds, and the bonds need not be signed by any officer of any other county.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15349.2. Errors, irregularities or omissions; effect on substantial rights of taxpayers; validity of election

No error, irregularity, or omission that does not affect the substantial rights of the taxpayers within the school facilities improvement district or the qualified electors voting at any election at which bonds of any school facilities improvement district are authorized to be issued shall invalidate the election or any bonds authorized by that election.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15350. Sale by board of supervisors; resolution

Bonds of a school facilities improvement district shall be offered for sale by the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located as soon as possible, when appropriate, following receipt of a resolution duly adopted by the governing board of that school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds.

(Added by Stats.1997, c. 893 (S.B.161), § 32.)

§ 15351. Bonds offered for sale as a group; resolution; bids

When authorized by the governing board of the school district or community college district in which the school facilities improvement district is located, bonds of the school facilities improvement district may be offered for sale as a group by the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located, at a time determined by the board of supervisors following receipt of a resolution duly adopted by the governing board of that school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. Bidders shall be required to bid a lump-sum bid on all bonds as a group. If bids satisfactory to the governing board of each school district or community college district in which a school facilities improvement district is located are received, the bonds offered for sale shall be awarded to the bidder whose bid will result in the lowest net interest cost for the group or for the bonds of any district included within the group. Bonds shall be issued and sold in the name of each school facilities improvement district in the same manner as provided in this chapter.

(Added by Stats.1997, c. 893 (S.B.161), § 34.)

§ 15352. Issuance in name of school facilities improvement district; statement on interest coupons

The bonds shall be issued in the name of the school facilities improvement district and shall be designated "Bonds of the School Facilities Improvement District of the _____ School District" or "Bonds of the School Facilities Improvement District of the _____ Community College District" and each bond and all interest coupons shall state that the tax for the payment thereof shall be limited to annual taxes to be levied upon and collected from the lands within the school facilities improvement district.

(Added by Stats.1997, c. 893 (S.B.161), § 36.)

EDUCATION CODE

§ 15353. Bond denominations

The bonds shall be issued in the denomination or denominations as the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located may prescribe.

(Added by Stats.1997, c. 893 (S.B.161), § 38.)

§ 15354. Interest rate

The bonds shall not bear a rate of interest greater than 8 percent per annum, payable annually or semiannually.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15355. Term of bonds; restriction

The number of years the whole or any part of the bonds are to run shall not exceed 25 years, from the date of the bonds or the date of any series thereof.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15356. Form of bonds; entry upon minutes; signatures; preparation, sale and delivery expenses

(a)(1) The board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located shall prescribe the form of the bonds by an order entered upon its minutes.

(2) The bonds shall be signed by the chairperson of the board of supervisors, or by any other member thereof as the board of supervisors shall, by resolution adopted by a four-fifths vote of all its members, authorize and designate for that purpose, and also signed by the treasurer of the county, and shall be countersigned by the clerk of the board of supervisors or by a deputy of either of the officers. Unless the board of supervisors otherwise provides, all the signatures and countersignatures may be printed, lithographed, engraved, or otherwise mechanically reproduced except that one of the signatures or countersignatures to the bonds shall be manually affixed. Any signature may be affixed in accordance with the provisions of the Uniform Facsimile Signatures of Public Officials Act, Chapter 6 (commencing with Section 5500) of Title 1 of the Government Code.

(3) All expenses incurred for the preparation, sale, and delivery of the school facilities improvement bonds, including but not limited to, fees of an independent financial consultant, the publication of the official notice of sale of the bonds, the preparation, printing, and distribution of the official statement, the obtaining of a rating, the purchase of insurance insuring the prompt payment of interest and principal, the preparation of the certified copy of the transcript for the successful bidder, the printing of the bonds, and legal fees of independent bond counsel retained by the school facilities improvement district issuing the bonds are legal charges against the funds of the school facilities improvement district issuing the bonds and may be paid from the proceeds of sale of the bonds.

(b) Notwithstanding subdivision (a), the board of supervisors may, in its discretion, determine that all of the required signatures and countersignatures shall be by facsimiles, provided, however, that the bonds shall not be valid or become obligatory for any purpose until manually signed by an authenticating agent duly appointed by the board or its authorized designee.

(Added by Stats.1997, c. 893 (S.B.161), § 40.)

EDUCATION CODE

§ 15357. Funds; deposit of proceeds

The board of supervisors shall establish within the county treasury a school facilities improvement fund for each school facilities improvement district the purpose of depositing the proceeds of the bonds issued pursuant to this chapter. The board of supervisors shall also establish within the county treasury a school facilities improvement bond interest and sinking fund for each school facilities improvement district.

(Added by Stats.1997, c. 893 (S.B.161), § 42.)

§ 15358. Interest and sinking funds; payment of bonds; negotiated sale or competitive bidding; sale deadline; deposit of proceeds

(a) The bonds shall be issued by the board of supervisors, payable out of the interest and sinking fund of the school facilities improvement district. The board of supervisors, in its discretion, and without further authorization from the governing board of the school district or community college district in which the school facilities improvement district is located, may sell the bonds at a negotiated sale or by competitive bidding. The bonds may be sold at a discount not to exceed 5 percent and at an interest rate not exceeding the maximum permitted by Section 15354. If the sale is by competitive bid, the board of supervisors shall comply with the provisions of Sections 15359 and 15359.1. The bonds shall be sold by the board of supervisors no later than the date designated by the governing board of the school district or community college district in which the school facilities improvement district is located as the final date for the sale of the bonds.

(b) The proceeds of the sale of the bonds, exclusive of any premium received, shall be deposited in the county treasury to the credit of the school facilities improvement fund of the school facilities improvement district. The proceeds deposited shall be drawn out as necessary to finance the purposes approved by the voters pursuant to this chapter. The bond proceeds withdrawn shall not be applied to any other purposes than those for which the bonds were issued. Any premium or accrued interest received from the sale of the bonds shall be deposited in the interest and sinking fund of the county treasury established for the school facilities improvement district.

(Added by Stats.1997, c. 893 (S.B.161), § 44.)

EDUCATION CODE

§ 15359. Advertisement for bids; newspapers

Before selling the bonds, or any part of them, the board of supervisors as appropriate, shall advertise for bids at least two weeks in some daily or weekly newspaper of general circulation published in the county whose county superintendent of schools has jurisdiction over the governing board of the school district or community college district in which the school facilities improvement district is located or if there is no newspaper published in the county, in a newspaper published in some other county in the state having a general circulation in the county.

(Added by Stats.1997, c. 893 (S.B.161), § 46.)

§ 15359.1. Successful bidder; certification; failure to receive acceptable bid; maximum acceptable interest rate

(a) If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder or bidders, and the * * * clerk of the board of supervisors shall prepare and certify to all of the proceedings on file in his or her office relative to the issuance and sale of the bonds, which transcript of proceedings shall be delivered to the successful bidder or bidders without charge. If no bids are received, or if the board determines that the bids received exceed either the maximum acceptable interest rate prescribed by the governing board or the maximum rate prescribed by Section 15353, or that they are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and without further authorization from the governing board of the school district or community college district in which the school facilities improvement district is located, either readvertise or sell the bonds at private sale.

(b) For the purpose of determining whether or not a bid exceeds the maximum acceptable interest rate, the interest rate of that bid shall be deemed to be the interest rate resulting from the total net interest cost arrived at by computing the total amount of interest that the school facilities improvement district would be required to pay from the date of the bonds to the respective maturity dates thereof at the rate or rates specified in the bid and by deducting therefrom any premium bid.

(Amended by Stats.2002, c. 221 (S.B.1019), § 11.)

§ 15359.2. Bond brochures; advertising; expenses

(a) The issuing school facilities improvement district, by action of the governing board of the school district or community college district in which the school facilities improvement district is located, may prepare, or have prepared, bond brochures to serve as a prospectus for bond buyers to assist in the satisfactory sale of the bonds, the expense of the brochures shall be payable out of the funds of the district. The brochures may be prepared only after the issuance of the bonds to be sold has been approved by the electors of the school facilities improvement district pursuant to Article 4 (commencing with Section 15340).

(b) The issuing school facilities improvement district by action of the governing board in which the school facilities improvement district is located may expend funds of the school facilities improvement district for the purposes of advertising the availability of the bonds for purchase in any publication or newspaper that in the opinion of that governing board will give notice to prospective bond buyers that the bonds are available for purchase by bond buyers.

(Added by Stats.1997, c. 893 (S.B.161), § 50.)

EDUCATION CODE

§ 15359.3. Authority of governing board of school or community college district to proceed on behalf of school facilities improvement district

The governing board of a school district or community college district may proceed pursuant to Chapter 1.5 (commencing with Section 15264) and subject to the requirements therein on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district under this chapter.

(Added by Stats.2001, c. 132 (S.B.1129), § 6.)

§ 15360. Coupon bonds; registered bonds

Notwithstanding any other provision of law, whenever any bonds are issued pursuant to this chapter, the bonds may be issued either in the form of coupon bonds, or in the form of registered bonds, or some in the form of coupon bonds and some in the form of registered bonds, as may be provided in the proceedings for the issuance of the bonds.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15361. Signatures, countersignatures or attestations; officer leaving office before delivery of bonds

If any officer whose signature, countersignature, or attestation appears on any school facilities improvement bonds or coupons ceases to be an officer before the delivery of the bonds to the purchaser, the signature, countersignature, or attestation either on the bonds or the coupons, or on both, is valid and sufficient for all purposes as if the officer had remained in office until the delivery of the bonds, and the signature upon the coupons of the person who is auditor at the date of the bonds, is valid although the bonds themselves may be attested by a different person who is auditor at the time of delivery of the bonds.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15362. Execution of bonds; validity

Any bonds executed in the manner provided by the board of supervisors shall be valid, notwithstanding any change in the officers who signed the bonds or the coupons, or in the seal of the board of supervisors, occurring after the execution.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15380. Unsold bonds; time period; petition for cancellation

If any bonds authorized under this chapter have not been offered for sale for one year from the date of the election at which they were authorized or remain unsold for a period of six months after having been offered for sale in the manner prescribed by the board of supervisors, the governing board of the school district or community college district in which the school facilities improvement district is located and for which the bonds were authorized, may petition the board of supervisors that has jurisdiction of the issuance and sale of the bonds to cause the unsold bonds to be canceled.

(Added by Stats.1997, c. 893 (S.B.161), § 52.)

§ 15381. Hearing upon receipt of petition

Upon receiving the petition, signed by a majority of the members of the governing board of the school district or community college district in which the school facilities improvement district is located, the board of supervisors shall fix a time for a hearing, which shall not be more than 30 days after receipt of the petition, and shall cause a notice stating the time and place of the hearing, and the object of the petition in general terms, to be published for 10 days prior to the hearing, in a newspaper published in the school facilities improvement district if there is one, and if there is no newspaper published in the school facilities improvement district, in a newspaper published at the county seat of the county.

(Added by Stats.1997, c. 893 (S.B.161), § 54.)

EDUCATION CODE

§ 15382. Hearing; reasons for or against cancellation

At the time and place designated in the notice, or at any subsequent time to which the hearing may be postponed, the board of supervisors shall hear any reasons that may be submitted for or against the granting of the petition.
(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15383. Best interests of school facilities improvement district; cancellation order; entry in minutes

If the board of supervisors deem it for the best interests of the school facilities improvement district named in the petition that the unsold bonds be canceled, it shall make and enter an order in the minutes of its proceedings that the unsold bonds be canceled. Upon the entry of the order the bonds and the vote by which they were authorized to be issued shall cease to be of any validity.
(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 15384. Governing board's petition for cancellation; remaining authorization to issue and sell bonds in district

The governing board of a school district or community college district in which a school facilities improvement district is located may petition the board of supervisors to cancel the remaining authorization of that district to issue and sell bonds resulting from any particular school bond election after the sale of at least 90 percent of the bonds authorized at the election if the amount of the remaining authorization is not more than twenty-five thousand dollars (\$25,000) and in the opinion of the governing board the sale of the remaining bonds would not be economically justified. Sections 15381 and 15382 shall be applicable and at or following the hearing therein provided for, the board of supervisors, if it determines that the public interest will be served thereby, may make and enter an order in the minutes of its proceedings that the remaining authorization be canceled. Upon the entry of the order, the vote by which the remaining authorization was created shall cease to be of any validity with respect to the remaining authorization.

(Added by Stats.1997, c. 893 (S.B.161), § 56.)

EDUCATION CODE

§ 15390. Open market purchases

The governing board of a school district or community college district in which a school facilities improvement district is located may purchase in the open market bonds issued by the school facilities improvement district with available funds from the school facilities improvement fund.

(Added by Stats.1997, c. 893 (S.B.161), § 58.)

§ 15391. Purchase and cancellation of bonds by school district; notice to board of supervisors; note in minutes

When any bonds issued by a school facilities improvement district have been purchased by the governing board of the school district or community college district in which the school facilities improvement district is located, the bonds shall be deemed canceled and of no further validity. The governing board of the school district or community college district in which the school facilities improvement district is located shall immediately, after purchasing the bonds, notify the board of supervisors of its action, describing the bonds purchased. At its first meeting thereafter, the board of supervisors shall note the purchase and cancellation of the bonds in the minutes of its proceedings.

(Added by Stats.1997, c. 893 (S.B.161), § 60.)

EDUCATION CODE

§ 15400. Payment date; issuance subject to call and redemption before maturity date; option; recital; notice

(a) The board of supervisors, by an order entered upon its minutes, shall fix the time when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. If the governing board of the school district or community college district in which the school facilities improvement district is located has prescribed in its resolution the time or times when the whole or any part of the bonds shall be payable, the times and amounts shall be fixed by the order of the board of supervisors.

(b) Any bonds may be issued subject to call and redemption before maturity at the option of the governing board of the school district or community college district in which the school facilities improvement district exists. The governing board may include in its resolution a requirement that all or any part of the bonds shall be issued subject to call and redemption before maturity and the price or prices at which said bonds shall be redeemed. The board of supervisors, in its order fixing the form of the bonds and the maturities thereof, shall provide that the bonds be redeemable at the option of the governing board and at the price or prices fixed in the resolution. Bonds issued subject to call and redemption prior to maturity shall contain a recital to that effect, and no bond shall be subject to call or redemption prior to maturity unless it contains the recital. The board of supervisors in its order shall fix the method of giving notice of redemption to holders of bonds to be redeemed.

(Added by Stats.1997, c. 893 (S.B.161), § 62.)

§ 15401. Series; maturity dates; issuance authorized by multiple propositions

The board of supervisors, at the direction of the governing board of the school district or community college district in which the school facilities improvement district is located, may divide the principal amount of bonds authorized at any election into two or more series and may fix different dates for the bonds of each series, in which event the maximum maturity date of the bonds shall be calculated from the date of each series respectively. When the issuance of bonds shall have been authorized pursuant to two or more propositions submitted at the same or different elections, all or any part of the bonds not theretofore issued may be combined and issued and sold as one or more series.

(Added by Stats.1997, c. 893 (S.B.161), § 64.)

EDUCATION CODE

§ 15402. Place of payment

The board of supervisors may make the principal and interest of the bonds payable at the office of the treasurer of the county, or at any other place within the United States which the board may designate, or at the office of the county treasurer, or at any other designated place at the option of the bondholder. The place of payment shall be specified in the bonds. The expense of paying the bonds elsewhere than at the office of the treasurer shall be a proper charge against the school facilities improvement district to be paid out of the tax levied and collected for the payment of the bonds.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

EDUCATION CODE

§ 15403. Payment by county treasurer; place; presentation and surrender of warrants; procedures

The principal and interest on the bonds shall be paid by the county treasurer of the county in which the superintendent of schools has jurisdiction of the school district or community college district in which the school facilities improvement district is located, at the place required by the terms of the bonds, upon presentation and surrender of warrants drawn by the county auditor in payment thereof, after he or she has canceled the bonds and coupons, or upon the receipt of the registered owner, if the bonds are registered, after a proper warrant has been drawn by the auditor, out of the fund provided for their payment.

(Added by Stats.1997, c. 893 (S.B.161), § 66.)

EDUCATION CODE

§ 15404. Money remaining in interest and sinking fund after payment of bonds; transfer to general fund

Upon the order of the auditor, any money remaining in the interest and sinking fund of any school facilities improvement district after the payment of all bonds and coupons payable from the fund, or any money in excess of an amount sufficient to pay all unpaid bonds and coupons payable from the fund, shall be transferred to the general fund of the governing board of the school district or community college district in which the school facilities improvement district is located.

(Added by Stats.1997, c. 893 (S.B.161), § 68.)

EDUCATION CODE

**§ 15405. Money remaining in county treasury after payment of bonds;
transfer to special reserve fund of school district**

Any money paid into the county treasury of the county and credited to the interest and sinking fund of any school facilities improvement district remaining after the payment of all bonds and coupons payable from the fund, or which is in excess of an amount sufficient to pay all unpaid bonds and coupons payable from the fund, shall be transferred to the special reserve fund of the school district or community college district in which the school facilities improvement district is located and may be used only for the purpose specified in Section 42840.

(Added by Stats.1997, c. 893 (S.B.161), § 70.)

§ 15425. Taxes in excess of annual special tax rate; legislative intent; evidence of compliance

Notwithstanding any other provision of this chapter, it is the intent of the Legislature that the rate of taxes levied annually upon the property in a school facilities improvement district formed pursuant to subdivision (a) of Section 15301 not be greater than the rate of the annual special tax levied upon parcels in the same school district or community college district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code. A determination by the governing board of a school district or community college district, made at the time bonds are sold pursuant to this chapter, that the rate of taxes to be levied annually upon the property in the school facilities improvement district, based upon tax rate estimates prepared pursuant to Section 9401 of the Elections Code, does not exceed the rate of the annual special tax levied upon parcels in the same school district or community college district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, shall be conclusive evidence of compliance with the intent of this section.

(Added by Stats.1997, c. 893 (S.B.161), § 80.)

§ 17000. Short title

This chapter may be cited as the "Leroy F. Greene State School Building Lease-Purchase Law of 1976."

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17001. Legislative declaration; allocation of funds for reconstruction of nonconforming buildings; legislative intent

(a) The Legislature hereby declares that it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements, and to acquire new schoolsites and buildings for the purpose of making them available to local school districts for the pupils of the public school system, that system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.

(b) In order to expedite the elimination of the use of nonconforming school buildings that are used or designed to be used for instructional purposes or intended to be entered by pupils, the State Allocation Board may establish criteria that considers special circumstances under which funds may be allocated for the reconstruction of nonconforming buildings. The funds allocated in accordance with this section shall not exceed 75 percent of the cost of facility replacement.

(c) It is the intent of the Legislature that all construction projects be designed and constructed to maximize the use of educational technology, as set forth in subdivision (b) of Section 17002.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17002. Definitions

The following terms wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Board" means the State Allocation Board.

(b) "Cost of project" includes, but is not limited to, the cost of all real estate property rights, and easements acquired, and the cost of developing the site and streets and utilities immediately adjacent thereto, the cost of construction, reconstruction, or modernization of buildings and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project. For purposes of this section, "educational technology hardware" includes, but is not limited to, computers, telephones, televisions, and video cassette recorders.

(c) The term "lease" includes a lease with an option to purchase.

(d) "Project" means the facility being constructed or acquired by the state for rental to the applicant school district and may include the reconstruction or modernization of existing buildings, construction of new buildings, the grading and development of sites, acquisition of sites therefor and any easements or rights-of-way pertinent thereto or necessary for its full use including the development of streets and utilities.

(e) "Property" includes all property, real, personal or mixed, tangible or intangible; or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(f) "Apportionment" means a reservation of funds necessary to finance the cost of any project approved by the board for lease to an applicant school district.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17002.1. Construction defined; funding approval of deferred maintenance activities

As used in this chapter, construction shall include, but not be limited to, reconstruction, modernization, and replacement of facilities, and the performance of deferred maintenance activities on facilities pursuant to rules and regulations regarding those activities as may be adopted by the board. Funding for deferred maintenance activities for a facility may be approved under this chapter without regard to whether project funding for the reconstruction, modernization, or replacement of the facility is prohibited under Section 17021.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17005.1. Funding approval for deferred maintenance activities

On or before June 30, 1981, and on or before June 30 of each year thereafter, the board shall approve a plan specifying (a) the amount of funds to be allocated in the forthcoming fiscal year for the purposes of deferred maintenance activities and (b) the manner in which such funds shall be allocated to applicant districts.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17005.3. Loans to small school districts; first or second phase project activities; repayment; maximum amounts; eligibility

(a) Any school district with an average daily attendance of less than 2,501 pupils may apply to the board for a loan to cover the project activities of the first or second phase, as those phases were defined on July 1, 1993, of a project funded under this chapter. The loan shall not be utilized for the purchase of real property and shall be repaid by the school district either through a dedication of fees or charges levied pursuant to Section 17620 until the loan is repaid or upon receiving the project funding at the construction phase, but, in any event, the loan shall be repaid within five years from the date on which the board makes the loan. In addition to the other methods of repayment specified in this subdivision, the board may also notify the Controller if a school district is 90 days late in making loan repayments, in which case the Controller shall reduce the apportionments to which the school district is otherwise entitled under Section 42238 as necessary to recover past due payments and any current payments.

(b) The board may make loans under this section to the extent that the board determines that funds are available for that purpose. The total annual maximum funds that may be loaned under this section is ten million dollars (\$10,000,000) per fiscal year.

(c) The board may make loans under this section only for those projects and phases that have met all of the eligibility standards of the board and receive approval for an apportionment, but for which apportionment funds are not available. In any event, the amount of the loan shall not exceed the amount that would have been eligible for apportionment.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17005.5. School district loans; bond sales; conditions

The board may provide a loan to any school district from the proceeds of the sale of bonds pursuant to the School Facilities Bond Act of 1992, and the 1992 School Facilities Bond Act, to provide aid for school districts in accordance with this chapter, when those proceeds are available in the State School Building Lease-Purchase Fund. In order to provide a loan, both of the following conditions shall be met:

- (a) The amount of the loan shall not exceed the amount set forth in legislation enacted that specifies the loan amount.
- (b) The loan shall be repaid pursuant to a schedule set forth in legislation enacted that specifies a loan repayment schedule.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17006. Lease and application for replacing inadequate school facilities; necessary conditions; investigation and finding; documentation; audit

(a) The board shall not enter into any lease with respect to an application for replacing inadequate school facilities unless it first has investigated and made a finding, or the governing board of a self-certifying district, as applicable, first certifies that it has investigated and made a finding, consistent with guidelines adopted by the board, that one or both of the following conditions exists:

(1) It would not be economical or good practice to rehabilitate those facilities.

(2) The school facilities are inadequate due to their susceptibility to repeated flooding. The board shall develop and adopt regulations that define inadequacy of school facilities on the basis of susceptibility to repeated flooding. The building area of any facility found to be inadequate pursuant to this subdivision shall be excluded, for the purposes of any application for the replacement of any facility, from the calculation under this chapter of the area of adequate school construction existing in the applicant school district.

(b) The self-certifying district shall maintain documentation of each investigation and finding it conducts pursuant to subdivision (a) as may be required by the board, and the investigation and finding shall be subject to subsequent audit as the board may direct.

(c) For purposes of this chapter, a "self-certifying district" as to any project to be funded under this chapter, is an applicant district that provides 50 percent or more of the cost of the project from funding sources other than any state program administered by the board.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17008. State School Building Lease-Purchase Fund

A fund is hereby created in the State Treasury to be known as the State School Building Lease-Purchase Fund. All money in the State School Building Lease-Purchase Fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated for expenditure pursuant to this chapter.

The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the State School Building Lease-Purchase Fund from any source.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17008.3. Revolving loan account; advance planning loans

(a) The board may establish a revolving loan account within the State School Building Lease-Purchase Fund, and may allocate from the fund to that account those amounts it determines to be necessary for the purposes of this section.

(b) The board may apportion to any school district that submits to the board a statement of its intent to subsequently file a project application under this chapter, a loan for the purpose of advance planning and related administrative costs pursuant to the preparation of that application. The loan amount shall not exceed 3 percent of the estimated project cost, as determined pursuant to the building cost standards established under this chapter.

(c) If, within a period of 24 months following the receipt of any loan amounts under this section, the project for which those advance planning funds were provided has not been found by the board to be qualified for funding under this chapter, the board shall so notify the Controller, who shall reduce the apportionments to which the district is otherwise entitled under Section 42238 as necessary to repay the amount of all loans provided under this section, over such period of time as the board finds to be reasonable. The Controller shall transfer the amount of all apportionment reductions imposed under this subdivision to the revolving loan account established under this section.

(d) The repayment of loan amounts received under this section by school districts other than those described under subdivision (c) shall be accomplished by the withholding, as determined by the board, of apportionment funds that would be available to the district for purposes of the project for which the district received funding approval under this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17008.5. State school building lease-purchase fund; approval of projects and apportionments; disbursements

The board may approve projects and make apportionments in amounts not exceeding those funds on deposit in the State School Building Lease-Purchase Fund plus any amount of bonds authorized by the State School Building Finance Committee but not yet sold by the Treasurer.

Disbursements may be made under any apportionment made from any funds in the State School Building Lease-Purchase Fund, irrespective of whether there exists at the time of the disbursement a sufficient amount in the State School Building Lease-Purchase Fund to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17009. Eligibility to receive funds from state bond sales; housing facilities; severely handicapped special education students

(a) The county superintendent of schools or county office of education shall be eligible to receive any funds from the portion of the proceeds of the sale of any state bonds that are set aside for the construction, reconstruction, or modernization of, or deferred maintenance on facilities to house special education pupils who are defined as severely handicapped and eligible pursuant to Section 17047.

(b) Subdivision (a) is only applicable if the county superintendent of schools or county office of education has filed with the State Allocation Board a regionalized facility plan, as developed and approved by the State Department of Education, that covers the county or special education local planning agency area of responsibility.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17009.3. Approval of construction projects

The board may not approve any projects pursuant to this chapter on and after November 4, 1998.

(Added by Stats.1998, c. 407 (S.B.50), § 2, eff. Aug. 27, 1998.)

§ 17009.5. Approval and funding of school facilities construction projects; applicable provisions

(a) Except as set forth in Section 17052, on and after November 4, 1998, the board shall only approve and fund school facilities construction projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(b) A school district with a first priority project that has received a construction approval by the Department of General Services, Division of the State Architect, or a joint-use project approval by the board, prior to November 4, 1998, for growth or modernization pursuant to this chapter shall receive funding pursuant to this chapter for all unfunded approved project costs as it would have received under this chapter, and the increased capacity assigned to the project shall be included in calculating the district's capacity pursuant to Chapter 12.5 (commencing with Section 17070.10). Funds received for projects described in this subdivision shall constitute the state's final and full contribution to these projects. The board shall not consider additional project funding except when otherwise authorized under Chapter 12.5 (commencing with Section 17070.10).

(c) A school district with a second priority project that has received a construction approval by the Department of General Services, Division of the State Architect prior to November 4, 1998, for growth or modernization pursuant to this chapter shall elect to do either of the following:

(1) Withdraw the application under this chapter, submit an initial report and application pursuant to Chapter 12.5 (commencing with Section 17070.10), and receive per pupil allocations as set forth in Chapter 12.5 (commencing with Section 17070.10). If the district withdraws the application, any funds previously allocated under this chapter for the project shall be offset from the first grant to the district under Chapter 12.5 (commencing with Section 17070.10).

(2) Convert the second priority project approved under this chapter to a first priority status and receive funds in accordance with this chapter.

(d) Notwithstanding priorities established pursuant to Chapter 12.5 (commencing with Section 17070.10), projects authorized for funding as set forth in this section shall be funded by the board pursuant to this chapter prior to funding other projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(e) For purposes of funding priority for modernization grants under Chapter 12.5 (commencing with Section 17070.10), a district that applies under subdivision (b) or paragraph (1) of subdivision (c) shall retain its original project approval date.

(f) Notwithstanding Section 17017.1, West Contra Costa Unified School District shall be eligible for state facilities funds beginning November 4, 1998.

(g) The State Allocation Board shall adopt regulations to ensure that an appropriate offset is made from funds approved pursuant to this chapter, for funds awarded to school districts pursuant to Chapter 12 (commencing with Section 17000) prior to November 4, 1998.

(Added by Stats.1998, c. 407 (S.B.50), § 3, eff. Aug. 27, 1998, operative Nov. 4, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 3; Stats.2000, c. 753 (S.B.1795), § 1.)

§ 17010. Authority to construct any project

The board may construct any project, and may acquire all property necessary therefor, on any terms and conditions as it may deem advisable. When any part of the work is to be done or performed by any public body or the United States jointly or in conjunction with the board, the portion of the cost of the project to be borne by the board may be turned over to the government of the United States or to any other public body, to be expended by it in the acquisition, construction or completion of the project.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17011. Permissible sources of funds

The board may use for the payment of the costs of acquisition, construction or completion of any project any funds made available to the board by the State of California or any other funds provided by the board from any source, to be expended for accomplishing the purposes set forth in this chapter, together with the proceeds of bonds issued and sold pursuant to the State School Building Lease-Purchase Bond Law of 1976.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17012. Board's authority over projects

The board has full charge of the acquisition, construction, completion, and control of all projects authorized by them and may proceed with such work forthwith.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17013. Title of property in state; exemption from taxation

Title to all property acquired, constructed, or improved by the board and the revenues and income therefrom, is in the State of California. All such property, and the income therefrom are exempt from all taxation by the State of California or by any county, city and county, city, district, political subdivision or public corporation thereof.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17014. Necessary repairs, renewals and replacements; enforcement; plan preparation certification

(a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and encourage applicants to maintain all buildings under their control, the board shall require the applicant to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the district's general fund for the exclusive purpose of providing moneys for regular maintenance and routine repair of school buildings, according the highest priority to funding for the purpose set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for the term of the lease agreements of all projects constructed under this chapter, a minimum amount equal to or greater than 2 percent of the applicant's General Fund budget for that fiscal year. This paragraph is applicable only to the following districts:

(A) High school districts with average daily attendance greater than 300.

(B) Elementary school districts with average daily attendance greater than 900.

(C) Unified school districts with average daily attendance greater than 1,200.

(c) For each project funded after July 1, 1998, the board shall require the applicant school district governing board to certify, as part of the school district's annual budget process and beginning in the fiscal year in which the project is funded by the state, that a plan has been prepared for completing major maintenance, repair, and replacement requirements for the project. For purposes of this subdivision, the term "major maintenance, repair, and replacement" means roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and other items designated by the governing board of the school district. The board shall require the school district's governing board to certify that the plan includes and is being implemented as follows:

(1) Identification of the major maintenance, repair, and replacement needs for the project.

(2) Specification of a schedule for completing the major maintenance, repair, and replacement needs.

(3) Specification of a current cost estimate for the scheduled major maintenance, repair, and replacement needs.

(4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance, repair, and replacement needs.

(5) Review of the plan annually, as a part of the school district's annual budget process, and update, as needed, the major maintenance, repair, and replacement needs, the estimates of expected costs, and any adjustments in funding the reserve.

(6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district.

(7) Provision in the school district's annual budget of a provision that states the total funding available in reserve for scheduled major maintenance, repair and replacement needs as specified in the updated plan, and an explanation if this amount is less than that specified in the updated plan. The reserve shall be maintained in the restricted account established pursuant to subdivision (b).

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998. Amended by Stats.1997, c. 513 (A.B.553), § 1.)

§ 17015. Projects insured against public liability and property damage

The board shall require the school district to insure against public liability or property damage in connection with any project.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17016. Projects and portable classrooms; priorities for acquisition, construction or leasing

(a) The board, by the adoption of rules, may establish priorities for the construction and leasing of projects to those school districts the pupils of which will benefit most. The board may make exceptions from established priorities when it determines that to do so will benefit the pupils affected.

(b) The board may adopt rules establishing priorities for the acquisition and leasing of portable classrooms to county superintendents of schools that will most benefit pupils needing a county community school. The board shall require each county superintendent of schools who leases portable classrooms pursuant to Section 17017.2 to demonstrate that the portable classrooms are utilized solely for operation of a county community school.

(Added by Stats.1997, c. 893 (S.B.161), § 83. Amended by Stats.1998, c. 485 (A.B. 2803), § 45.)

§ 17017. Application for project; costs

Each school district that desires to lease a project for a grade level maintained by it, shall submit through its governing board an application therefor to the board in the form and number of copies that the board may prescribe. Immediately upon receipt of an application in the prescribed form accompanied by the required estimate of cost, a copy thereof shall be transmitted by the board to the Director of General Services.

Each copy of the application shall be accompanied by a statement of the estimated cost of the project certified by an architect or structural engineer, and by layout plans showing the entire construction project.

Before the board approves an application for a construction project, it shall establish cost standards for all new construction included therein. The cost standards shall not exceed typical comparable new construction by school districts in the same area, or if there has been no new construction by school districts in the area, the cost standards shall not exceed the reasonable current cost of similar construction in the area. The board shall determine such typical current costs or such reasonable current costs. In applying cost standards the board shall take into account the size and type of the construction proposed and may make any deviations that in its judgment are justified. When a standard has been set by the board to cover any individual apportionment, no project shall be approved by the board in excess of the standard, unless the board shall find that in view of a subsequent increase in building costs an adjustment is warranted. No contract shall be let for a construction project which has been approved by the board if the cost exceeds the construction cost standards fixed by the board under this section for the new construction. (Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17017.2. Portable classrooms; county community school programs

(a) The board may own, have maintained, and lease portable classrooms to any county superintendent of schools who provides a county community school program, as defined in Section 1986. These portable classrooms shall be adequately equipped to meet the educational needs of these pupils, including, but not limited to, sinks and restroom facilities.

(b) The board, with the advice of the Superintendent of Public Instruction, may have portable classrooms constructed, furnished, or equipped, and may otherwise require whatever work is necessary to place portable classrooms for county community schools where needed, including the acquisition and preparation of sites. The board shall, in consultation with the Superintendent of Public Instruction, establish standards for the acquisition of land, with land acquisition limited to no more than 10,000 square feet per portable classroom, waivable by the board only as needed to meet local zoning and land use requirements or health and safety considerations.

(c) A county superintendent of schools who desires to lease portable classrooms shall have prepared for the board's use performance specifications for portable classrooms and bids for their construction that can be solicited from more than one responsible bidder.

(d) No portable classroom shall be made available to a county superintendent of schools unless the county superintendent of schools furnishes evidence, satisfactory to the board, that the county superintendent of schools has no other facility available for rental, lease, or purchase in the geographic service area that is economically or otherwise feasible.

(e) If at any time the board determines that a lessee's need for particular portable classrooms that were made available to the lessee pursuant to this chapter has ceased, the board may take possession of the portable classrooms and may lease them to other county superintendents of schools or, if there is no longer a need for portable classrooms, the board may dispose of them to public or private parties in the manner it deems to be in the best interest of the state.

(f) This section does not limit the authority of a county superintendent of schools to provide facilities without assistance from the board for pupils who are enrolled in a county community school.

(Added by Stats.1997, c. 893 (S.B.161), § 84.)

§ 17017.5. Approval of applications; additional approvals; five-year plans; year-round educational program

(a) The board may approve, in whole or in part, an application submitted by a school district under Section 17017 or 17020 in an amount not exceeding the amount applied for as the board may deem appropriate.

(b) The board may, upon approval of the application, in whole or in part, and subsequently from time to time, make apportionments of project funding not exceeding in the aggregate the total amount determined by the board under subdivision (a) for the portion or portions of the project for which the board determines the district is ready to proceed. Subsequent to the board's approval of a project, any requirement imposed by the board that the compliance of the project with building cost or area standards and related guidelines adopted by the board be established as a condition of the apportionment of funds under this chapter shall be satisfied, as to a project for a self-certifying district, by the certification by the district of that compliance. In addition, the board shall not require that estimates of average daily attendance be updated as to that project more often than once every 12 months subsequent to the board's approval of the project. The self-certifying district shall maintain documentation of the compliance certified pursuant to this subdivision as may be required by the board, and that compliance shall be subject to subsequent audit as the board may direct.

(c) Whenever a district files an application, the board shall require the district to submit to the board and the State Department of Education a five-year plan for construction and rehabilitation of school facilities, and to obtain the written approval of the department that the plan complies with standards that are established by the department for this purpose to ensure that the applicant district has adequately anticipated its school facilities needs and identified funding sources as necessary to meet those needs. The plan may be adjusted to reflect adjusted growth targets.

(d) The board shall not approve any application under this chapter after January 1, 1990, unless accompanied by a study examining the feasibility of implementing in the district a year-round multitrack educational program that is designed to increase pupil capacity in the district or in overcrowded high school attendance areas by at least 20 percent.

(e) The board may waive subdivision (d) or the requirements of Section 17017.7, or both, if a school district demonstrates that these requirements will result in a particular educational or financial hardship to the district. Further, the board shall waive subdivision (d), if it finds that there is clear hardship to a district due to declining enrollment or no growth.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17017.6. Substantial enrollment; application to high school districts

Notwithstanding Section 17017.7, the definition of "substantial enrollment" set forth in that section shall apply only to elementary and unified school districts. For a high school district, "substantial enrollment in multitrack year-round schools," for the purposes of Section 17017.7, means that at least 30 percent of the pupils enrolled in the high school district are enrolled in multitrack year-round schools, or that 40 percent of the pupils enrolled in public school in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools. In addition, a high school district shall be deemed to have a substantial enrollment in multitrack year-round schools for purposes of Section 17017.7 if, at the option of the district, the entire high school to be constructed is to operate on a multitrack year-round basis.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17017.7. Project funding for new construction; priority for approval

(a) Notwithstanding any other provision of this chapter, priority for the approval of project funding for new construction under this chapter, shall be as follows:

(1) First priority for construction funds shall be given to school districts with a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project that would be constructed to operate on a multitrack year-round basis.

(2) Second priority shall be for school districts with a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would be constructed to operate on a multitrack year-round basis.

(3) Third priority shall be for school districts without a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project to operate on a multitrack year-round basis.

(4) Fourth priority shall be for school districts without a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would be constructed to operate on a multitrack year-round basis.

(5) Fifth priority shall be for school districts with a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project that would not operate on a multitrack year-round basis.

(6) Sixth priority shall be for school districts with a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would not operate on a multitrack year-round basis.

(b) The board shall not restrict the availability of funding for construction of multitrack year-round schools, from any funding source available to the State School Building Lease-Purchase Fund, but shall make approval of project funding for those projects the first priority in accordance with this section.

(c) "Substantial enrollment," for the purposes of this section, means enrollment of at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, or 40 percent of pupils in kindergarten and grades 1 to 12, inclusive, in the high school attendance area for which the school district is applying for new facilities. The calculation set forth in this subdivision, as to a self-certifying district, shall be made by the district, in accordance with any standards governing that calculation that are adopted by the board. The calculation shall be certified by the district to the board and used by the board for the purposes of this section. The self-certifying district shall maintain documentation of the calculation as may be required by the board, and the calculation shall be subject to subsequent audit as the board may direct. If a self-certifying district is found by the board to have materially misrepresented its pupil enrollment pursuant to this subdivision, the board may impose either or both of the penalties set forth in paragraphs (1) and (2) of subdivision (b) of Section 17041.2, in accordance with that section.

(d) "Multitrack year-round school," for purposes of this section, means a school for which the applicant district demonstrates that both of the following criteria are satisfied:

(1) The pupils are divided into three or more groups or tracks, which rotate attendance so that, for a majority of schooldays during the school year, at least one group or track is not attending the school while all other groups or tracks are in attendance.

(2) The operation of the school on a multitrack year-round basis has resulted in an increase in enrollment capacity.

(e) Notwithstanding any other provision of this section, the State Allocation Board may continue to implement any year-round school priority provisions for hardships adopted prior to September 14, 1990.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17017.9. State funding of project requested for only 50 percent of cost; priority status; conditions

(a) Notwithstanding any other provision of law, a project shall be accorded, subject to subdivision (b), the priority status that otherwise is accorded under Section 17017.7 to a project for which state funding is requested for only 50 percent of the cost, if all of the following conditions are met:

(1) The applicant district documents to the satisfaction of the board that it has incurred bonded indebtedness in an amount not less than 95 percent of the bonding capacity of the district. "Bonded indebtedness" for the purposes of this section includes, but is not limited to, funding provided pursuant to Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code.

(2) The applicant district agrees that up to 95 percent of the unexpended bonding capacity of the district, existing on or after the date of the district's first application for project funding pursuant to this section, shall apply toward the cost of projects.

(3) Either of the following apply:

(A) The applicant district agrees that developer fees imposed pursuant to Section 17620 shall apply toward the cost of projects for which the district requests state funding pursuant to this chapter, not to exceed 50 percent of the cost of any project. Fees needed for interim housing for capital outlay purposes for modernization and new construction projects, school district administration capital outlay projects, and capital outlay projects for transportation needs, are exempt from this requirement.

(B) The applicant is a school district with an average daily attendance of 2,500 or less.

(b) An applicant district qualifying for the priority status described in subdivision (a) as to any project shall continue to be accorded that status for all subsequent projects under this chapter until the time that the bonding capacity of the district determined for purposes of that subdivision increases by 20 percent.

(c) The condition set forth in paragraph (2) of subdivision (a) shall apply until either the applicant district's eligibility under this section terminates pursuant to subdivision (b), or funding for the district is approved and apportioned under this chapter for a project for which 50 percent or more of the cost is provided by the district from funding sources other than any state program administered by the board, whichever occurs first.

(d) Notwithstanding any other provision of law, as to any project for which priority status is accorded pursuant to subdivision (a), the estimate of average daily attendance for the applicant district may be calculated, upon request of the district, in the manner set forth in subdivision (a) of Section 17040.3.

(e) The board may recalculate program allowances and apportionments pursuant to this section.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998. Amended by Stats.1998, c. 957 (S.B.2045), § 1.)

§ 17018. Energy conservation design; board encouragement

In approving applications pursuant to this chapter, the board shall encourage the design and construction of facilities which will conserve unreplenishable energy resources by consideration of alternate design and insulation concepts as well as unconventional energy sources. In so doing, the board may increase cost allowances to reflect the difference between conventional and unconventional concepts when the board is satisfied that the life cycle cost of the project is not expected to exceed the life cycle cost of a conventionally designed project.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17018.5. Alternative funding methods; cost sharing; prioritizing funding applications

(a) The Legislature intends for the board to encourage school districts to utilize alternative methods to fund school facilities.

(b) The board shall approve applications pursuant to the requirements of this section that request the board to share a portion of the cost of projects constructed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth by Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code. The board shall disregard the fact that structures have been constructed in accordance with that act, and neither consider nor approve any application for cost sharing until the time that the applicant school district would have become eligible for approval of its application during the normal process established for considering and approving applications.

(c) The board shall approve applications for cost sharing based on both of the following factors:

(1) Estimates of average daily attendance at the time the application is considered.

(2) The amount of cost sharing requested.

(d) The costs shared by the board shall be an amount equal to the cost that would have been allowed for the project had it been originally approved pursuant to this chapter less 5 percent per year depreciation, exclusive of land, for each year that the project was constructed in advance of the application approval, but no more than the lesser of an amount equal to 75 percent of the allowable cost of the project or the principal amount of any outstanding callable bonds and other debts incurred to finance the project under the Mello-Roos Community Facilities Act of 1982.

(e) If the board utilizes a point system to prioritize applications for funding, the computation of priorities for an application pursuant to this section shall be increased by 4 percent for each year from the date of construction of the project to the date of approval of the cost-sharing application.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17018.7. School facilities constructed or acquired in past 24 months with completely local funding; funding for construction of gymnasium or multipurpose room on site

(a) Notwithstanding any other provision of law to the contrary, a school district that has, within the previous 24-month period, constructed or otherwise acquired school facilities with 100 percent local funding, may apply for funding for the construction of a gymnasium or multipurpose room on the site where it constructed or otherwise acquired school facilities with 100 percent local funding.

(b) If the State Allocation Board determines that the schoolsite does not have adequate gymnasium or multipurpose room facilities, the board may approve the application pursuant to this section.

(c) For an application approved pursuant to this section, the board shall grant the school district a credit against its local matching share requirement of up to 50 percent of the costs of the project or the total local funds expended by the school district on any school facilities funded by 100 percent local funds within the immediately preceding 24-month period, whichever is less.

(d) For an application approved under this section, the project shall be accorded the priority status that is otherwise accorded under Section 17017.7 to a project for which state funding is requested for only 50 percent of the costs.

(e) As used in this section "100 percent local funding" includes construction or acquisition of a school facility with 40 percent funding from the general fund of the school district and with the remainder of the local funding from the sale of surplus school property.

(Added by Stats.1998, c. 941 (A.B.191), § 1.)

§ 17019. Cost and quality standards for furniture and equipment

Before the board approves any project that includes the acquisition of furniture or equipment, it shall establish current cost and quality standards for furniture and equipment, including, but not limited to, educational technology hardware. The standards shall not exceed the cost and quality of furniture and equipment for comparable facilities purchased by school districts in the same area. The standards shall consist of furniture and equipment costs for each type of classroom or pupil station having different cost criteria. The standards shall be reviewed quarterly by the board and adjustments made in accordance with actual current costs. When cost and quality standards have been adopted by the board, the standards shall not be exceeded unless a subsequent increase in actual current costs warrants an adjustment.

Before the board approves a project for the replacement, reconstruction, or alteration of, or addition to, a school building, full consideration shall be given to all usable furniture and equipment existing in the applicant district. The board may approve all or a portion of the amount applied for.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17019.3. Construction project management services; contracts; funding

(a) Any applicant school district may contract with a firm, as defined in Section 4525 of the Government Code, for construction project management services to assist in the development or implementation of a project for which the district has applied for funding under this chapter, subject to the requirement that a performance bond be required from all building contractors hired to construct the project in order to ensure the completion of performance under the contract.

(b) That portion of any contract, as described in subdivision (a), concerning the final phase of construction of the project, shall be submitted by the applicant district to the board for approval. If the board does not approve, reject, or recommend modifications to, that contract portion within 15 business days after receiving that contract information, that portion of the contract shall be deemed to be approved by the board.

(c) From the amount of funding approved by the board under this chapter for any project, the board shall authorize the expenditure of funds for the costs of construction project management services provided to the project, as described in subdivision (a), where the board finds that the contracting for those services was necessary and appropriate to the school district's development or implementation of that project.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17019.5. Supplemental appropriations for new construction projects; reimbursement for administrative expenses

For a school district having an average daily attendance of 2,500 or less for the prior fiscal year, the board may approve, subject to the building cost standards established under this chapter, a supplemental apportionment up to five thousand five hundred dollars (\$5,500) for any new construction project, and up to one thousand three hundred twenty dollars (\$1,320) for any other project approved under this chapter, as reimbursement for administrative expenses incurred by the district in filing the application for the project. The amount of the supplemental apportionments shall be adjusted in 1990, and every two years thereafter, by the board at its January meeting, which adjustment shall be in an amount equal to the amount of the adjustment for inflation set forth in the statewide cost index for class D construction.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17020. Application for advance purchase of land and preparation of plans; estimate of average daily attendance; repayment of apportionment

(a) Notwithstanding other provisions of this chapter, in order to expedite a total school facility a school district may first apply for a project which includes only the advance purchase of the land and preparation of plans and specifications. The acquisition of the site and the plans preparation shall be based on the justification documents for the total school facility. The school district may apply for a subsequent project or projects to complete the total school facility.

(b) Any application filed pursuant to this section shall be subject to all provisions of this chapter generally applicable to project applications, to the extent not in conflict with this section.

(c) Any estimate of average daily attendance made by an applicant district for the purpose of justifying an application pursuant to this section may be made for up to and including two years longer than the period of time permitted by Section 17040.

(d) Beginning in the fifth fiscal year following the fiscal year in which any apportionment is made to a school district pursuant to this section, the district shall repay the apportionment, with interest, in 10 equal annual installments, unless and until the district has qualified for an apportionment pursuant to an application for utilization of the site under this chapter. These repayments shall constitute rent, and shall be in addition to any other rents or fees for which the district is obligated under Section 17032. The board may waive any obligation of repayment under this subdivision to the extent that the board finds that the obligation will result in an extreme hardship upon the district.

(e) The school district may apply for a subsequent project or projects to complete the total school facility.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17021. Projects restricted to older school buildings

No project shall be approved for the reconstruction, modernization, or replacement of any school building that was constructed or reconstructed less than 30 years, or, in the case of any portable classroom, as defined in subdivision (e) of Section 17042.5, less than 20 years, prior to the date of approval of the project applied for under this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17021.3. Modernization or renovation; definitions; approval of projects

(a) For purposes of this chapter, "modernization" or "renovation" means any modification of an existing structure, the costs of which do not exceed 25 percent of the replacement cost of that structure.

(b) No project shall be approved for the modernization of any school facility unless and until both of the following are demonstrated to the satisfaction of the board:

(1) The project will enhance the capacity of the facility to achieve one or more educational purposes.

(2) The resulting pupil capacity of the facility, as measured in units of average daily attendance, will equal or exceed 80 percent of the facility's maximum capacity as determined under the board standards established under this chapter.

(c) No project shall be approved for the modernization of any school facility that was constructed less than 30 years prior to the date of the approval of the project applied for under this chapter.

(d) The State Allocation Board may waive the requirement in subdivision (c) if the building has been declared by the Office of the State Architect to be, or is in imminent danger of becoming, a health or safety hazard to the pupils. This determination may only be made in the case of a natural disaster, for example, fire, flood, or earthquakes, or as a result of a determination by a qualified engineer, and agreed to in writing by the Office of the State Architect.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17021.4. Cost of modernization or renovation projects; amount

Notwithstanding the limitation set forth in subdivision (a) of Section 17021.3, the costs of a modernization or renovation project funded under this chapter may exceed 25 percent of the replacement cost of an existing structure where the costs in excess of that amount are funded by the district exclusively from sources other than any state program administered by the board. For each project, the total costs of the modernization or renovation project, as supplemented pursuant to this section, may not exceed 50 percent of the replacement cost of the existing structure except to the extent of those costs funded by the district, from sources other than any state program administered by the board, that are expended to conform that structure to current building standards, in which event the total costs of the project may not exceed 75 percent of the replacement cost of the structure.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17022. Approval of new facilities; prerequisite; maximum use of existing facilities and sites; exploration of cooperative efforts

Except as provided in Section 17041, the board shall not approve any new school facilities for any applicant school district or county superintendent of schools until it first has made a determination that the applicant will utilize all existing facilities and sites to the extent economically and practically feasible. The board may also require the applicant to explore cooperative efforts with adjacent districts or, in the case of county superintendents of schools, with adjacent county superintendents of schools, in order that all existing or planned facilities in the general area of need shall be utilized.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17022.7. Funding for reconstruction projects; qualification

(a) The funding for any reconstruction project approved by the board pursuant to this chapter that meets the requirements set forth in subdivision (b) shall include all of the following, not to exceed the total cost of the reconstruction project or 75 percent of the replacement cost of the facility to be reconstructed, whichever is less:

(1) Twenty-five percent of the replacement cost of the facility.

(2) A funding entitlement to the extent that the reconstruction will result in an increased capacity of the facility to house pupils, calculated pursuant to the cost standards for new construction established by the board under Section 17017.

(3) Any costs incurred by the district as required to ensure that the facility, as reconstructed, complies with applicable structural safety standards for school buildings pursuant to Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365) of Chapter 2 of Part 10.5, and Article 7 (commencing with Section 81130) and Article 8 (commencing with Section 81160) of Chapter 1 of Part 49.

(b) In order to qualify for the funding entitlement set forth in subdivision (a), a school district reconstruction project shall be required to meet all of the following conditions:

(1) The facility to be reconstructed is at least 30 years old as of the date the application is filed.

(2) The cost of the reconstruction project exceeds 25 percent of the replacement cost of the facility.

(3) The reconstruction will result in an increased capacity of the facility to house pupils.

(c) No reconstruction project shall be approved under this chapter for which the total cost exceeds 75 percent of the replacement cost of the facility to be reconstructed.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17023. Powers and duties of the Departments of Education and General Services regarding school sites and construction of school buildings

Nothing contained in this chapter shall be construed as changing the powers and duties of the Department of Education or the Department of General Services in respect to schoolsites and the construction of school buildings as contained in Chapter 1 (commencing with Section 17211) and Chapter 2 (commencing with Section 17251) of Part 10.5.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17024. Prior written approval of school site or construction of building; self-certifying districts; audits; penalties for material inaccuracy

(a) The board shall not authorize the selection of any schoolsite, or a contract for the construction of any new school building, or for any addition to, or alteration of, any existing building, for lease-purchase to any school district, unless the applicant district has obtained the written approval of the State Department of Education that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251.

(b) A self-certifying district shall comply with subdivision (a) by certifying to the State Department of Education and the board that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251. The self-certifying district shall maintain documentation of the determinations made pursuant to this subdivision as required by the board. Those determinations shall be subject to subsequent audit by the State Department of Education in accordance with this section.

(c) The State Department of Education shall conduct random audits of the information certified by self-certifying districts pursuant to subdivision (b), using generally accepted auditing principles, at any time to ensure compliance with the law.

(d) If any information certified by a self-certifying district pursuant to subdivision (b) is found by the department to contain any material inaccuracy, the department shall so notify the board. The board shall thereupon impose both of the following penalties:

(1) Pursuant to a repayment schedule approved by the board of no more than five years, the district shall repay to the board, for deposit in the State School Building Lease-Purchase Fund, an amount equal to the amount of project funding allocated under this chapter to acquire any site that was selected in material violation of the standards adopted by the department pursuant to subdivision (b) of Section 17251, together with interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. The amount of any repayment owing under this paragraph for any fiscal year, which is not repaid otherwise by the district, shall be withheld by the board from any project funding that otherwise would be allocated to that district under this chapter in that fiscal year. As to any repayment obligation remaining for that fiscal year, the board shall notify the Superintendent of Public Instruction, who shall withhold the amount of that remaining obligation from the apportionments to be made to the district from the State School Fund in that fiscal year.

(2) The board shall prohibit the district from exercising the self-certifying authority under subdivision (b) under any subsequent applications for project funding for a period of up to five years following the date of the finding of a material inaccuracy, or until the district's repayment of the entire amount owing under paragraph (1), whichever occurs later.

(e) Any school district against which the board imposed the penalties under paragraphs (1) and (2) of subdivision (d) may submit for binding determination by an arbitrator the issue of whether the penalties imposed are disproportionate to the inaccuracy certified by the district. Except as otherwise provided by this chapter, the procedure governing the arbitration shall be as set forth in Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(f) It is the intent of the Legislature that audits as described in this section not interfere with the application and construction process under this chapter unless one or more violations are ¹¹⁶²erred.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17024.5. Evaluation of existing school facilities and district needs; Department of Education's assistance

Upon request of any school district, the State Department of Education shall provide assistance in the evaluation and utilization of existing school facilities and the justification of the need for schoolsites, new facilities, and the rehabilitation or replacement of existing facilities, in accordance with board regulations.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17025. Prior written approval of department of general services; certification by self-certifying district or board

(a) The board shall not authorize a contract for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district unless the applicant district has submitted plans therefor to the Department of General Services and obtained the written approval of the department pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5.

(b) The board, or the self-certifying district, as applicable, shall certify the compliance of a project with Sections 17212, 17212.5, and 17213, with Division 13 (commencing with Section 21000) of the Public Resources Code, and with any other law that applies to that project, but may require documentation of compliance only as to requirements that are applicable under this chapter. Notwithstanding any other law, for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, the applicant district shall be deemed to be the "lead agency" with regard to any project funded for that district under this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17029. Applicant school district as agent; compliance with standards by self-certifying district

(a) The board shall authorize the applicant school district to act as its agent in the performance of acts specifically approved by the board and all acts required pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5. That authorization shall include, but is not limited to, the selection of schoolsites, the securing of appraisals, the contracting for architectural services, the advertisement for construction bids and the entering into of contracts therefor and the purchase of furniture and equipment.

(b) If, pursuant to the authority granted under subdivision (a), a self-certifying district submits to the board two or more independent appraisals and certifies to the board that the appraisals were performed by appraisers licensed or certified in accordance with Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code and were obtained in accordance with standards and procedures imposed by the board for that purpose, the district shall not be required to document its compliance with those standards and procedures except as specified in Section 17041.2. In addition, the board shall use any of those appraisals, including an appraisal that is not the highest bid appraisal, for the purposes of this section, except that the board may substitute, for the results of those appraisals, the results of one or more independent appraisals, which may include an appraisal performed by the Department of General Services, obtained by the board for that purpose.

(c) If, pursuant to the authority granted under subdivision (a), any bid reported to the board by a self-certifying district as the lowest responsible bid for a construction contract does not exceed the cost limit established by the board for that purpose, and the district certifies to the board that the bid was obtained in accordance with standards and procedures imposed by the board for that purpose, the district shall not be required to document its compliance with those standards and procedures except as specified in Section 17041.2.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17029.5. Contract funding; board liability; actions for damages arising from contracts

Notwithstanding any other provisions of this chapter, the funding by the board of contracts entered into by a school district pursuant to this chapter shall not, in itself, make the board liable for any tort, breach of contract, or any other action for damages caused by a school district arising from those contracts. These contracts include, but are not limited to, contracts between the school district and its construction contractors, construction managers, architects, or engineers. The school district shall be liable for all torts, breaches of contract, or any other actions for damages caused by the school district.

(Added by Stats.1996; c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17030. Title of property in state; recordation; release of state interest

(a) In expending funds for any project under this chapter, a school district acts as an agent of the state and all sites purchased and improved, all equipment purchased, and all buildings constructed, altered or added to through the expenditure of funds apportioned under this chapter, are declared to be, and are, the property of the state.

(b) The Director of General Services shall file with the county recorder of the county in which any site purchased or improved through the expenditure of funds under this chapter is located a certificate, properly acknowledged, indicating the state's interest in real property of the district by virtue of this section, without the necessity of particularizing the real property. The recorder shall record and index the certificate in the same manner as abstracts of judgments and the certificate shall constitute constructive notice of the state's interest in the particular real property affected. The certificate shall, as to any party thereafter acquiring real property or any interest therein in the county from the school district, have the same force, effect and priority as if it had been a judgment lien imposed upon real property which was not exempt from execution. That effect shall commence upon recordation and shall continue until the certificate is discharged or released as provided herein.

(c) Upon request, the Director of General Services shall issue either of the following:

(1) A release of the state's interest in any real property or a portion thereof that the district has been authorized by the board to dispose of under Section 17039, provided that delivery of such release may be subject to such conditions as may be prescribed by the board to protect the state's interest.

(2) A disclaimer of the state's interest in any real property or a portion thereof of the district, the disposition of which the board is not required to consent to under the terms of Section 17039, provided that the delivery of such disclaimer may be subject to such conditions as the board deems appropriate to protect the interest of the state, including conditions relating to the amount of consideration to be received from the disposition where the board asserts an interest in the proceeds of such disposition under other provisions of this chapter. The release or disclaimer shall conclusively protect any third party relying upon the same and shall be acknowledged to permit recordation by the county recorder.

(d) Upon payment by the district of all amounts required to be paid by it, or on its behalf, to the state under this chapter, each of the following shall occur:

(1) The Director of General Services shall file with the county recorder a release of any certificate, which release shall be recorded and indexed in the same index as the certificate.

(2) The title to personal property purchased by the school district with funds apportioned under this chapter shall revert thereto without further action by the state.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17030.2. Termination of lease agreements; reversion of title

Notwithstanding any other provision to the contrary, all lease agreements shall terminate 40 years from the date of execution and title to the property covered therein shall revert to the district as though full payment had been made.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17030.3. Asbestos in school facility projects; exemption from reversion of title provisions

Notwithstanding any other provision of this chapter, any project funded under this chapter that involves only the identification, assessment, or abatement of hazardous asbestos in school facilities shall not be subject to Section 17014 or 17032, nor shall that funding cause the transfer to the state of title or any other property interest in the subject facilities.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17030.5. Authorization of board necessary for expenditure of funds

Notwithstanding any provision to the contrary, no funds authorized by any act for the purpose of this chapter may be expended for any purpose without specific authorization from the board or its designated representatives.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17030.6. Allocations to local agencies

From any moneys in the State School Building Lease--Purchase Fund, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance, pursuant to this chapter, required by Section 15504 of the Government Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17031. Compliance with laws pertaining to construction and alteration of school buildings

The applicant district, acting as agent for the state, shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to school buildings.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17032. Fixing of rents for projects

The board shall fix rents for all projects acquired and may change the rents from time to time as may be needed provided the rents shall not in any year exceed the sum of the following:

- (a) One dollar (\$1).
- (b) Any interest earned on funds in the county school lease-purchase fund for the district.
- (c) Any unencumbered bond funds of the district, exclusive of funds that are used by the district to fund a project pursuant to Section 17040.2.
- (d) The net proceeds from the sale or lease of any school buildings or land no longer needed for school purposes, exclusive of proceeds that are used for capital outlay expenditures for school construction that conforms to building area standards established under this chapter, for revenue purposes under a joint venture as authorized by Section 17032.3.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17032.3. Surplus buildings, land, or other property interests; joint ventures to generate revenue; district asset utilization plans

(a) Any school district for which one or more projects has been funded under this chapter may, pursuant to written agreement with any other public or private person or entity, utilize any school buildings, land, or other real property interest that the governing board determines is not needed for school purposes, and will not be needed for school purposes within the next 30 years, in a joint venture with that person or entity to generate revenues for school facilities purposes, pursuant to the following conditions:

(1) The district has developed a school district asset utilization plan, setting forth the information required under subdivision (b), which plan has been the subject of a public hearing, and the governing board of the district has made the finding that the implementation of the plan will benefit the district.

(2) Prior to the execution by the school district governing board of any agreement regarding the utilization of the school buildings or land, or both, under a joint venture pursuant to this section, the school district asset utilization plan has been submitted for, and has received, the review and approval of the State Allocation Board. No later than 90 days after the receipt of the plan, the board shall determine whether to approve the plan, which approval shall be granted if the board finds the plan to comply with this section.

(3) Once every three years after the approval of any plan pursuant to paragraph (2), the school district shall update the plan with information regarding the disposition of the revenues received by the district from the utilization of the school buildings or land, or both, under the joint venture, including the effect of those revenues upon the school facility needs for which the district may otherwise be eligible under this chapter or under any other

§ 17032.3.

school facilities program administered by the board, together with such other information as the board may require, and shall resubmit the plan to the board for its review and approval. In the event that the board refuses to approve the plan on the basis that the district is no longer in substantial compliance with this section, the surplus school buildings or land, or both, utilized under the joint venture shall no longer be exempt from the rental requirements of Section 17032.

(4) Pursuant to a school district asset utilization plan approved under this section, the school district may utilize school buildings or land, or both, in a joint venture, the revenues from which shall be placed by the district in a separate fund. The principal and interest from that separate fund may be expended by the district only for the following school facilities purposes, as authorized under the approved plan, in accordance with the pupil loading and cost standards established pursuant to this chapter: the acquisition of land, new construction, reconstruction, modernization, rehabilitation, and deferred maintenance.

(b) For purposes of this section, a school district asset utilization plan shall include, but not necessarily be limited to, all of the following:

(1) A specific description of the surplus school buildings or land, or both, to be utilized under the joint venture.

(2) The identification of the current educational uses of the surplus school buildings or land, or both, and of the educational uses proposed under the joint venture.

(3) The identification of the current noneducational uses of the surplus school buildings or land, or both, and of the noneducational uses proposed under the joint venture, and a specific assessment of the compatibility of those uses with any applicable general or specific governmental land use plans and with applicable zoning restrictions.

(4) A description of the prospective economic benefits to be derived by the district from the joint venture.

(5) A description of the prospective educational benefits to be derived by the district from the joint venture.

(6) A comprehensive description of the joint venture, including, but not limited to, a description of the intended means of financing the joint venture.

(7) A plan for the disposition of the revenues received by the district from the joint venture.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17032.5. Portable classrooms; county community school programs; leases; conditions

The board shall establish the annual rent and conditions to be met by the lessee of a portable classroom leased pursuant to Section 17717.2 and shall require lessees to undertake all necessary maintenance, repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee.

(Added by Stats.1997, c. 893 (S.B.161), § 85.)

§ 17033. Refunding of rent, charges, and fees collected in error

Rent, charges, and fees collected in error may be refunded by the board in accordance with regulations prescribed by the board.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17034. Creation of a county school lease-purchase fund

A county school lease-purchase fund is hereby created in the county treasury within each county for each school district project in the county.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17035. Transfer from state to county fund

The board may from time to time authorize the Controller to transfer any funds that the board may deem necessary from the State School Building Lease-Purchase Fund established for a given project to the corresponding county school lease-purchase fund in the county treasury.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17036. Expenditures from county school lease-purchase fund; authorization; reimbursement

(a) Except as provided in subdivision (b), funds may be expended from the county school lease-purchase fund by the applicant school district only when specifically authorized by the board for either direct project costs or reimbursements.

(b) Upon specific authorization by the board, applicant school districts may be reimbursed from the county school lease-purchase fund for expenditures, or commitments therefor, made prior to the approval of a project by the board, subject to all of the following conditions:

(1) The expenditures or commitments were made in accordance with the terms of the approval of a project.

(2) The expenditures or commitments were made not more than four years prior to the approval of a project.

(3) The expenditures or commitments do not include any cost incurred for construction of a project.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17038. Duty of school district to insure sites, equipment, and buildings

The board shall require school districts to insure at their own expense for the benefit of the state, all sites, equipment and buildings which are, under Section 17030, the property of the state, against such risks and in such amounts as the board may deem necessary to protect the interests of the state. No project funds shall be used to pay the premiums on such insurance. All payments resulting from claims made against said insurance shall be made payable to and retained by the board. Funds so received shall be utilized by the board for repair or replacement of the facilities for which claim was made. In no event may the amounts expended from such funds for such repair or replacement exceed the payments received.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17039. Moneys authorized by State School Building Bond Law of 1982; reconstruction or modernization; limitations; priorities

(a) Not more than one hundred fifty million dollars (\$150,000,000) of the moneys authorized by the State School Building Lease-Purchase Bond Law of 1982 (Sec. 34, Ch. 552, Stats. 1995) shall be reserved for the reconstruction or modernization of facilities within the meaning of this chapter.

(b) For purposes of this section, the State Allocation Board shall establish a separate priority system which shall be based on the following factors and any other factors which the board determines are appropriate:

- (1) Structural condition and age of the building.
- (2) Percentage of pupils affected in the district or attendance area.
- (3) Degree of utilization of eligible buildings.
- (4) Other building code deficiencies, such as health, safety, or electrical problems.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

Historical and Statutory Notes

Subordination of legislation by Stats.1996, c. 277 (S.B.1562), to other 1996 legislation, severability of provisions, and nonsubstantive nature of changes made by that Act, see Historical and Statutory Notes under Education Code § 15100.

Derivation: Former § 17739, added by Stats. 1982, c. 410, § 2, amended by Stats.1983, c. 698, § 1.

GENERAL PROVISIONS
Title 1

§ 17039.1. State School Building Lease-Purchase Bond Law of 1984; reservation of moneys for reconstruction or modernization of facilities

Not more than two hundred million dollars (\$200,000,000) of the moneys authorized by the State School Building Lease-Purchase Bond Law of 1982 (Sec. 34, Ch. 552, Stats. 1995) shall be reserved for the reconstruction or modernization of facilities within the meaning of this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

Historical and Statutory Notes

Subordination of legislation by Stats.1996, c. 277 (S.B.1562), to other 1996 legislation, severability of provisions, and nonsubstantive nature of changes made by that Act, see Historical and Statutory Notes under Education Code § 15100.

Derivation: Former § 17739.1, added by Stats.1984, c. 375, § 2.

§ 17039.2. Moneys reserved for rehabilitation, reconstruction or modernization of facilities; limitation on reserve for apportionments; conditions

Of the moneys reserved for the rehabilitation or modernization of facilities pursuant to Section 17039.1, the board may reserve not more than twenty-five million dollars (\$25,000,000) for apportionments to school districts that the board has determined to be in severe need of the apportionment. In addition, of the moneys reserved for the reconstruction or modernization of facilities pursuant to Section 17696.96 of the Greene-Hughes School Building Lease-Purchase Bond Law of 1986 (Sec. 34, Ch. 552, Stats. 1995), the board may reserve up to and including 10 percent for this purpose. In either event, the apportionment shall be for purposes of site acquisition and the construction of school facilities for schoolsites that meet one or more of the conditions established by the board, which shall include, but are not limited to, the following:

- (a) The schoolsite is not less than 30 years of age.
- (b) The schoolsite has accommodated a significant increase in enrollment during the last 10-year period.
- (c) Enrollment increases have been accommodated by placing relocatable structures on the schoolsite without expanding the schoolsite.
- (d) The schoolsite has inadequate playground space for its enrollment.
- (e) The schoolsite has inadequate meal facilities, and those facilities are used for more than three times the number of pupils for which the facilities were originally designed.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

Historical and Statutory Notes

Subordination of legislation by Stats.1996, c. 277 (S.B.1562), to other 1996 legislation, severability of provisions, and nonsubstantive nature of changes made by that Act, see Historical and Statutory Notes under Education Code § 15100.

Derivation: Former § 17739.2, added by Stats.1984, c. 1749, § 2, amended by Stats. 1986, c. 887, § 3.

§ 17040. Project approval; area of adequate school construction

Except as provided in Section 17041, no project shall be approved, the building area of which, when added to the area of adequate school construction existing in the applicant school district at the time of application, will provide a total area of school building construction per unit of estimated average daily attendance in excess of that computed in accordance with Sections 17043, 17044, 17045, and 17046.

As used in Sections 17041.5, 17043, 17044, 17045, and 17046, "maximum area" means maximum area of school building construction and "attendance unit" means unit of estimated average daily attendance.

As used in this section and Sections 17045 and 17046, "attendance center" means a school maintained or to be maintained at a given location within a district. Enrollment projections shall be made for the third fiscal year beyond the fiscal year in which the application is made for a project for kindergarten or any of grades 1 to 6, inclusive, and for the fourth fiscal year beyond the fiscal year in which the application is made for a junior high school or high school project. Except as otherwise provided by the board, the estimates of average daily attendance shall be based upon the number of family dwellings and mobilehome parks, as defined in Section 18214 of the Health and Safety Code, under construction or newly constructed and never occupied in the district and the number of children residing in the district. In no case shall an estimate be given effect unless approved by the board.

For the purposes of this chapter, pupils attending grades 7 and 8 in an elementary district, but residing in a high school district that maintains one or more junior high schools, shall not be considered in determining or estimating the average daily attendance of the elementary district, unless one of the following conditions is met:

(a) The elementary district is maintaining and has continuously maintained grades 7 and 8 since a date prior to January 1, 1975.

(b) The elementary district, by a vote of the electorate at an election held on June 2, 1981, withdrew its 7th and 8th grade pupils from the high school district.

(c) The elementary district, by a vote of the electorate at an election held on November 4, 1980, withdrew its 7th and 8th grade pupils from the high school district and the high school district continues to qualify for a project, other than a project pursuant to Section 17041, on the basis of the remaining 7th and 8th grade pupils. In no event shall a facility be constructed for the withdrawn 7th and 8th grade pupils at a distance less than one and one-half miles from the nearest proposed or existing junior high facility.

When these pupils are so considered in determining or estimating the average daily attendance of the elementary district, they shall not be considered in determining or estimating average daily attendance of the high school district for junior high school purposes.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17040.1. Increase in allowable building area of project; increase in maximum cost

(a) The allowable building area of any project, as calculated under this article, may be increased by any applicant school district, where the increase is funded exclusively from sources other than any state programs administered by the State Allocation Board. Any increase in building area pursuant to this section in a project for which construction commenced on or after January 1, 1987, not to exceed 110 percent of the area that would be allowed under applicable state standards, shall be excluded from the calculation of the area of adequate school construction for the purposes of all subsequent project applications by the district under this chapter.

(b) The maximum building cost permitted for any project under this article may be increased, by not more than 10 percent, by any applicant school district, where the increase is funded by the district exclusively from the proceeds of a general obligation bond measure approved by the voters of the district or of a special tax pursuant to the formation of a community facilities district under Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, or both. In order to qualify for this purpose, any tax or other charge authorized pursuant to that approval or formation, respectively, shall apply uniformly to all taxpayers or all real property within the school district, rather than to a particular class of property or taxpayers, and shall require that the amount of the school facilities fee or other requirement that may be levied by the school district pursuant to Section 17620, in addition to that tax or other charge, not exceed the amount deemed by the governing board to be necessary for the interim school facilities needs of the district.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17040.2. Project funded by applicant district from sources other than state program administered by board; increase in area and cost

Where 75 percent or more of the total cost of a project approved under this chapter is to be funded by the applicant district from sources other than any state program administered by the board, the area of the allowable new building construction for that project, and the amount of the building cost allowed for that project under this chapter, shall each be increased by 5 percent, plus 1 percent for each 1 percent by which that local contribution exceeds 75 percent.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17040.3. Calculation of estimated average daily attendance; fast tracking of project; delay of construction agreements following project approval

(a) Notwithstanding any other provision of this part, the estimate of average daily attendance for an applicant school district shall be calculated for up to and including two years longer than the period of time permitted by Section 17040, as requested by the district, where 50 percent or more of the cost of the project is provided by the district from funding sources other than any state program administered by the board. For the purposes of any subsequent project application from that district based upon additional growth in pupil enrollment, the estimate of average daily attendance shall be based on enrollment projections for any period of time, as requested by the district, up to and including that permitted by Section 17040.

(b) The project shall be "fast tracked." For purposes of this section, "fast tracking" means that the total amount of project funding eligibility shall be established upon the board's approval of the project, which shall be subsequently disbursed as necessary for the development and construction of the project without the prerequisite of any additional state certification or other state-conducted review of project eligibility. Based upon the results of an audit to be conducted upon completion of the project, the board or the applicant district, as appropriate, shall pay to the other any amount that is necessary to conform to the allocation of project costs determined upon the board's approval of the project.

In the event that the applicant district has not executed all contractual agreements necessary for the complete construction of the project within a period of 18 months following the board's approval of the project, this subdivision shall cease to apply to the project with regard to any state funding of the project not yet disbursed. Upon request of the applicant district and approval by the board, this 18-month period may be extended for an additional period of up to six months to account for one or more delays resulting from circumstances beyond the district's control.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17040.4. Master plan for determination of average daily attendance; conditions for use

Notwithstanding any other provision of this part, the board may use, for purposes of determining the estimate of average daily attendance for an applicant school district, a master plan that has been prepared by a district that includes the additional pupils due to increases in housing units within the boundaries of the district or attendance area. Before a master plan may be used, both of the following conditions shall be satisfied:

(a) The city, county, or city and county has obtained approval of a local general obligation bond or has obtained funds pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth by Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, to provide local matching funds for school facility projects for which approval is being sought pursuant to this section.

(b) At least 60 percent of the total cost of the project for which approval is being sought shall be provided by funding sources other than any state program administered by the board.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17040.5. Multistory buildings; exclusion of stairs and landings

Notwithstanding any other provision of this article, the board shall exclude the area of enclosed stairs and appropriate landings for each floor level served from the computation of the allowable building area of multistory buildings for any applicant school district.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17040.6. Multistory buildings; additional project funding

(a) For any school of two or more stories, the project funding provided under this chapter shall include, at the request of the applicant district, the costs of any or all of the following:

- (1) Compliance with applicable requirements of law for fire safety, and for handicapped access, as a result of the multistory design.
- (2) Playground apparatus.
- (3) Duct shafts, utility tunnels, and pipe conduit chases.
- (4) Security items required as a result of the multistory design.

(b) In calculating the maximum project funding that may be allocated for parking, landscaping, and other general schoolsite improvements, which calculation is determined in proportion to the total building cost or area approved for funding under the project, the total building cost or area approved for funding under the project shall be computed by the board to include any increase in project building area, as authorized under Section 17041.8. The applicant district shall provide the board information on how the supplemental project funding will be allocated to relieve the effects resulting from less than the specified land area for the schoolsite.

(c) This section shall apply to any application for project funding under this chapter for which the final apportionment for construction of the project had not been made on or prior to December 1, 1987.

(d) For any project approved under this chapter, the amount of project funding granted by the board shall include the actual and reasonable costs incurred by any applicant district for the revision of its project application for the purpose of qualifying for supplemental project funding as authorized by this section.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17040.7. Enclosed hallways; computing amount of building area

Notwithstanding any other provision of this article, the board shall provide that building area for enclosed hallways in the second or higher story of any building shall be counted as two-thirds of the actual area. For purposes of this section "enclosed hallways" includes, but is not limited to, all of the following:

- (a) Covered passages, arcades, shelters, porches, and planting areas.
- (b) Enclosed covered areas that provide shelter between buildings that are 20 feet or more apart.
- (c) Sun control devices designed and located to function in lieu of covered walks or other shelters.
- (d) Mezzanines used for storage purposes.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17040.8. Existing sites with less than 50% of recommended land; increased area of allowable new construction

Where an applicant district that is eligible under this chapter for project funding of new construction of school facilities on an existing schoolsite, which site has less than 50 percent of the land recommended under State Department of Education guidelines, as published in the School Site Analysis and Development Handbook in effect on January 1, 1987, the area of allowable new building construction for that project shall be increased by the square footage of any existing one-story school facility or facilities to be replaced under the project by one or more multistory school facilities.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17040.9. Supplemental project funding; projects with high pupil density

(a)(1) The board shall allocate the amount calculated under subdivision (b), in addition to any other project funding authorized under this chapter, to each project funded under this chapter for which the resulting pupil density will exceed the following:

(A) For a project for kindergarten or any of the grades 1 to 6, inclusive, 90 pupils per acre.

(B) For a project for a junior high school project, 80 pupils per acre.

(C) For a project for a senior high school project, 70 pupils per acre.

(2) For any new construction project, pupil density shall be computed, for purposes of paragraph (1), by dividing the number of units of estimated average daily attendance for the project, including those to be served by relocatable structures, by the acreage of the project site.

(3) For any project for the construction of additional facility space on an existing schoolsite or on land acquired that is adjacent to an existing schoolsite, pupil density shall be computed, for purposes of paragraph (1), by adding the number of units of estimated average daily attendance for the project to the number of units of average daily attendance for the existing school facilities, and dividing that sum by the total site acreage for the project and the existing school facilities.

(b) The supplemental project funding authorized under this section shall be calculated by dividing the actual pupil density for the project, as calculated under subdivision (a), by the threshold pupil density for the project as set forth in that subdivision, and multiplying the resulting fraction by an amount equal to the average cost per acre of the land approved for acquisition by the board under this chapter for the project, or that would have been approved for acquisition if the applicant school district had not had an existing schoolsite available for the project.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17041. Separate computation of allowable building area; competing "attendance area"

Whenever the area of adequate school construction existing in any attendance area is such as to prevent another attendance area from receiving the maximum area of school construction for each unit of attendance as specified for the district as a whole, the allowable building area may be computed separately for each attendance area. For the purposes of this section and Section 17041.5, an "attendance area" is defined as the geographical area serving an existing or proposed high school and those junior high schools and elementary schools included therein.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17041.1. Determinations by self-certifying district for calculation of district's eligibility for project funding; determinations; audit; estimates of average daily attendance

(a) Notwithstanding any other provision of this chapter, the following determinations shall be made by a self-certifying district, in the manner specified in this chapter and in accordance with the standards governing those determinations that are adopted by the board, for the purpose of calculating the district's eligibility for project funding under this chapter:

(1) The total allowable building area for which the district is eligible for project funding under this chapter.

(2) The district's area of existing adequate school construction, including, but not limited to, the conducting of field inspections for this purpose.

If requested by the applicant district, the board shall provide assistance to the district in preparing the necessary documents for self-certification pursuant to this chapter.

(b) The area determinations made by a self-certifying district pursuant to subdivision (a) shall be certified by the district in its application for project funding and shall be used by the board as the basis for project funding eligibility, except to the extent of any information that the board finds is demonstrated, pursuant to the information certified and any other documentation available to the board from prior project funding applications for that district, to be materially inaccurate, regardless of whether the inaccuracy was intended. No later than 30 calendar days after receipt of the determinations certified pursuant to subdivision (a), the board shall notify the district of any inaccuracies identified under this subdivision.

(c) Each self-certifying district shall maintain documentation of the determinations described in subdivision (a) as required by the board. Those determinations shall be subject to subsequent audit as the board may direct.

(d) All estimates of average daily attendance for a self-certifying district for the purposes of this article shall be made by the district in accordance with the standards governing those estimates that are adopted by the board. Each determination made by a self-certifying district pursuant to this subdivision shall be reviewed for accuracy by the board or by the county office of education in the county in which the district is located. In the event that the review is performed by the board, that review shall be completed no later than 45 calendar days subsequent to the board's receipt from the district of all documentation necessary for that purpose.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17041.2. Information certified by self-certifying districts; random audits; material inaccuracy; penalties; arbitration

(a) The State Allocation Board shall conduct random audits of the information certified by self-certifying districts pursuant to this chapter, except as to any determinations that are made under subdivision (d) of Section 17041.1 or that are subject to audit by the State Department of Education pursuant to Section 17024, using generally accepted auditing principles, at any time to ensure compliance with the law.

(b) If any information submitted by a self-certifying district in its certification of funding eligibility for any project is found by the board to contain any material inaccuracy, any building area constructed as a result, in excess of the building area to which the district was entitled for purposes of that project, shall be included in the calculation of the area of adequate school construction for the purposes of all subsequent project applications by the district under this chapter. In addition, the board shall impose both of the following penalties:

(1) Pursuant to a repayment schedule approved by the board, the district shall repay to the board of no more than five years, for deposit in the State School Building Lease-Purchase Fund, an amount equal to the amount of project funding allocated under this chapter to construct that excess building area, together with interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. The amount of any repayment owing under this paragraph for any fiscal year, which is not repaid otherwise by the district, shall be withheld by the board from any project funding that otherwise would be allocated to that district under this chapter in that fiscal year. As to any repayment obligation remaining for that fiscal year, the board shall notify the Superintendent of Public Instruction, who shall withhold the amount of that remaining obligation from the apportionments to be made to the district from the State School Fund in that fiscal year.

(2) The information that otherwise may be certified under this chapter by a self-certifying district shall be made by the board under any subsequent applications for project funding, rather than by the applicant district, for a period of up to five years following the date of the finding of a material inaccuracy, or until the district's repayment of the entire amount owing under paragraph (1), whichever occurs later.

(c) Any school district against which the board imposes the penalties under paragraphs (1) and (2) of subdivision (b) may submit for binding determination by an arbitrator the issue of whether the penalties imposed are disproportionate to the inaccuracy certified by the district. Except as otherwise provided by this chapter, the procedure governing the arbitration shall be as set forth in Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(d) It is the intent of the Legislature that audits as described in this section not interfere with the application and construction process under this chapter unless one or more violations are discovered.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17041.3. Alternative computation of allowable building area; combination of adjacent high school attendance areas; conditions

For the purposes of Sections 17041 and 17041.5, allowable building area may be computed, in the alternative to the methods prescribed by Section 17041, for any combination of two or more adjacent high school attendance areas pursuant to the following conditions:

(a) The project to be funded is for the construction of a high school, junior high school, or elementary school located or to be located in any of those high school attendance areas.

(b) The high school, junior high school, or elementary school to be constructed is to serve pupils residing in each of those high school attendance areas.

(c) The combined computation of allowable building area reflects the allowable building area to which each of the high school attendance areas would otherwise be entitled, reflecting the proportion of projected pupil enrollment in the school to be constructed, as calculated under this chapter, from each of those attendance areas.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17041.5. Use of allowable building area for construction of district administration and maintenance facilities; inclusion in computation

(a) Whenever the area of adequate school construction existing in an attendance area is less than the maximum area computed for that attendance area, any portion of the remaining computed allowable building area may be used for the construction of district administration and maintenance facilities.

(b) If the allowable building area is computed separately by attendance area, the board shall include within the computation of the maximum area for that attendance area the proposed building area of a project for the construction of district administration and maintenance facilities.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17041.6. Priority in allocation of funds for school facilities construction

The board shall, in allocating funds for school facilities construction pursuant to this chapter, give first priority to applicant districts proposing additional classrooms within their maximum allowable building area before allocating funds to applicant districts proposing administration and maintenance facilities.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17041.8. Expenditure of supplemental project funds; maximum amount of entitlement

(a) Notwithstanding any other provision of law, any applicant school district that receives supplemental project funding under Sections 17040.6, 17040.7, 17040.8, and 17041.8 shall apply that funding to the purposes of the project funded, in compliance with any requirements set forth in those sections, but need not comply in that regard with the allowable building area of that project as otherwise calculated under this chapter. The expenditure of the supplemental project funds authorized under those sections is exempt from the total building cost standards applicable to the project. In addition, the increase in building area authorized under this subdivision is exempt, for purposes of any subsequent application for project funding under this chapter, from the calculation of existing adequate school construction of the district.

(b) Notwithstanding any other provision of law, the total amount of supplemental project funding that an applicant district is entitled to receive under Sections 17040.6, 17040.7, 17040.8, and 17040.9 may not exceed the lesser of the following:

(1) An amount equal to that calculated under subdivision (b) of Section 17040.9.

(2) An amount equal to the sum of four thousand dollars (\$4,000) for each of the first 500 units of estimated average daily attendance for the project, and two thousand dollars (\$2,000) for each additional unit of estimated average daily attendance. The monetary rates set forth in this paragraph shall be increased annually for inflation for the prior calendar year on the basis of the cost index for class B construction as determined in the January meeting of the board.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17042. Adoption of rules for determining the area of adequate school construction; exceptions

(a) The board, by the adoption of rules, shall provide for the manner of determining the area of adequate school construction existing in an applicant school district at the time of application. Those rules shall define and provide for the method of determining building areas that are to be included in, in whole or in part, or to be excluded from, the area of existing adequate school construction. Any building to which Article 3 (commencing with Section 39140) of Chapter 1 of Part 23 of Division 3 of Title 2 does not apply shall not be considered adequate school construction for the purpose of determining the maximum total building area per attendance unit.

The board may make exceptions to the provisions of this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

(b) For the purposes of this chapter, the area of adequate school construction existing in an applicant school district does not include any of the following:

(1) Any portable classroom made available to the district under Chapter 25 (commencing with Section 17785).

(2) In any school operated on a year-round schedule, any building area that has been in continuous use during the preceding five-year period primarily for the operation of any preschool program or programs.

(3) Any building area, not to exceed the area that is equivalent to one classroom per schoolsite, used to provide support services pursuant to Chapter 5 (commencing with Section 8800) of Part 6 or to provide integrated children's services pursuant to Section 18986.40 of the Welfare and Institutions Code. A school shall meet the definition of a "qualifying school" under paragraph (1) of subdivision (h) of Section 8802 to qualify for this exemption from the area of adequate school construction.

(4) Any classroom acquired or constructed and continuously used by the school district primarily for the purpose of reducing class size in kindergarten or in any of grades 1 to 3, inclusive, pursuant to the school district's participation in the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28.

(5) Any classroom acquired or constructed for the purpose of operating a community day school pursuant to Section 48660, if the classroom is not located on a regular elementary, middle, junior high, or senior high school site.

(c) The board may make exceptions to this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

(Added by Stats.1997, c. 893 (S.B.161), § 86.)

§ 17042.5. Determination of area of adequate school construction; inclusion of portable classrooms

(a) For purposes of determining the area of adequate school construction existing in an applicant school district pursuant to Section 17042.7, all portable classrooms, whether owned or leased, shall be included, except as otherwise provided in paragraphs (1) to (3), inclusive.

(1) Leased portable classrooms acquired by a school district shall not be included in the area of existing adequate school construction until January 1, 1991.

(2) Portable classrooms leased pursuant to Chapter 14 (commencing with Section 17085) shall be excluded from the area of adequate school construction. Portable classrooms obtained by an applicant district pursuant to subdivision (b) of Section 17088.5 also shall be excluded from the area of adequate school construction, except as to any portable classroom or classrooms for which the district rejected the board's offer to purchase pursuant to that subdivision.

(3) Portable classrooms that have been leased or owned by the district for 20 years or more shall be excluded from the area of adequate school construction.

(4) Leased portable classrooms shall not be included in the area of adequate school construction for a period of five years from the date first leased by the district. That exclusion shall be extended by the board for one additional five-year period where the board finds that the continued use of the leased portable classrooms for classroom purposes is justified by additional growth in average daily attendance pursuant to the standards established by this part. If the board finds continued use to be no longer justified, it may extend the exclusion for a period of up to two years as necessary to maintain the eligibility of the applicant district for project funding pursuant to this chapter if the board finds that the district has made a good faith effort to obtain that funding in a timely manner. The additional five-year exclusion shall not apply to any portable classroom for which, under the lease agreement, the district is to take title, or the total consideration paid by the district for the lease and an option to purchase is determined by the board to be substantially equivalent to the cost of acquiring title.

(b) For purposes of this section, "portable classroom" means a classroom building of modular design and construction that meets all of the following criteria:

(1) Is designed and constructed to be relocatable and transportable over public streets.

(2) Is designed and constructed for relocation without the separation of the roof or floor from the building.

(3) When measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17042.7. Formula for calculation of adequate school construction

(a) For any project application filed or amended on or after January 1, 1993, the area of adequate school construction existing in the applicant school district or, where appropriate, in the attendance area, at the time of application shall be calculated pursuant to the following formula:

(1) Identify by grade level all teaching stations existing in the school district or, where appropriate, the attendance area, as of January 1, 1993. For the purposes of this section, "teaching station" means any space that was constructed or reconstructed to serve as an area in which to provide pupil instruction.

(2) Determine the maximum pupil loading figure for each grade level pursuant to the district pupil loading standards in effect on January 1, 1993. For the purposes of this section, the "district pupil loading standards" are those pupil loading standards in effect in a school district on July 1, 1992, as a result of actions including, but not necessarily limited to, the execution of a collective bargaining agreement or the adoption of a district policy by the governing board of the school district. In no event may this figure be more than the maximum pupil loading standards established by the board, or less than three pupil units lower than those maximum pupil loading standards.

(3) Multiply the figure determined under paragraph (2) for each grade level by the number of teaching stations for the particular grade level, as determined under paragraph (1).

(4) Multiply the product determined under paragraph (3) by the maximum area allowance established for that grade level under this article.

(5) The sum of these computations for each grade level, as determined under paragraphs (1) to (4), inclusive, shall be the total area of adequate school construction existing in the district or attendance area pursuant to this formula.

(b) For purposes of this section, a school district that is participating in a class size reduction program set forth in this code, other than the Class Size Reduction Program (Ch. 6.10 (commencing with Section 52120) of Part 28), shall use the pupil loading standard established pursuant to that program.

(c) The area of existing adequate school construction calculated under this section shall not include, in any school operated on a year-round schedule, any teaching station that has been in continuous use during the preceding five-year period primarily for the operation of a preschool program or programs.

(Added by Stats.1997, c. 893 (S.B.161), § 88.)

§ 17042.9. Portable classrooms; replacement with permanent buildings

(a) Notwithstanding any other provision of law, a school district that complies with the requirements of subdivision (b) may replace a portable classroom, as defined in Section 17742.5, that has been leased or owned by the district for 20 years or more, with a permanent building if the resulting area of new building construction is no greater than the area that would be authorized under this chapter for the lease or purchase of a portable classroom.

(b) A school district that utilizes subdivision (a) shall fund its expenses incurred thereby through the issuance of general obligation bonds by the district or by the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) or by any other financing mechanism that does not encumber the school district's general fund.

(Added by Stats.1997, c. 893 (S.B.161), § 89.)

§ 17043. Maximum area; certain kindergartens and grades 1 to 6

(a) There shall be allowed to each district with attendance units of 300 or more in kindergarten and grades 1 to 6, inclusive, a maximum area of 55 square feet for each attendance unit of the district in kindergarten and grades 1 to 6, inclusive.

(b) The maximum total building area per attendance unit allowed to applicant districts with attendance units of less than 300 in kindergarten and grades 1 to 6, inclusive, for such attendance units shall be determined by the board, and shall be building area to provide comparable facilities to those provided by subdivision (a) of this section, and shall be the least building area required to house adequately the estimated average daily attendance and the normal instructional and other services.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17044. Maximum area; grades 7 and 8

There shall be allowed to each district a maximum area of 75 square feet for each attendance unit of the district in grades 7 and 8.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17045. Maximum area; junior high schools

The maximum area allowed to a district for attendance units in junior high schools composed of grades 7 to 9, inclusive, or 7 to 10, inclusive, as the case may be, shall be determined pursuant to this section, rather than Sections 17044 and 17046. This section shall not apply to junior high schools composed of grades 7 and 8 only.

The maximum area allowed for attendance units in junior high schools shall be determined by computing, in accordance with this section, the number of square feet for the attendance units at each junior high school attendance center of the district, and totaling the number of square feet so determined for all attendance units in all such junior high school attendance centers of the district. There shall be allowed a maximum area of 75 square feet for each attendance unit of the junior high school attendance center in grades 7 and 8. For each attendance unit in grade 9, or grades 9 and 10, as the case may be, at each junior high school attendance center, there shall be allowed a maximum area equal to the number of square feet which would be allowed under Section 17046 for each attendance unit of an attendance center having a total number of attendance units equal to the total number of attendance units in grades 7 to 9, inclusive, or 7 to 10, inclusive, as the case may be, at such junior high school attendance center. The number of square feet which would be allowed under Section 17046 for each attendance unit of an attendance center shall be computed by determining in accordance with that section the total number of square feet which would be allowed at an attendance center and dividing such total number of square feet by the total number of attendance units at such attendance center.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17046. Maximum area; grades 9 through 12

There shall be allowed to each district a maximum area for the attendance units of the district in grades 9 to 12, inclusive, determined by computing, for the attendance units in grades 9 to 12, inclusive, at each attendance center of the district, a number of square feet for the number of attendance units in such grades at each attendance center, in accordance with the following table, and totaling the number of square feet so determined for all attendance units in such grades of all attendance centers of the district:

Attendance units of attendance center	Maximum number of square feet of building area
1- 50	18,000
51-100	18,000 plus 162 for each attendance unit over 50
101-200	26,100 plus 99 for each attendance unit over 100
201-300	36,000 plus 60 for each attendance unit over 200
301-600	42,000 plus 54 for each attendance unit over 300
601-1,800	58,200 plus 80 for each attendance unit over 600
Over 1,800	154,200 plus 85 for each attendance unit over 1,800

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17046.7. Determination of area of allowable new building construction

Notwithstanding any other provision of law, the determination of the area of allowable new building construction for any project for an applicant school district for which original construction commenced on or after January 1, 1987, shall be made on the basis of 107 percent of the area that would otherwise be determined for that purpose under this chapter, calculated to the nearest whole number.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17046.8. Maximum allowable building area; reduction

Notwithstanding any other provisions of law, the maximum allowable building area for each applicant district shall be reduced by the product of the maximum area per attendance unit calculated for each appropriate grade level and the number of pupils reported by the Superintendent of Public Instruction for that grade level pursuant to Section 42268. This reduction shall be calculated on the basis, at the district's option, of either the district as a whole or the appropriate attendance area, as defined in Section 17041.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17047. Special day class and Resource Specialist Program Facilities; allowable new building area

(a) The allowable new building area for the purpose of providing special day class and Resource Specialist Program facilities for special education pupils shall be negotiated and approved by the State Allocation Board, with any necessary assistance to be provided by the Special Education Division of the State Department of Education. The square footage allowances shall be computed within the maximum square footage set forth in the following schedule:

Special Day Class Basic Need	Grade Levels	Load- ing*	Square Footage																		
Nonsevere Disability																					
—Specific Learning Disability	All	12	1080																		
—Mildly Mentally Retarded	All	12	1080																		
—Severe Disorder of Language	All	10	1080																		
Severe Disability																					
—Deaf and Hard of Hearing	All	10	1080																		
—Visually Impaired	All	10	1330 (1080 + 250 storage)																		
—Orthopedically and Other Health Impaired	All	12	2000 (1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy + 750 therapy per additional classroom)																		
—Autistic	All	6	1160 (1080 + 80 toilets)																		
—Severely Emotionally Disturbed	All	6	1160 (1080 + 80 toilets)																		
—Severely Mentally Retarded	Elem.	12	1750 (1080 + 400 toilets + 270 daily living skills) Secun. 2150 (1080 + 400 toilets + 270 daily living skills + 400 vocational)																		
—Developmentally Disabled	All	10	2000 (1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy** + 750 therapy per additional CR)																		
—Deaf-Blind/Multi	All	5	1400 (1080 + 200 storage + 150 toilets)																		
Resource Specialist Program for those pupils with disabling conditions whose needs have been identified by the Individualized Education Program (IEP) Team, who require special education for a portion of the day, and who are assigned to a regular classroom for a majority of the schoolday.***		All Maximum caseload for RS is 28, not all served at same time	<table border="1"> <thead> <tr> <th>Pupils</th> <th>Square Feet</th> </tr> </thead> <tbody> <tr> <td>1-8</td> <td>240</td> </tr> <tr> <td>9-28</td> <td>480</td> </tr> <tr> <td>29-37</td> <td>720</td> </tr> <tr> <td>38-56</td> <td>960</td> </tr> <tr> <td>57-65</td> <td>1200</td> </tr> <tr> <td>66-85</td> <td>1440</td> </tr> <tr> <td>86-94</td> <td>1680</td> </tr> <tr> <td>95-112</td> <td>1920</td> </tr> </tbody> </table>	Pupils	Square Feet	1-8	240	9-28	480	29-37	720	38-56	960	57-65	1200	66-85	1440	86-94	1680	95-112	1920
Pupils	Square Feet																				
1-8	240																				
9-28	480																				
29-37	720																				
38-56	960																				
57-65	1200																				
66-85	1440																				
86-94	1680																				
95-112	1920																				

* Special pupils may usually be grouped without accordance to type, especially in smaller districts or where attendance zones may indicate, to maximize loadings per classroom where there are children with similar educational needs (Sec. 56364 or 56364.2, as applicable).

** Therapy add-ons not to be provided if on same site as orthopedically impaired.

*** To a maximum of 4 percent of the unhoused average daily attendance of the district, per new school or addition, to a maximum of 1920 square feet.

(b) The allowable new building area shall be computed by dividing the number of eligible pupils by the minimum required loading per classroom for special day classes for the type of pupils to be enrolled. No new or additional facility shall be provided for special day classes unless the number of additional eligible pupils equals one-third or more of the minimum required loading.

(Added by Stats.1996, c. 277 (S.B.156), operative Jan. 1, 1998. Amended by Stats.1998, c. 89 (A.B.598), § 6, eff. June 30, 1998, operative July 1, 1998; Stats.1998, c. 691 (S.B.1686), § 2.)

§ 17047.5. Facilities used by pupils with exceptional needs; design and location; integration; regulations; waiver; exceptions

(a) All school facilities purchased or newly constructed pursuant to this chapter for use, in whole or in part, by pupils who are individuals with exceptional needs, as defined in Section 56026, shall be designed and located on the schoolsite so as to maximize interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both.

(b) School district governing boards and county offices of education shall ensure that school facilities for pupils who are individuals with exceptional needs are integrated with other school facilities in applying for the purchase or new construction of school facilities pursuant to this chapter.

(c) The State Allocation Board, after consultation with the State Department of Education and representatives from county offices of education, special education services regions, and school districts, shall develop and adopt any regulations necessary to implement this section.

(d) Notwithstanding any other law, the requirement set forth in subdivision (a) may be waived, by the Superintendent of Public Instruction, only upon compliance with the following procedure:

(1) The applicant school district or county superintendent of schools shall file a written request for waiver that documents the reasons for its inability to comply with the requirement.

(2) The State Department of Education shall verify the reasons set forth pursuant to paragraph (1), including the documentation submitted, which verification shall be completed no later than 30 days after the filing of the request for waiver with the Superintendent of Public Instruction.

(3) The Advisory Commission on Special Education, as established under Section 33590, at its first scheduled meeting following the verification conducted pursuant to paragraph (2), shall review the request for waiver, accompanying documentation, and the verification findings of the State Department of Education. No later than 15 days following the date of that meeting, the commission shall submit its written comments and recommendations regarding the request for waiver to the Superintendent of Public Instruction.

(4) The Superintendent of Public Instruction shall review the comments and recommendations submitted by the Advisory Commission on Special Education prior to approving or rejecting the request for waiver.

(5) Any request for waiver, submitted in accordance with this section, that is not rejected within 60 days of its receipt by the State Department of Education, shall be deemed approved.

(e) This section does not apply to any application for project funding under this chapter that meets one of the following conditions:

(1) The application was submitted to the board prior to January 1, 1987, and all of the facilities under the project for use, in whole or in part, by pupils who are individuals with exceptional needs are located on a schoolsite on which facilities for use by other pupils are also located.

(2) The application is for any other project, for which, prior to January 1, 1987, the board approved the drawing of final plans and the preparation of final specifications.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17047.6. Portable classrooms; county community school programs; eligibility to lease

The board, with the advice of the Superintendent of Public Instruction, may determine the eligibility of county superintendents of schools to lease portable classrooms provided that a county superintendent of schools is eligible to receive one portable classroom pursuant to this section and Section 17717.2 for each 15 units of average daily attendance at county community schools in excess of the amount of average daily attendance claimed by the county superintendent of schools in the prior fiscal year except that, for pupils who are enrolled in a county community school and on independent study, only time spent in the classroom shall be included in the calculation of average daily attendance.

(Added by Stats.1997, c. 893 (S.B.161), § 90.)

§ 17048. Additional building area allocation; existing buildings

Whenever an existing building is to be reconstructed, rather than replaced, under an application pursuant to this chapter, there shall be allowed, for those attendance units to be housed in such reconstructed building, an additional five square feet of building area beyond the amounts set forth in Section 17043, 17044, 17045, or 17046.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17049. Allowable new building construction; relocatable structures; percentage requirements; exemptions

(a) The board shall require, as a condition of providing funding for any project under this chapter, that, for any facilities for kindergarten or any of grades 1 to 12, inclusive, or for any facilities for special education or continuation high school purposes, at least 30 percent of allowable new building construction for classrooms under the project be utilized for relocatable structures.

(b) The board may reduce the percentage requirement set forth in subdivision (a), as to any applicant, in the event that the quantity of relocatable structures necessary to comply with those requirements is unavailable from the manufacturers of those structures.

(c) The board may reduce or eliminate the percentage requirements set forth in subdivision (a), as to any applicant, under either of the following circumstances:

(1) Where the board finds that special conditions of terrain, climate, or unavailability of space within the attendance area make the use of relocatable structures impractical or inappropriate.

(2) Under the condition that, as the result of a future project for which the district receives funding under this chapter, located on the same schoolsite on which the current project is located, at least 30 percent of total building construction for classrooms on that schoolsite will be utilized for relocatable structures.

(d) Relocatable structures acquired by an applicant school district up to two years preceding the final approval by the board of the project application submitted by the district shall apply to the percentage requirements set forth in subdivision (a).

(e) Notwithstanding subdivision (d), relocatable structures acquired by an applicant school district up to 10 years preceding the final approval by the board of the project application submitted by the district shall apply to the percentage requirements set forth in subdivision (a) if the relocatable structures are to be situated on the site of a new school to be constructed under the project and all of the following conditions are met:

(1) The relocatable structures were not previously used to satisfy the 30 percent requirement set forth in subdivision (a) under any other project constructed pursuant to this chapter.

(2) The board determines that the relocatable structures are in satisfactory condition upon being moved to the new schoolsite, and are usable for classroom purposes without requiring major repair or renovation for a period of not less than 20 years subsequent to that relocation.

(3) Subsequent to moving the relocatable structures to the new schoolsite, at least 30 percent of the classroom space at the schoolsite where the structures were previously located consists of relocatable structures.

The cost of moving the relocatable structures to the new schoolsite shall be at the school district's sole expense.

(f) Whenever at least 10 percent of the allowable new building construction contained in an application is to be utilized for relocatable structures, an additional three square feet of building area for each pupil to be housed under the approved project shall be allowed.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17050. Joint-use library facility; contract for operation; lease-purchase; evaluation of application for project; contents of contract; space calculations

(a) A district may enter into a contract with the county, or other appropriate entity having responsibility for the provision of public library services, in which the district is located for the purpose of operating a joint-use library facility at a schoolsite owned by the district.

(b) The district may apply for the lease-purchase of a project which includes a library facility, pursuant to Section 17017, which facility, if constructed, would be of sufficient size to accommodate the requirements of a joint-use library for which the district has entered into a contract, pursuant to subdivision (a).

(c) Should the board receive an application for a project which includes space for a joint-use library, the board shall evaluate the application disregarding any space in the proposed library facility which is beyond the needs of the district, provided the application contains a copy of the contract specified in subdivision (a), and provided that the contract contains at least the following:

(1) Agreement that the county or other appropriate entity shall deposit in the county school lease-purchase fund, created pursuant to Section 17034, an amount equal to the total cost of any space in the proposed library facility which is beyond the needs of the district, prior to the signing of the construction contract for the project. The deposit shall not be refundable, except to the extent that it may prove subsequently to be in excess of the actual total cost of the space which is beyond the needs of the district.

(2) Agreement between the district and the county or other appropriate entity regarding staffing, maintenance, materials acquisition, and other matters related to the administration and operating costs of the joint-use facility.

(3) Agreement between the district and the county or other appropriate entity regarding the procedure for amendment or termination of the contract, including the disposition of materials housed in the joint-use facility should termination of the contract occur.

(d) Any space in a joint-use library which is beyond the needs of the district shall not be included by the board in any calculations made for any other purposes provided for in this article for the period of time that the contract for that joint-use facility remains in effect. Should the contract be terminated, the board shall include the additional space in any calculations made after the termination for any other purposes provided for in this article.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17051. Joint use of facilities; agreements; contents; evaluation of project applications

(a) A district may enter into an agreement with another governmental entity that includes some or all of the territory of the district for the purpose of the joint use of park and recreation facilities, including an auditorium, or commercial or industrial facilities.

(b) If the board receives an application for a project that includes some or all of the territory of the district for the purpose of the joint use of park and recreation facilities or commercial or industrial facilities, the board shall evaluate the application disregarding any space in the proposed joint-use facility that is beyond the needs of the district if the application contains a copy of the agreement specified in subdivision (a) and if the contract contains at least the following:

(1) An agreement that the county or other appropriate entity shall deposit in the county school lease-purchase fund, created pursuant to Section 17034, an amount equal to the total cost of any space in the proposed joint-use facility that is beyond the needs of the district, prior to the signing of the construction contract for the project. The deposit shall not be refundable, except to the extent that it may prove subsequently to be in excess of the actual total cost of the space that is beyond the needs of the district.

(2) An agreement between the district and the county or other appropriate entity regarding staffing, maintenance, materials acquisition, and other matters related to the administration and operating costs of the joint-use facility.

(3) An agreement between the district and the county or other appropriate entity regarding the procedure for amendment or termination of the contract, including the disposition of materials housed in the joint-use facility should termination of the contract occur.

(c) Any space in a joint-use facility that is beyond the needs of the district shall not be included by the board in any calculations made for any other purposes provided for in this article for the period of time that the contract for that joint-use facility remains in effect. If the contract is terminated, the board shall include the additional space in any calculations made after the termination for any other purposes provided for in this article.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17052. State Allocation Board; funding of joint-use projects to construct libraries, multipurpose rooms, and gymnasiums; application for funding

(a) Notwithstanding any other provision of law, the State Allocation Board may fund joint-use projects to construct libraries, multipurpose rooms, and gymnasiums, on school campuses where these facilities are used jointly for both school and community purposes.

(b) A school district may apply to the State Allocation Board for funding under this section if it meets all of the following requirements:

(1) The school does not have the type of facility for which it seeks funding.

(2) The school district agrees to provide local matching funds for 50 percent of the eligible cost of the facility as set forth in subdivision (c), and 100 percent local or joint-use funding for all costs that exceed that standard, as required by subdivision (d).

(3) The school district has obtained approval of the plans for the facility from the Division of the State Architect and the State Department of Education.

(4) The school district has entered into a joint-use agreement with its joint-use partner that specifies the method for sharing capital and operating costs, specifies relative responsibilities for the operation and staffing of the facility, and specifies the manner in which the safety of school pupils will be maintained during school hours.

(5) The school district demonstrates that the facility will be used to the maximum extent possible for school and community purposes after regular school hours.

(c) The State Allocation Board shall establish standards for the amount of funding to be made available for each project under this section. The funding standards may be expressed as per-square-foot cost limits or per-pupil cost limits or both.

(d) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards set forth in subdivision (c) if the excess is paid completely by local or joint-use partnership sources.

(e) On July 1 of each year the board shall apportion to qualifying applicant school districts those funds that it determines are available for the purposes of this section.

(f) The board may establish priority standards to govern the order of funding projects. If applications exceed available funding, the board shall give priority to applications where the size of the project is increased by at least 30 percent beyond minimum essential facilities through the use of additional funding from a joint-use partner.

(Added by Stats.2000, c. 753 (S.B.1795), § 2.)

§ 17055. Authorization for project funding to construct; design features

(a) The board shall authorize project funding under this chapter for the construction, in urban areas in which the construction of schools would ordinarily require the removal of residential, commercial, or industrial structures, of four elementary or junior high schools, or any combination thereof, none of which serve any of the grades 10 to 12, inclusive.

(b) The construction funded pursuant to subdivision (a) shall be designed to minimize the need for the relocation of inhabitants of residential, commercial, or industrial structures. The design features of the schools may include, but should not be limited to, the use of below-ground facility construction, multistory construction, multiuse construction where single-use construction currently exists, the joint use of facilities that otherwise involve such uses as a shopping center, office complex, or apartment building, the joint or dual use of land that otherwise involves park or other uses, overhead or underground parking, or the use of areas above or below streets or freeways.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17056. Application for project by school district; duties after approval

Any school district that is a project applicant under this chapter may apply for the funding of a school specifically under this article, pursuant to which it may be approved by the board for funding only to the extent of its project eligibility under this chapter. The governing board of each district for which that funding is approved by the board shall do all of the following, in the order specified:

(a) Identify an area within the district that it determines to be appropriate for the construction of a school that meets the purposes of this article.

(b) Establish criteria for the purpose of identifying the school design that will most effectively accomplish the purposes of this article and the needs of the district. The district shall thereupon issue, in a manner approved by the board, a request for architectural design proposals incorporating those criteria.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17058. Maximum cost of projects

The cost of any project funded under this article shall not exceed the maximum cost that would otherwise be allowable for a project funded under this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17059. Legislative findings and declarations

The Legislature finds and declares as follows:

(a) In many areas of the state, overcrowding in the schools has created a need for new school facilities in neighborhoods where little or no vacant land exists. School districts are compelled, therefore, to acquire property that already has been developed with structures, then demolish these structures and construct classroom space.

(b) With an estimated statewide need for school facilities within the next five years that exceeds fourteen billion dollars (\$14,000,000,000), neither state nor local funds reasonably can be anticipated to meet this need.

(c) In many of the areas having overcrowded schools, a significant supply exists of vacant space in structures meeting current building codes.

(d) Use of this vacant space by schools can be a cost-effective means of providing classroom space for the students of California.

(e) This chapter and Section 4-306 of Part 1 of Title 24 of the California Code of Regulations authorize the reconstruction of existing commercial buildings for school facility purposes.

(f) No existing commercial building shall be considered for reconstruction for school facility classroom purposes unless it was designed and constructed according to the standards established in the 1976 Uniform Building Code or subsequent editions of that code.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17059.1. School district; commercial building conversion; new construction funding use

In a manner that is consistent with this chapter and the California Code of Regulations, a school district that is eligible for an apportionment for project funding for new construction under this chapter may use that apportionment for the acquisition and conversion of an existing commercial building to school facility purposes.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17059.2. State Allocation Board; school district advice and assistance

The State Allocation Board in conjunction with the office of the State Architect shall advise all school districts in the state of the existence of the procedure for reconstructing existing commercial buildings for school facility purposes and shall upon request assist in the interpretation and successful implementation of the pertinent regulations in the California Code of Regulations.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17060. Joint venture agreements

(a) A school district may enter into a joint venture relationship for the purposes of school facilities construction. Notwithstanding any other provision of this chapter, a school district entering into a joint venture relationship does so as an independent entity and not as an agent of the State Allocation Board.

(b) For the purposes of this article, "joint venture" means a collaborative undertaking by two or more persons or organizations for a specific project or projects, having the legal characteristics of a partnership.

(c) The joint venture relationship may, but is not required to, include any of the following:

(1) Joint use of the property of, or facilities on, the project site.

(2) Ground leases, alternative financing arrangements, or similar financing arrangements.

(3) A construction arrangement in which a school district enters into an agreement with a developer pursuant to which the school district initially stipulates the basic performance and programmatic criteria for the facility and the developer provides input into the design work and building construction services by entering into a contract with a single source team to administer the project in a manner consistent with state law, and construct the project to, under most circumstances, a maximum price.

(d) The price for the portion of the project that is funded by the state shall be established through a bidding process as approved by the State Allocation Board. All subcontract trade groups that are included within the project, shall be determined based upon competitive bidding for each contract group. All subcontracts shall be awarded to the lowest responsible bidder.

(e) The proposed uses of any facilities constructed under the joint venture project shall not be inconsistent with educational purposes and activities.

(f) The cost of any project funded under this article shall not exceed the maximum cost that would otherwise be allowable for a project funded under this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17061. Applications for funding; requests for proposals

(a) A school district may apply to the State Allocation Board for funding for the costs of property acquisition and the cost of construction, as specified in this chapter, of the school facilities portion of a joint venture project. The school district shall publicly solicit proposals for the joint venture project pursuant to the procedures set forth in this section and Sections 17062, 17521, 17522, and 17523.

(b) Upon review of the application for funding, the State Allocation Board shall establish the maximum allowances for construction of the school facilities portion of the joint venture project. For the purpose of calculating allowances pursuant to Article 3 (commencing with Section 17040), the State Allocation Board shall use the information used to determine the allowances for the school district at the time the district received approval of funds under this chapter to acquire property on which the school facilities will be constructed, or at the time an application is made pursuant to subdivision (a), whichever is earlier.

(c) The State Allocation Board may approve, in whole or in part, an application submitted by a school district pursuant to this section in an amount the State Allocation Board may deem appropriate, not to exceed the amount applied for, subject to final approval of the joint venture agreement pursuant to Section 17063.

(d) For purposes of this section, and the process referred to in subdivision (a), a school district joint venture request for proposals shall include, but not necessarily be limited to, all of the following:

(1) A specific description of the school buildings or land, or both, to be constructed or utilized under the joint venture and a description of how the costs of the project have been determined.

(2) The identification of the current educational uses of the school buildings or land, or both, and of the educational uses proposed under the joint venture.

(3) The identification of the current noneducational uses of the proposed school buildings or land, or both, and of the noneducational uses proposed under the joint venture, and a specific assessment of the compatibility of those uses with any applicable general or specific governmental land use plan and with applicable zoning restrictions.

(4) A description of the prospective economic benefits to be derived by the school district from the joint venture.

(5) A description of the prospective educational benefits to be derived by the school district from the joint venture.

(6) A request that each request for proposal response include a comprehensive description of the joint venture, including, but not limited to, a description of the intended means of financing the joint venture.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17062. Joint venture agreements; liens on schoolsites

(a) Notwithstanding Sections 20111 and 20118.4 of the Public Contract Code, or any other law, upon approval of funding pursuant to Section 17061, a school district may utilize a request for qualifications and proposal process described in subdivision (a) of Section 17061 to select and enter into a joint venture agreement with a developer to construct school facilities. The agreement may utilize Section 17406.

(b) The joint venture agreement shall include, but not be limited to, all of the following terms:

(1) The cost of the project approved by the State Allocation Board pursuant to Section 17061 as the amount that the district will pay to the developer pursuant to the joint venture agreement upon completion of the project, if applicable.

(2) A detailed description of the project, including, but not limited to, the school facilities and any other facilities that may be included in the project and any other information necessary to meet the requirements of this chapter.

(3) The timeframe for completion of the project.

(4) A requirement that there shall be no state liability if funds are not made available within the four-year period specified in subdivision (a) of Section 17063.

(c) The joint venture agreement may also include a requirement that if the actual cost of constructing the school facility project designated in the agreement exceeds the amount set forth in that agreement, the developer shall be responsible for the additional expense.

(d) The lien placed on a schoolsite pursuant to this chapter shall only attach to that portion of the project for which state funds are actually expended. In addition, the lien shall expressly recognize any subordinate property interest created by the joint venture, and the state lien shall not be foreclosed or otherwise used to terminate the property interest, or any subordinate financing liens incidental thereto, created by the joint venture. The document creating that lien on a schoolsite shall be written in a manner to clearly prohibit assumption of any state liability resulting from the lien.

(e) Notwithstanding subdivision (d), the nondisturbance of subordinate property interests permitted in subdivision (d) shall not permit the foreclosure or other private taking of actual school facilities or property paid for with state funds in a manner that would restrict, terminate, or impair the school facilities portion of the joint venture or the school district's use thereof.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17063. Joint venture agreements; review; approval

Upon completion of the joint venture agreement pursuant to Section 17062, the school district shall transmit the agreement to the State Allocation Board for final review to determine whether the agreement is consistent with the project approval pursuant to Section 17061. The State Allocation Board shall act to approve or disapprove the complete agreement within 60 days following submission of the complete proposal to the State Allocation Board. The approval or disapproval relates to only the decision by the State Allocation Board to fund the school portion of the joint venture project and is not to be construed as an approval or disapproval of the terms and conditions of the joint venture agreement nor as authority for the school district to act as the agent of the State Allocation Board. The State Allocation Board is not made a party to the joint venture agreement and shall not incur liability under the joint venture agreement through its approval or disapproval of the agreement. The joint venture shall indemnify and hold harmless the State Allocation Board and its officers, agents, and employees from any loss or liability, including reasonable attorneys fees and costs, caused by the joint venture arising out of, or in relation to, any contract entered into by the joint venture in furtherance of the joint venture project. The date of approval by the State Allocation Board of the project shall be the date of funding eligibility for the project. The apportionment of funds for the eligible project shall be made at any point up to four years following the date of funding eligibility subject to the availability of funds for this purpose. If the state funds are not available within that four-year period, the school district may at its option remain in the funding cycle, subject to other provisions of this chapter, until the school district receives all of the funds it is eligible to receive pursuant to this article as of the date of funding eligibility. The district's eligibility for reimbursement of authorized costs and the district's position in the processing schedule for the reimbursement shall be established as the date of project approval by the State Allocation Board. The exact amount of the reimbursement shall be determined at the conclusion of the project and shall be based upon the actual subcontract trade bids and other costs allowable pursuant to Section 17019.3.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17064. Selection of design professionals

The selection of any design professional pursuant to this article shall be made in accordance with Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17065. Design and construction of school facilities

The design and construction of school facilities pursuant to this article shall comply with Article 3 (commencing with Section 17280) of Chapter 2 of Part 10.5.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17066. Prevailing wage requirements

This article does not affect any requirement of a school district to comply with the prevailing wage requirements of Article 2 (commencing with Section 1770) of Chapter 2 of Part 7 of Division 2 of the Labor Code with respect to the school facilities portion of a joint venture project under this article.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17070.10. Short title

This chapter shall be known, and may be cited, as the Leroy F. Greene School Facilities Act of 1998.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17070.15. Definitions

The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

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

(b) "Attendance area" means the geographical area serving an existing high school and those junior high schools and elementary schools included therein.

(c) "Board" means the State Allocation Board as established by Section 15490 of the Government Code.

(d) "Department" means the Department of General Services.

(e) "Committee" means the State School Building Finance Committee established pursuant to Section 15909.

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

(g) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(h) "School district" means a school district or a county office of education. For purposes of determining eligibility under this chapter, "school district" may also mean a high school attendance area.

(i) "Fund" means the 1998 State School Facilities Fund, the 2002 State School Facilities Fund,¹ or the 2004 State School Facilities Fund,² as the case may be, established pursuant to Section 17070.40.

(j) "County fund" means a county school facilities fund established pursuant to Section 17070.43.

(k) "Portable classroom" means a classroom building of one or more stories that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable classroom, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

(l) "School building capacity" means the capacity of a school building to house pupils.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 4; Stats.2002, c. 33 (A.B.16), § 1, eff. April 29, 2002.)

§ 17070.33. Guidelines for construction cost reductions

(a) The board shall adopt guidelines for use by districts by June 30, 1999, to achieve measurable reductions in the costs of school facilities construction.

(b) The guidelines shall include, but need not be limited to, all of the following:

- (1) Mechanisms designed to reduce the costs of professional fees.
- (2) Mechanisms designed to reduce the costs of site preparation.
- (3) Recommendations for the use of alternate cost-saving construction materials and methods.
- (4) Recommendations regarding the joint use of core facilities.
- (5) Mechanisms designed to reduce costs by incorporating efficiencies in schoolsite design.
- (6) Recommendations regarding the use of cost-effective, efficient reusable facility plans.

(c) If a school district's matching funds include fees charged pursuant to Section 17620 or pursuant to Section 65995.5 or 65995.7 of the Government Code, or if a district receives funds pursuant to this chapter, the district shall consider the guidelines developed pursuant to this section as fully as is practicable.

(d) When the board adopts the guidelines, it shall not include any recommendation that would have a significant detrimental effect on educational programs.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17070.40. Creation of state funds

(a)(1) A fund is hereby established in the State Treasury to be known as the 1998 State School Facilities Fund. All money in the fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated without regard to fiscal years for expenditure pursuant to this chapter.

(2) The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the 1998 State School Facilities Fund from any source.

(3) The board may make apportionments in amounts not exceeding those funds on deposit in the 1998 State School Facilities Fund, and any amount of bonds authorized by the committee, but not yet sold by the Treasurer.

(4) The board may make disbursements pursuant to any apportionment made from any funds in the 1998 State School Facilities Fund, irrespective of whether there exists at the time of the disbursement an amount in the 1998 State School Facilities Fund sufficient to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

(b)(1) A fund is hereby established in the State Treasury to be known as the 2002 State School Facilities Fund.¹ All money in the fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated without regard to fiscal years for expenditure pursuant to this chapter.

(2) The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the 2002 State School Facilities Fund from any source.

(3) The board may make apportionments in amounts not exceeding those funds on deposit in the 2002 State School Facilities Fund, and any amount of bonds authorized by the committee, but not yet sold by the Treasurer.

(4) The board may make disbursements pursuant to any apportionment made from any funds in the 2002 State School Facilities Fund, irrespective of whether there exists at the time of the disbursement an amount in the 2002 State School Facilities Fund sufficient to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

(c)(1) A fund is hereby established in the State Treasury to be known as the 2004 State School Facilities Fund.² All money in the fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated without regard to fiscal years for expenditure pursuant to this chapter.

(2) The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the 2004 State School Facilities Fund from any source.

(3) The board may make apportionments in amounts not exceeding those funds on deposit in the 2004 State School Facilities Fund, and any amount of bonds authorized by the committee, but not yet sold by the Treasurer.

(4) The board may make disbursements pursuant to any apportionment made from any funds in the 2004 State School Facilities Fund, irrespective of whether there exists at the time of the disbursement an amount in the 2004 State School Facilities Fund sufficient to permit payment in full of all apportionments previously made. However, no disbursement shall be made from any funds required by law to be transferred to the General Fund.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.2002, c. 33 (A.B.16), § 3, eff. April 29, 2002.)

§ 17070.50. Conditions for apportionment

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

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.1999, c. 992 (A.B.387), § 1.)

§ 17070.51. Falsely certified eligibility or funding applications relating to information; notification to board; penalties

(a) If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a material inaccuracy, the Office of Public School Construction shall notify the board.

(b) The board shall impose the following penalties if an apportionment and fund release has been made based upon information in the project application or related materials that constitutes a material inaccuracy.

(1) Pursuant to a repayment schedule approved by the board of no more than five years, the school district shall repay to the board, for deposit into the 1998 State School Facilities Fund, the 2002 State School Facilities Fund,¹ or the 2004 State School Facilities Fund,² as the case may be, an amount proportionate to the additional funding received as a result of the material inaccuracy including interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater.

(2) The board shall prohibit the school district from self-certifying certain project information for any subsequent applications for project funding for a period of up to five years following the date of the finding of a material inaccuracy or until the district's repayment of the entire amount owed under paragraph (1). Although a school district that is subject to this paragraph may not self-certify, the school district shall not be prohibited from applying for state funding under this chapter. The board shall establish an alternative method for state or independent certification of compliance that shall be applicable in these cases. The process shall include, but shall not be limited to, procedures for payment by the school district of any increased costs associated with the alternative certification process.

(c) For school districts found to have provided material inaccuracies when a funding apportionment has occurred, but no fund release has been made, the board shall direct its staff to reduce the apportionment as necessary to reflect the actual nature of the project and to disregard the inaccurate information or material, and paragraph (2) of subdivision (b) shall apply.

(d) For those school districts found to have provided material inaccuracies when no funding apportionment or fund release has been made, the inaccurate information or materials shall not be considered, and paragraph (2) of subdivision (b) shall apply. The project may continue if the application, minus the inaccurate materials, is still complete.

(Added by Stats.2000, c. 590 (S.B.2066), § 1. Amended by Stats.2002, c. 33 (A.B.16), § 5, eff. April 29, 2002.)

§ 17070.55. Department of Education's assistance

Upon request of any school district, the State Department of Education shall provide assistance in the evaluation and utilization of existing school facilities and the justification of the need for schoolsites, new facilities, and the rehabilitation or replacement of existing facilities, in accordance with board regulations.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17070.60. Liability of board

Funding decisions made by the board shall not, in themselves, make the board liable for any tort, breach of contract, or any other action for damages caused by a school district arising from new construction or modernization by the district. These contracts include, but are not limited to, contracts between the school district and its construction contractors, construction managers, architects, or engineers. The school district shall be liable for all torts, breaches of contract, or any other actions for damages caused by the school district.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17070.63. State's full and final contribution

(a) The total funding provided under this chapter shall constitute the state's full and final contribution to the project and for eligibility for state facilities funding represented by the number of unhoused pupils for which the school district is receiving the state grant. As a condition of receipt of funds, a school district shall certify that the grant amount, combined with local funds, shall be sufficient to complete the school construction project for which the grant is intended.

(b) Any funds provided to a school district under any article in this chapter may not be counted towards the local match for receipt of funds under any other article in this chapter.

(c) Any savings achieved by the district's efficient and prudent expenditure of these funds shall be retained by the district in the county fund for expenditure by the district for other high priority capital outlay purposes.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17070.70. Title to property

(a) Title, including, but not limited to, any leasehold interest as set forth in subdivision (c), to all property acquired, constructed, or improved with funds made available under this chapter shall be held by the school district to which the board grants the funds. Title, as defined solely for the purpose of a school district's eligibility to receive funds from the board pursuant to this chapter shall include an order for prejudgment possession issued by a court in an eminent domain proceeding.

(b) The applicant school district shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school buildings.

(c) Notwithstanding Section 17009.5, construction or modernization funds made available pursuant to this chapter may be expended upon property that is leased to the applicant school district only if the project qualified for and received approval by the board, prior to November 4, 1998, pursuant to Article 4 (commencing with Section 17055), of Chapter 12.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.2000, c. 127 (A.B.2866), § 7, eff. July 10, 2000; Stats.2002, c. 33 (A.B.16), § 7, eff. April 29, 2002.)

§ 17070.71. Funding on construction or modernization upon real property leased by school district; conditions

(a) Notwithstanding subdivision (a) of Section 17070.70, new construction or modernization funded pursuant to this chapter may be upon real property leased to the applicant school district if all of the following conditions are met:

(1) The property is leased from another governmental entity.

(2) The term of the lease is for at least 40 years after approval of the project under this chapter, or the school district has a lease for at least 25 years on federal property. The board may authorize a lesser term, of not less than 30 years only if the board finds that granting an exception to this requirement would be in the state's best interest.

(b) The applicant school district, and the facility on leased land, if any, shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, schoolsites and school buildings.

(c) Lease costs are not eligible project or site acquisition costs under this chapter.

(Added by Stats.2000, c. 530 (A.B.2408), § 1, eff. Sept. 19, 2000.)

§ 17070.75. Maintenance of facilities

(a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and to encourage school districts to maintain all buildings under their control, the board shall require an applicant school district to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the school district's general fund for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings, according the highest priority to funding for the purposes set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for 20 years after receipt of funds under this chapter, a minimum amount equal to or greater than 3 percent of the applicant school district's total general fund expenditures, including other financing uses, for that fiscal year. For the 1998-99 fiscal year and the 1999-2000 fiscal year, a school district may phase in this requirement by agreeing to certify the deposit of no less than 2 percent for the 1998-99 fiscal year and no less than 2½ percent for the 1999-2000 fiscal year. Annual deposits to the fund established pursuant to paragraph (1) in excess of 2½ percent of the district general fund budget may count towards the district's matching funds requirement necessary to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 17584 to the extent that funds are used for purposes that qualify for funding under that section. In addition, any district contribution to this fund may be provided in lieu of meeting the ongoing maintenance requirements pursuant to Section 17014 to the extent the funds are used for purposes established in that section. A school district that serves as the administrative unit for a special education local plan area may elect to exclude from its total general fund expenditures, for purposes of this paragraph, the distribution of revenues that are passed through to participating members of the special education local plan area. This paragraph is applicable only to the following school districts:

(A) High school districts with an average daily attendance greater than 300 pupils.

(B) Elementary school districts with an average daily attendance greater than 900 pupils.

(C) Unified school districts with an average daily attendance greater than 1,200 pupils.

(3) Certify that it has publicly approved an ongoing and major maintenance plan that outlines the use of the funds deposited, or to be deposited, pursuant to paragraph (2). The plan may provide that the district need not expend all of its annual allocation for ongoing and major maintenance in the year in which it is deposited if the cost of major maintenance requires that the allocation be carried over into another fiscal year. However, any state funds carried over into a subsequent year shall not be counted toward the annual minimum contribution by the district. A plan developed in compliance with this section shall be deemed to meet the requirements of Section 17585.

(c) A district to which paragraph (2) of subdivision (b) does not apply shall certify to the board that it can reasonably maintain its facilities with a lesser level of maintenance.

(d) For the purposes of calculating a county office of education requirement pursuant to this section, the 3 percent maintenance requirement shall be calculated based upon the county office of education general fund less any restricted accounts.

(Added by Stats.1998, c. 407 (S.B.50) § 4, eff. Aug. 27, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 5; Stats.2001, c. 1235 (S.B.804), § 10, eff. Oct. 11, 2001.)

§ 17070.77. Certification of compliance with plan adopted pursuant to § 17070.75 for completing major maintenance requirements for funded project; "Major maintenance" defined; components necessary for certification

(a) For each project funded after January 1, 2002, the board shall require the applicant school district governing board to certify, as part of the school district's annual budget process and beginning in the fiscal year in which the project is funded by the state, that it is in compliance with the plan adopted pursuant to paragraph (3) of subdivision (b) of Section 17070.75 for completing major maintenance requirements for the project.

(b) For purposes of this chapter, the term "major maintenance" means all actions necessary to keep roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and other items designated by the governing board of the school district in good repair.

(c) The board shall require the school district's governing board to certify that the plan includes and is being implemented with all of the following components:

- (1) Identification of the major maintenance needs for the project.
- (2) Specification of a schedule for completing the major maintenance.
- (3) Specification of a current cost estimate for the scheduled major maintenance needs.
- (4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance needs.
- (5) Review of the plan annually, as a part of the school district's annual budget process, and update, as needed, the major maintenance needs, the estimates of expected costs, and any adjustments in funding the reserve.
- (6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district.
- (7) Provision in the school district's annual budget for the reserve that contains the total funding available for scheduled major maintenance needs as specified in the updated plan, and an explanation if this amount of the reserve is less than that specified in the updated plan.

(Added by Stats.2001, c. 194 (A.B.1558), § 1.)

§ 17070.80. Facilities for exceptional needs pupils

(a) All school facilities purchased or newly constructed pursuant to this chapter for use, in whole or in part, by pupils who are individuals with exceptional needs, as defined in Section 56026, shall be designed and located on the schoolsite so as to maximize interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both.

(b) The governing board of each applicant school district and the county office of education shall ensure that school facilities for pupils who are individuals with exceptional needs are integrated with other school facilities.

(c) The State Allocation Board, after consultation with the State Department of Education and representatives from county offices of education, special education services regions, and school districts, shall develop and adopt any regulations necessary to implement this section.

(d) Notwithstanding any other provision of law, the requirement set forth in subdivision (a) may be waived, by the Superintendent of Public Instruction, only upon compliance with the following procedure:

(1) The applicant school district or county superintendent of schools shall file a written request for waiver that documents the reasons for its inability to comply with the requirement.

(2) The State Department of Education shall verify the reasons set forth pursuant to paragraph (1), including the documentation submitted, which verification shall be completed no later than 30 days after the filing of the request for waiver with the Superintendent of Public Instruction.

(3) The Advisory Commission on Special Education, as established under Section 33590, at its first scheduled meeting following the verification conducted pursuant to paragraph (2), shall review the request for waiver, accompanying documentation, and the verification findings of the State Department of Education. No later than 15 days following the date of that meeting, the commission shall submit its written comments and recommendations regarding the request for waiver to the Superintendent of Public Instruction.

(4) The Superintendent of Public Instruction shall review the comments and recommendations submitted by the Advisory Commission on Special Education prior to approving or rejecting the request for waiver.

(5) Any request for waiver, submitted in accordance with this section, that is not rejected within 60 days of its receipt by the State Department of Education, shall be deemed approved.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17070.90. Joint-use facilities

As a part of its application, a school district shall certify that it has considered the feasibility of the joint use of land and facilities with other governmental entities in order to minimize school facilities costs. Funds provided pursuant to this chapter for growth and modernization may be used for the school portion of joint-use facilities.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17070.95. Application for large construction and modernization projects; certification that school district has considered need for vocational and career technical facilities

As a part of its application for large construction and modernization projects, a school district shall certify, in consultation with the career technical education advisory committee established pursuant to Section 8070, that it has considered the need for vocational and career technical facilities to adequately meet its program needs consistent with Section 51224, subdivision (b) of Section 51225.3, and Section 52336.1. The board shall adopt regulations necessary for administration of this section.

(Added by Stats.2002, c. 33 (A.B.16), § 8, eff. April 29, 2002.)

§ 17070.97. Insurance

The board shall require the school district to insure against public liability or property damage in connection with any facility constructed or modernized with an apportionment under this chapter.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17070.98. Construction management

A school district that does not have employees who possess adequate construction management experience may contract for the provision of construction management, and may use funds provided pursuant to Article 4 (commencing with Section 17072.10), Article 5 (commencing with Section 17072.20), and Article 7 (commencing with Section 17074.10) for the cost of those services as expressly authorized by Section 17072.35 and Section 17074.25.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17071.10. One-time calculations; report on building capacity; newly organized districts

(a) The calculation determined by this article shall be made on a one-time basis, and will be used as the baseline for eligibility determinations pursuant to this chapter.

(b) Each school district that elects to participate in the new construction program pursuant to this chapter shall submit to the board a one-time report of existing school building capacity.

(c) Notwithstanding subdivisions (a) and (b), a school district newly formed , reorganized, or affected by reorganization, pursuant to an election that occurred on or after November 4, 1998, shall calculate or recalculate its existing school building capacity pursuant to regulations adopted by the State Allocation Board.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.1999, c. 857 (A.B.1627), § 1; Stats.1999, c. 858 (A.B.695), § 6.)

§ 17071.25. Existing school building capacity

(a) The existing school building capacity in the applicant school district or, where appropriate, in the attendance area, at the time of initial application shall be calculated pursuant to the following formula:

(1) Identify by grade level all permanent teaching stations existing in the school district or, where appropriate, the attendance area. For the purposes of this section, "teaching station" means any space that was constructed or reconstructed to serve as an area in which to provide pupil instruction, but shall not include portable buildings, except as provided in Section 17071.30.

(2)(A) The assumed capacity of each calculated teaching station pursuant to paragraph (1) shall be 25 pupils for each teaching station used for kindergarten or for grades 1 to 6, inclusive, and 27 pupils for each teaching station used for grades 7 to 12, inclusive.

(B) On or after January 1, 2000, the board may adopt or amend regulations adjusting the assumed capacity set forth in this subparagraph as appropriate for each teaching station used for nonsevere or severe special day class purposes after considering the recommendations of the Legislative Analyst pursuant to Section 17072.15. These special day class capacity adjustments and any adjustment of existing school capacity related to changes in the assumed capacity of special day class teaching stations shall be approved by the Director of Finance prior to implementation.

(C) On or after January 1, 2001, the board may adopt regulations establishing assumed capacity standards after consideration of the recommendations developed by the Director of General Services for continuation high school, community day school, county community school, and county community day school, teaching stations pursuant to Section 17072.17. Teaching station assumed capacity adjustments pursuant to these regulations and any other adjustments of existing school capacity related to changes in the assumed capacity of continuation high school, community day school, county community school, and county community day school, teaching stations shall be approved by the Director of Finance prior to implementation.

(3) Multiply the assumed capacity of each teaching station as specified in paragraph (2) by the number of teaching stations calculated under paragraph (1).

(4) The result of this computation shall be the number of pupils housed by grade level in the existing school building capacity of the applicant school district.

(b) The existing school building capacity of the applicant school district calculated under this section shall not include, in any school operated on a year-round schedule, any teaching station that has been in continuous use during the preceding five-year period primarily for the operation of a preschool program or programs.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 7.)

§ 17071.30. Portable classrooms; calculation of existing school building capacity

For purposes of determining the existing school building capacity , each applicant school district shall include each portable classroom, whether owned or leased, except as otherwise provided in subdivision (a) or (b).

(a) Portable classrooms leased pursuant to Chapter 14 (commencing with Section 17085) shall be excluded from the existing school building capacity. Portable classrooms obtained by an applicant district pursuant to subdivision (b) of Section 17088.5 shall be excluded from the existing school building capacity, except as to any portable classroom or classrooms for which the district rejected the board's offer to purchase pursuant to that subdivision.

Portable classrooms leased for a period of less than five years prior to the date of application shall not be included in existing school building capacity.

(b) The number of portable classrooms, reduced by the number of portable classrooms used as interim housing for modernization projects, that exceed 25 percent of the number of permanent classrooms available to the district shall not be included in the existing building capacity.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17071.33. Adjustments to calculations

(a) For the purposes of determining existing school building capacity, the calculation shall be adjusted as required for first priority status pursuant to Section 17017.7 as that calculation would have been made under the policies of the board in effect immediately preceding September 1, 1998.

(b) Notwithstanding subdivision (a), with respect to a high school district, the existing school building capacity shall be calculated without regard to multi-track year-round school considerations.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.2002, c. 33 (A.B.16), § 9, eff. April 29, 2002.)

§ 17071.35. Increase in maximum school building capacity

Notwithstanding any other provisions of law, the maximum school building capacity for each applicant district shall be increased by the number of pupils reported by the Superintendent of Public Instruction for that grade level pursuant to Section 42268. This adjustment shall be calculated on the basis, at the district's option, of either the district as a whole or the appropriate attendance area.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17071.40. Multitrack, year-round schools; exemption

Each school on a year-round, multitrack calendar that has a density of 200 or more pupils enrolled per acre, that is located in a school district with 40 percent of its pupils attending multitrack, year-round schools shall be exempted from the increase in school building capacity required by Section 17071.35. Nothing in this section shall be construed as exempting the school from the requirements of Section 17071.33.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17071.46. Replacement of single story building with multistory building

(a) When an applicant school district proposes to demolish a single story building and replace it with a multistory building on the same site, the State Allocation Board shall provide a supplemental grant for 50 percent of the replacement cost of the single story building to be demolished, if all of the following conditions are met:

(1) The school at which the building demolition and replacement is to occur is operating on a multitrack year-round education schedule.

(2) The cost of the demolition and replacement is less than the total cost of providing a new school facility, including land, on a new site for the additional number of pupils housed as a result of the replacement building, as determined by the State Allocation Board.

(3) The school district will maximize the increase in pupil capacity on the site when it builds the replacement building, subject to the limits imposed on it pursuant to paragraph (4).

(4) The State Department of Education has determined that the demolition of an existing single story building and replacement with a multistory building at the site is the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site, as determined by the State Department of Education.

(b) The State Allocation Board shall establish additional requirements it deems necessary to ensure that the economic interests of the state and the educational interests of the children of the state are protected.

(Added by Stats.2000, c. 458 (A.B.801), § 1. Amended by Stats.2001, c. 159 (S.B.662), § 55.)

§ 17071.75. Ongoing eligibility for new construction funding; calculations

After a one-time initial report of existing school building capacity has been completed, a school district's ongoing eligibility for new construction funding shall be determined by making all of the following calculations:

(a) Each school district that applies to receive funding for new construction shall calculate enrollment projections for the fifth year beyond the fiscal year in which the application is made. Projected enrollment shall be determined by utilizing the cohort survival enrollment projection system, as defined and approved by the board. The board may supplement the cohort survival enrollment projection by the number of unhoused pupils that are anticipated as a result of dwelling units proposed pursuant to approved and valid tentative subdivision maps.

(b) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for which facilities were provided from any state or local funding source after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10). For this purpose, the total number of pupils for which facilities were provided shall be determined using the pupil loading formula set forth in Section 17071.25.

(c) Subtract the number of pupils pursuant to subdivision (b) from the number of pupils determined pursuant to subdivision (a).

(d) The calculations required to establish eligibility under this article shall result in a distinction between the number of existing unhoused pupils and the number of projected unhoused pupils.

(e) Apply the increase or decrease resulting from the difference between the most recent report made pursuant to Section 42268, and the report used in determining the school district's baseline capacity pursuant to subdivision (a) of Section 17071.25.

(f) For a school district with an enrollment of 2,500, or less, an adjustment in enrollment projections shall not result in a loss of ongoing eligibility to that school district for a period of three years from the date of the approval of eligibility by the board.

(Amended by Stats.2002, c. 935 (A.B.14), § 3.)

§ 17071.76. Computation for each high school attendance area; calculations of combined areas

(a) Whenever the existing school building capacity in any high school attendance area prevents another high school attendance area from receiving the maximum per-unhoused-pupil grant specified for the school district as a whole the eligibility may be computed separately for each high school attendance area.

(b) For the purposes of eligibility, a school district may combine two or more adjacent high school attendance areas pursuant to the following conditions

(1) The funding eligibility is for the construction of a high school, junior high school, or elementary school located or to be located in any of those high school attendance areas.

(2) The high school, junior high school, or elementary school to be constructed is to serve pupils residing in each of those high school attendance areas

(3) The combined eligibility reflects the eligibility to which each of the high school attendance areas would otherwise be entitled, reflecting the proportion of projected pupil enrollment in the school to be constructed, as calculated under this chapter, from each of those attendance areas.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17072.10. Maximum total new construction grant eligibility; calculations

(a) The board shall determine the applicant's maximum total new construction grant eligibility by multiplying the number of unhoused pupils calculated pursuant to Article 3 (commencing with Section 17071.75) in each school district with an approved application for new construction, by the per-unhoused-pupil grant as follows:

- (1) Five thousand two hundred dollars (\$5,200) for elementary school pupils.
- (2) Five thousand five hundred dollars (\$5,500) for middle school pupils.
- (3) Seven thousand two hundred dollars (\$7,200) for high school pupils.

(b) The board shall annually adjust the per-unhoused-pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) The board may establish a single supplemental per-unhoused-pupil grant in addition to the amounts specified in subdivision (a) based on the statewide average marginal difference in costs in instances where a project requires multilevel school facilities due to limited acreage. The district's application shall demonstrate that a practical alternative site is not available.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to seven thousand five hundred dollars (\$7,500) for any new construction project assistance. The amount of the supplemental apportionment authorized pursuant to this subdivision shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 9; Stats.2002, c. 33 (A.B.16), § 11, eff. April 29, 2002.)

§ 17072.12. Assistance in site development and acquisition

(a) In addition to the amount provided in Section 17072.10, the board may provide funding for assistance in site development and acquisition if all of the following are met:

(1) The amount of the site acquisition and development assistance does not exceed 50 percent of the cost of site development to the school district, plus the lesser of the following:

(A) 50 percent of the site cost to the school district .

(B) 50 percent of the appraised value of the site within six months of the time the complete application is submitted .

(2) The school district certifies that there is no alternative available site, or that the district plans to sell an available site in order to use the proceeds of the sale for the purchase of the new site.

(b) Notwithstanding subdivision (a), the board may provide funding for assistance in site development and acquisition to a school district that uses land previously acquired by the school district in an amount equal to 50 percent of the cost of site development to the school district, plus 50 percent of the site's appraised value at the time the application for site acquisition and development is submitted, provided all of the following are met:

(1) The site was acquired no less than five years prior to the date the application is submitted.

(2) The site had been productively used by the school district as other than a schoolsite for the five years immediately preceding the date the application is submitted.

(3) The board determines that the nonschool function currently taking place on the site must be discontinued or relocated in order to utilize the site as a schoolsite.

(c) A school district that receives assistance pursuant to subdivision (b) shall, within one year after the completion of the project, certify in writing to the board that the nonschool function was in fact relocated as set forth in paragraph (4) of subdivision (b).

(d) Pursuant to subdivision (b), an applicant school district shall include in its application to the board a cost-benefit analysis performed by the school district demonstrating how utilizing existing nonschoolsite district property pursuant to this section would be a more effective method of solving the school district's pupil housing problems than any other method of funding under this chapter. The board shall review and approve the analysis if the board agrees with the findings and shall consider the analysis and findings in approving the project pursuant to this section.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.2001, c. 647 (A.B.401), § 1.)

§ 17072.13. Site acquisition and hazardous materials evaluation and response action funding

In addition to the amounts provided pursuant to Sections 17072.10 and 17072.12, the board may provide site acquisition and hazardous materials evaluation and response action funding for proposed new schoolsites as follows:

(a)(1) For 50 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and for 50 percent of the other response action costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action in connection with hazardous substances at that site. Except as provided in subdivision (b), the funding provided pursuant to this section may not exceed 50 percent * * * of the total evaluation and response action costs, including, but not limited to, the costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action, as determined by the Department of Toxic Substances Control, in connection with hazardous substances at that site, pursuant to standards adopted by the board.

(2) For projects eligible for funding under this subdivision, the total state share of the site acquisition costs, including evaluation and response action, shall not exceed 50 percent of 1½ times the appraised value of the uncontaminated site. However, the board may exceed this maximum for projects that demonstrate circumstances of extreme need.

(b)(1) The board may provide funding for up to 100 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district eligible for financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10) and for up to 100 percent of the other response action costs for the site. The funding provided pursuant to this subdivision may not exceed 100 percent of * * * the total evaluation and response action costs, including, but not limited to, the costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action, as determined by the Department of Toxic Substances Control, in connection with hazardous substances at that site, pursuant to standards adopted by the board.

(2) The board may provide funding pursuant to this subdivision only if the State Department of Education certifies that the site is the best available site considering all of the following factors in relation to other available sites:

(A) The total costs of the project, including, but not limited to, costs of evaluation and response action.

(B) The desirability of the site, considering its proximity to pupils and suitability for meeting the educational and safety needs of the school district.

(C) The time required to fully complete the project in relation to the current and projected need for school facilities.

(3) For projects eligible for funding under this subdivision, the total state share of the site acquisition costs, including evaluation and response action, shall not exceed 100 percent of 1½ times the appraised value of the uncontaminated site. However, the board may exceed this maximum for projects that demonstrate circumstances of extreme need.

(c) A school district with a proposed site that meets the environmental hardship criteria set forth in paragraph (1) may apply to the board for site acquisition, including, but not limited to, evaluation and response action, funding for that site prior to having construction plans for that site approved by the Division of the State Architect and State Department of Education * * *.

(1) A project is eligible for environmental hardship site acquisition funding if both of the following apply:

(A) The * * * preparation and implementation of a response action * * * for the site, to be approved by the Department of Toxic Substances Control * * * pursuant to Section 17213, is estimated by the Department of Toxic Substances Control to take six months or more to complete.

(B) The State Department of Education determines that the site is the best available alternative site.

(2) The initial site-specific reservation pursuant to this subdivision shall be for a period of one year. Extension may be approved in one-year intervals upon demonstration to the State Allocation Board of progress toward acquisition, including, but not limited to, evaluation or response, as the case may be. In the event there is not demonstrable progress, the State Allocation Board shall have the option of rescinding the reservation.

(3) Environmental hardship site acquisition funds approved by the State Allocation Board can be used only for the site identified in the response action approved by the Department of Toxic Substances Control.

(4) The date that the State Allocation Board approves the environmental hardship site acquisition funding will become the State Allocation Board approval date for the project's construction funding for that site.

(5) A school district may apply to the State Allocation Board for construction funding for the environmental hardship site when the project has received final Division of the State Architect plan approval and final State Department of Education site and plan approval.

(d) The cost incurred by the school districts when complying with any requirement identified in this section are allowable costs for purposes of an applicant under this chapter and may be reimbursed in accordance with * * * this section.

(e) The State Allocation Board shall develop regulations that allow school districts with financial hardship site acquisition, including, but not limited to, evaluation and response action, funding prior to ownership of the site or evidence that the site is in escrow.

(Amended by Stats.2002, c. 935 (A.B.14), § 4.)

§ 17072.18. **Removal of hazardous wastes or substances; evaluation and response action funding; application for funding**

(a)(1) The board may provide evaluation and response action funding for response costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action in connection with hazardous substances at * * * an existing schoolsite, in the same manner as provided in Section 17072.13 * * *.

(2) Funding as set forth in paragraph (1) may be provided to a school district that has not applied for, or received, funds from the board for the acquisition of a new schoolsite, but which has incurred, or will incur, response costs necessary for the development of the * * * existing schoolsite, if the school district is otherwise eligible * * * for funding under this chapter.

(b) A school district may apply for funding pursuant to this section prior to having construction plans for that site approved by the Division of the State Architect or by the State Department of Education if the school district is otherwise eligible for funding under this chapter.

(Amended by Stats.2002, c. 935 (A.B.14), § 5.)

§ 17072.20. Requests for project apportionment; applications; approval

(a) An applicant school district that has been determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) or Article 3 (commencing with Section 17071.75) may submit at any time a request to the board for a project apportionment for all or a portion of the funding for which the school district is eligible.

(b) The application shall include, but shall not be limited to, the school district's determination of the amount of state funding that the district is otherwise eligible for relating to site acquisition, site development, new construction, and hardship funding provided pursuant to Article 8 (commencing with Section 17075.10), if any. The amount shall be reduced by the amount of the alternative fee collected pursuant to subdivision (a) of Section 65995.7 of the Government Code if a reimbursement election or agreement pursuant to Section 65995.7 of the Government Code is not in effect.

(c) The board shall verify and adjust, as necessary, and approve the district's application.

* * *

(Amended by Stats.2002, c. 935 (A.B.14), § 6.)

§ 17072.30. Approval of project pursuant to Field Act

Subject to the availability of funds, and to the determination of priority pursuant to Section 17072.25, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, and certification by the school district that the required 50 percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund, or will be expended by the district by the time the project is completed, in an amount at least equal to the proposed apportionment pursuant to this chapter, prior to release of the state funds. (Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17072.32. Release of funds

For any project that has received an apportionment pursuant to Section 17072.30, funding shall be released in amounts equal to the amount of the local match upon certification by the district that the district has entered into a binding contract for completion of the approved project.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17072.33. Site acquisition

In the case of site acquisition, a district may request that the state's share of site assistance be provided to the district in amounts equal to the amount of the local match when the district enters escrow for a site included within a project.
(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17072.35. Use of new construction grant funds

A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use. (Amended by Stats.2002, c. 935 (A.B.14), § 7.)

§ 17073.10. Submission of application

Each school district that desires to receive an apportionment for modernization under this chapter shall submit an application in a form, and in the number of copies, that the board may require.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17073.15. Eligibility

A school district shall be eligible to receive an apportionment for modernization of permanent school buildings that are more than 25 years old , or in the case of portable classrooms that are at least 20 years old, and that have not been previously modernized with state funding.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17073.20. Age of buildings

Funding may be approved for the modernization of any permanent school building that is more than 25 years old, or, in the case of any portable classroom that is more than 20 years old, as described in Section 17071.30, and that prior to November 4, 1998, had not been previously modernized with state funding.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17074.10. Total eligibility for modernization funding

(a) The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level housed in permanent school buildings that are at least 25 years old or portable classrooms that are at least 20 years old, and that have not been previously modernized with state funding:

(1) Two thousand two hundred forty-six dollars (\$2,246) for each elementary pupil.

(2) Two thousand three hundred seventy-six dollars (\$2,376) for each middle school pupil.

(3) Three thousand one hundred ten dollars (\$3,110) for each high school pupil.

(b) The board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) It is the intent of the Legislature that the amounts provided pursuant to this article for school modernization do not include funding for administrative and overhead costs.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to two thousand five hundred dollars (\$2,500) for any modernization project assistance. The amount of the supplemental apportionment shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 12; Stats.2002, c. 33 (A.B.16), § 13, eff. April 29, 2002.)

EDUCATION CODE

§ 17074.15. Release of funds; applications filed on or before April 29, 2002

(a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 80-percent share, and the school district has provided its 20-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required 20-percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) This section shall apply only to an application filed on or before April 29, 2002, regardless of the source of state bond funding.

(Amended by Stats.2002, c. 935 (A.B.14), § 9.)

§ 17074.16. Release of funds; applications filed after April 29, 2002

(a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 60-percent share, and the school district has provided its 40-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required 40-percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) This section shall apply only to an application that was filed after * * * April 29, 2002.

(Amended by Stats.2002, c. 935 (A.B.14), § 10.)

EDUCATION CODE

§ 17074.20. Compliance with provisions

As a condition for the receipt of funds under this article, a school district shall ensure that all buildings modernized comply with Sections 17212, 17212.5, and 17213.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17074.25. Use of modernization funds

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

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998.)

§ 17074.26. Regulations to adjust per-pupil amounts for school building modernization projects

The board shall adopt regulations to adjust the per-pupil amounts set forth in Section 17074.14 for modernization projects for school buildings that are 50 years old or older based upon the higher costs associated with modernizing older buildings.

(Added by Stats.2002, c. 33 (A.B.16), § 16, eff. April 29, 2002.)

EDUCATION CODE

§ 17074.27. **Modernization apportionment for the control, management, or abatement of lead**

In addition to the uses specified in Section 17074.25, a modernization apportionment may also be used for the control, management, or abatement of lead.

(Added by Stats.2002, c. 1075 (S.B.21), § 2.)

EDUCATION CODE

§ 17074.30. Modernization projects; funding applications made by school districts after January 1, 2004; certifications regarding lead-containing materials and compliance with federal, state, and local standards for lead management

Commencing with applications submitted after January 1, 2004, any school district applying for funding pursuant to this article shall certify that it has considered the potential for the presence of lead-containing materials in the modernization projects and will follow all relevant federal, state, and local standards for the management of any identified lead.

(Added by Stats.2002, c. 1075 (S.B.21), § 3.)

§ 17074.50. New construction projects; modernization projects; fire detection, alarm, and sprinkler systems

(a) On and after July 1, 2002, all new construction projects submitted to the Division of the State Architect pursuant to this chapter, including, but not limited to, hardship applications, that require the approval of the Department of General Services shall include an automatic fire detection, alarm, and sprinkler system as set forth in Section 17074.52 and approved by the State Fire Marshal. These provisions shall entitle the school district to all applicable reductions in code requirements, as provided in the California Building Standards Code (Title 24 of the California Code of Regulations).

(b) On and after July 1, 2002, all modernization projects that have an estimated total cost in excess of two hundred thousand dollars (\$200,000) submitted to the Division of the State Architect pursuant to this chapter, including, but not limited to, hardship applications, that require the approval of the Department of General Services shall include an automatic fire detection and alarm system as set forth in Section 17074.52 and approved by the State Fire Marshal. For a modernization project that is to be completed in more than one phase, the school district may defer installation of the system until the final phase of the modernization project. Solely for purposes of this section, "modernization" means any modification of a permanent structure or construction of a new building on an existing campus.

(c) The Department of General Services shall administer this section based upon the standards adopted by the State Fire Marshal pursuant to Section 17074.52.

(Added by Stats.2001, c. 725 (S.B.575), § 2.)

§ 17074.52. Requirements for fire detection, alarm, and sprinkler systems

(a) For modernization projects, the automatic fire detection and alarm system required pursuant to subdivision (b) of Section 17074.50 shall consist of smoke or heat detectors, or a combination thereof, as determined by the State Fire Marshall, installed in the school building. The alarm, upon activation of an initiating device, shall alert all occupants and shall transmit the alarm signal to an approved supervising station.

(b) For new construction projects, the automatic fire detection, alarm, and sprinkler system required pursuant to subdivision (a) of Section 17074.50, shall in addition to compliance with subdivision (a), include an automatic fire sprinkler system installed in the school building including, but not necessarily limited to, attic spaces.

(c) Notwithstanding Section 17074.50 or subdivisions (a) or (b) of this section, for a stand alone portable building, the system required pursuant to this article shall consist of an automatic fire detection and alarm system. For the purposes of this subdivision a "stand alone portable building" means a portable building that is used as a single classroom and that is sited more than 25 feet from any other building, including, but not limited to, any other portable building.

(d) Except as required for automatic fire detectors and waterflow detection devices, manual fire alarm boxes shall not be required throughout the school building.

(e) The entire system shall be installed, tested, and maintained in accordance with the regulations of the State Fire Marshal.

(Added by Stats.2001, c. 725 (S.B.575), § 2.)

§ 17074.54. Portable buildings

(a) A portable building that is sited with the intent that it be at the site for less than three years and is sited upon a temporary foundation in a manner that is designed to permit easy removal, is exempt from Sections 17074.50 and 17074.52 for a period of three years from the date of siting.

(b) After the three-year exemption set forth in subdivision (a), a school district may request an extension of the exemption for an additional period not to exceed three additional years. The board shall grant the request if the school district presents convincing evidence demonstrating to the satisfaction of the board that the extension is necessary.

(c) For purposes of this section, "portable building" means a classroom building of modular design and construction that meets all of the following criteria:

(1) It is designed and constructed to be relocatable and transportable over public streets.

(2) It is designed and constructed for relocation without detaching the roof or the floor from the building.

(3) It has a floor area of 2,000 square feet or less when measured at the most exterior walls.

(Added by Stats.2001, c. 725 (S.B.575), § 2.)

§ 17074.56. Costs

(a) The State Allocation Board shall adjust the per-pupil grant amount set forth in Section 17072.10 as necessary to accommodate 50 percent of the increased costs due to the automatic fire detection, alarm, and sprinkler system required pursuant to subdivision (a) of Section 17074.50. The board shall adjust the per-pupil grant amount set forth in Section 17074.10 as necessary to accommodate 80 percent of the increased costs due to the automatic fire detection and alarm system required pursuant to subdivision (b) of Section 17074.50. The board shall establish a method to provide up to 100 percent of the increased costs of the automatic fire detection, alarm, and sprinkler, if applicable, systems for school districts which qualify for hardship assistance pursuant to paragraph (1) of subdivision (b) of Section 17075.10.

(b) By July 1, 2003, the board shall review the adequacy of the per-pupil grant adjustments made pursuant to subdivision (a) and shall increase or decrease those adjustments as determined to be necessary.

(c) Any project submitted to the Division of the State Architect on or after September 1, 2001, that includes a qualifying fire detection, alarm, and sprinkler, if applicable, system, and that has not been fully funded prior to July 1, 2002, shall be eligible for grant or eligibility adjustments as set forth in this article.

(Added by Stats.2001, c. 725 (S.B.575), § 2.)

§ 17075.10. Criteria; cost accommodation

(a) A school district may apply for hardship assistance in cases of extraordinary circumstances.

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

(1) Demonstrate both of the following:

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

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

(2) Demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities.

(c) The board shall review the increased costs that may be uniquely associated with urban construction and shall adjust the per-pupil grant for new construction, or modernization, hardship applications as necessary to accommodate those costs. The board shall adopt regulations setting forth the standards, methodology, and a schedule of allowable adjustments, for the urban adjustment factor established pursuant to this subdivision.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.2002, c. 33 (A.B.16), § 17, eff. April 29, 2002.)

§ 17075.15. Source and amount of funding; regulations

(a) From funds available from any bond act for the purpose of funding facilities for school districts with a financial hardship, the board may provide other construction, modernization, or relocation assistance as set forth in this chapter or Chapter 14 (commencing with Section 17085) to the extent that severe circumstances may require, and may adjust or defer the local financial participation, as pupil health and safety considerations require to the extent that bond act funds are provided for this purpose.

(b) The board shall adopt regulations for determining the amount of funding that may be provided to a district, and the eligibility and prioritization of funding, under this article.

(c) The regulations shall define the amount, and sources, of financing that the school district could reasonably provide for school facilities as follows:

(1) Unencumbered funds available in all facility accounts in the school district including, but not limited to, fees on development, redevelopment funds, sale proceeds from surplus property, funds generated by certificates of participation for facility purposes, bond funds, federal grants, and other funds available for school facilities, as the board may determine.

(2) The board may exclude from consideration all funds encumbered for a specific capital outlay purpose, a reasonable amount for interim housing, and other funds that the board may find are not reasonably available for the project.

(d) Further, the regulations shall also specify a method for determining required levels of local effort to obtain matching funds. The regulations shall include consideration of at least all of the following factors:

(1) Whether the school district has passed a bond measure within the two-year period immediately preceding the application for funding under this article, the proceeds of which are substantially available for use in the project to be funded under this chapter, but remains unable to provide the necessary matching share requirement.

(2) Whether the school district has a current outstanding bonded indebtedness, which shall include general obligation bonds, Mello-Roos bonds, school facility improvement district bonds, certificates of participation, and other debt instruments upon which the school district is paying a debt service, of at least 60 percent of the school district's total bonding capacity, as determined by the board.

(3) Whether the total bonding capacity, as defined in Section 15102 or 15106, as applicable, is five million dollars (\$5,000,000) or less, in which case, the school district shall be deemed eligible for financial hardship.

(4) Whether the application for funding under this article is from a county superintendent of schools.

(5) Whether the school district submits other evidence of substantial local effort acceptable to the board.

(6) The value of any unused local general obligation debt capacity, and developer fees added to the needs analysis to reflect the district's financial hardship, available for the purposes of school facilities financing.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.2002, c. 33 (A.B.16), § 18, eff. April 29, 2002.)

§ 17076.10. Expenditure reports; school district's failure to make progress

(a) A school district that has received any funds pursuant to this chapter shall submit a summary report of expenditure of state funds and of district matching funds annually until all state funds and district matching funds are expended, and shall then submit a final report to the board. The board may require an audit of these reports or other district records to ensure that all funds received pursuant to this chapter are expended in accordance with program requirements.

(b) If the board finds that a participating school district has made no substantial progress towards increasing its pupil capacity or modernizing its facilities within 18 months of the receipt of any funding pursuant to this chapter, the board shall rescind the apportionment in an amount equal to the unexpended funds.

(c) If the board, after the review of expenditures or audit has been conducted pursuant to subdivision (a), determines that a school district failed to expend funds in accordance with this chapter, the department shall notify the school district of the amount that must be repaid to the 1998 State School Facilities Fund, the 2002 State School Facilities Fund,¹ or the 2004 State School Facilities Fund,² as the case may be, within 60 days. If the school district fails to make the required payment within 60 days, the department shall notify the Controller and the school district in writing, and the Controller shall deduct an amount equal to the amount received by the school district under this subdivision, from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained by the Controller shall be deposited into the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as appropriate.

(d) If a school district has received an apportionment, but has not met the criteria to have funds released pursuant to Section 17072.32 or 17074.15 within a period established by the board, but not to exceed 18 months, the board shall rescind the apportionment and deny the district's application.

(Added by Stats.1998, c. 407 (S.B.50), § 4, eff. Aug. 27, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 13; Stats.2002, c. 33 (A.B.16), § 19, eff. April 29, 2002.)

§ 17076.11. Participation goal; disabled veteran business enterprises

Any school district using funds allocated pursuant to this chapter for the construction or modernization of a school building, shall have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises.

(Added by Stats.1999, c. 133 (A.B.1633), § 1.)

§ 17077.10. School classrooms; telephone connection to a public switched network

(a) It is a goal of the Legislature to eventually enhance pupil safety by equipping all elementary and secondary school classrooms with a telephone hook connected to a public switched network.

(b) The Legislature finds and declares that as of 1999, there are approximately 205,000 classrooms in California's elementary and secondary schools and only a small, undetermined percentage of these classrooms have telephones. The Legislature finds and declares that in order to protect the safety of pupils, schools should be integrated into local emergency, information, and inter-agency health and safety, networks with up-to-date telecommunications systems. Connection to these systems would also facilitate community and parent interaction with teachers and schools, and thereby further enhance pupil safety.

(c) "School building" as used in this section means and includes any building used, or designed to be used, for elementary or secondary school purposes and constructed, reconstructed, altered, or added to, by the state or by any city or city and county, or by any political subdivision, or by any school district of any kind within the state, or by any regional occupational center or program, established by or authorized to act by any agreement under joint exercise of power, or by the United States government, or any agency thereof. This definition includes any fabrication, construction, or alteration of a relocatable school building.

(d) Commencing with applications submitted on or after January 1, 2000, any school district applying for funding pursuant to this chapter shall include in its plans and specifications for the construction or fabrication of a new or modernized school building, that includes the construction or fabrication of new or modernized classrooms, a hard-wired connection to a public switched telephone network in each new or modernized classroom. However, a school district may meet this requirement by utilizing wireless technology equal to a hard-wired connection to a public switched telephone network.

(Added by Stats.1999, c. 709 (A.B.1136), § 1.)

§ 17077.30. New construction or modernization project application; report contents; use; cost

(a) As part of the requirements for submission of an application to the State Allocation Board for funding pursuant to this chapter for any new construction or modernization project, the applicant school district may, at the time of submission of the final drawings to the Division of the State Architect, certify that an energy analysis and report has been prepared that sets forth the utility savings that would be generated if the facilities were designed, constructed, and equipped, with the energy efficiency and renewable technologies that would make the facilities exceed the minimum building energy-efficiency standards mandated for new public buildings pursuant to the latest edition of the California Building Standards Code through the use of energy efficiency and renewable energy technologies.

(b) The energy analysis and report shall include a verifiable life-cycle cost analysis for each proposed energy conservation measure and renewable energy that may include, but need not be limited to, photovoltaic parking lot and security lighting, and solar swimming pool and domestic water heating, showing a return on investment of less than 15 years.

(c) The cost of the energy analyses and reports shall not exceed:

(1) Seven thousand five hundred dollars (\$7,500) per project for elementary schools.

(2) Ten thousand dollars (\$10,000) per project for middle schools.

(3) Fifteen thousand dollars (\$15,000) per project for high schools.

(d) An applicant school district may count the following funds or expenditures toward meeting the local matching funds requirement under this chapter:

(1) The amount from any local sources actually expended on the project by the applicant school district for an energy audit.

(2) The amount actually applied to the project from any incentive, grant, or rebate, received by the applicant school district from a program funded pursuant to Section 381 of the Public Utilities Code.

(Formerly § 17077.10, added by Stats.1999, c. 981 (A.B.1551), § 1. Renumbered § 17077.30 and amended by Stats.2002, c. 33 (A.B.16), § 21, eff. April 29, 2002.)

§ 17077.35. Plan design and other project components with respect to school facility energy efficiency; grant adjustments

(a) An applicant school district may include plan design and other project components that seek school facility energy efficiency approaching the ultimate goal of school facility energy self-sufficiency, and may seek a grant adjustment for the state's share of the increased costs associated with those components.

(b) Energy efficiency components that are eligible for inclusion into a project pursuant to this section include, but are not limited to, conservation, load reduction technologies, peakload shifting, solar water heating technologies as described in subparagraph (A) of paragraph (2) of subdivision (b) of Section 25619 of the Public Resources Code and as rated and certified by the Solar Rating and Certification Corporation, the use of ground source temperatures for heating and cooling, photovoltaics, and technologies that meet the emerging technology eligibility criteria established by the State Energy Resources Conservation and Development Commission pursuant to Section 383.5 of the Public Utilities Code. A project that received funding from the renewable energy program administered by the State Energy Resources Conservation and Development Commission is not eligible for a grant adjustment under this section.

(c) In order to be eligible for the grant adjustment pursuant to this section, the building proposed for the project, including the energy-efficiency and renewable energy measures utilized pursuant to this section, shall exceed the nonresidential building energy-efficiency standards specified in Part 6 (commencing with Section 100) of Title 24 of the California Code of Regulations by an amount not less than 15 percent for new construction projects and not less than 10 percent for modernization projects, and shall be shown to provide sufficient energy savings to return the cost of the initial investment in the project over a period not to exceed seven years. The applicant shall certify that the cost for the project exceeds the amount of funding otherwise available to the applicant under this chapter.

(d) The board shall provide an applicant for a new construction or modernization project with a grant adjustment to provide an increase not to exceed 5 percent of its state grants authorized by Sections 17072.10 and 17074.10 for the state's share of costs associated with design and other plan components related to school facility energy efficiency as set forth in this article.

(Added by Stats.2002, c. 33 (A.B.16), § 22, eff. April 29, 2002.)

§ 17077.40. Grants to fund joint-use projects to construct facilities on kindergarten to grade 12 schoolsites; funding criteria

(a) With funds made available for the purposes of this article, the board may provide a grant to fund joint-use projects to construct facilities on kindergarten to grade 12, inclusive, schoolsites.

(b) A school district may apply to the board for funding under this article for a project that meets any of the following criteria:

(1) The joint-use project is a part of an application for new construction funding under this chapter, and is for the purpose of providing facilities to be used for a kindergarten to grade 12/higher education collaborative effort for any of the following purposes:

(A) To improve pupil academic achievement.

(B) To provide teacher education.

(C) To provide childcare facilities.

(2) The joint-use project is part of an application for new construction funding under this chapter, and will increase the size or extra cost associated with the joint use of the proposed multipurpose room, gymnasium, childcare facility, or library beyond that necessary for school use.

(3) The joint-use project is for a kindergarten to grade 12/higher education collaborative effort to improve academic achievement or provide teacher education, or a multipurpose room, gymnasium, library, or childcare facility, and the project will be located at a school that does not have the type of facility for which funds are requested or the existing facility is inadequate.

(Added by Stats.2002, c. 33 (A.B.16), § 23, eff. April 29, 2002.)

§ 17077.42. Grant approval compliance

In order to be approved for a grant under this article, the applicant district shall demonstrate that it has complied with all of the following:

(a) The school district has entered into a joint-use agreement with a governmental agency, public community college, public college or public university, or a nonprofit organization approved by the board.

(b) The joint-use agreement specifies the method of sharing capital and operating costs, specifies relative responsibilities for the operation and staffing of the facility, and specifies the manner in which the safety of the pupils will be ensured.

(c) The joint-use partner has agreed to provide matching funds for 50 percent of the eligible costs under this article.

(d) The school district demonstrates that the facility will be used to the maximum extent possible for both school and community purposes, or both school and higher education purposes, as applicable.

(e)(1) The project application qualifies for funding under paragraph (1) or (2) of subdivision (b) of Section 17077.40 and the school district has received all approvals necessary for apportionment under this chapter.

(2) The project qualifies for funding under paragraph (3) of subdivision (b) of Section 17077.40 and the school district has completed preliminary plans for the project and has received State Department of Education approval of the plans.

(Added by Stats.2002, c. 33 (A.B.16), § 23, eff. April 29, 2002.)

§ 17077.45. Standards for determining amount of supplemental grant funding for projects under this article

(a) The board shall establish standards for determining the amount of the supplemental grant funding to be made available for each project under this article.

(1) For a project application qualifying for funding under paragraph (1) or (2) of subdivision (b) of Section 17077.40, the supplemental grant shall be in the form of an adjustment to the per-pupil eligibility of the project. This per-pupil eligibility adjustment shall be calculated to cover costs associated with the project that are uniquely related to the joint-use nature of the project, including, but not limited to, any increased costs associated with planning the joint-use aspect of the project.

(2) For a project application qualifying under paragraph (3) of subdivision (b), the supplemental grant may be provided without regard to the existence of per-pupil eligibility pursuant to this chapter, and may be expressed on per-square-foot cost basis, on a per-pupil cost basis, or on a per-project cost basis.

(b) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards established pursuant to subdivision (a) only if the excess is paid completely by local or joint-use partner sources.

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

(d) If the total funding for the purposes of this article is not sufficient to fund all of the joint-use projects for funding under this article, the board shall fund projects eligible under paragraphs (1), (2), and (3) of subdivision (b) of Section 17077.40 in that order. The board may establish other priority standards within that order, as necessary.

(e) Except as expressly provided in this article, projects funded pursuant to this article shall comply with all other requirements of this chapter, except for Article 11 (commencing with Section 17078.10), which shall apply only to projects under this article if they also qualify for funding under Article 11 (commencing with Section 17078.10).

(Amended by Stats.2002, c. 935 (A.B.14), § 11.)

§ 17078.10. Critically Overcrowded School Facilities Program; 2002 Critically Overcrowded School Facilities Account within 2002 State School Facilities Fund; 2004 Critically Overcrowded School Facilities Account within 2004 State School Facilities Fund

(a) There is hereby established the Critically Overcrowded School Facilities Program to be administered by the board.

(b) For the purposes of this article, "preliminary application" means an application for a preliminary apportionment pursuant to this article.

(c) For the purposes of this article, "preliminary apportionment" means an apportionment made for eligible applicants with critically overcrowded schools in advance of full compliance with all of the application requirements otherwise required for an apportionment pursuant to this chapter.

(d) For the purposes of this article, "final apportionment" has the same meaning as "apportionment" as set forth in subdivision (a) of Section 17070.15.

(e) There is hereby established the 2002 Critically Overcrowded School Facilities Account within the 2002 State School Facilities Fund,¹ and the 2004 Critically Overcrowded School Facilities Account within the 2004 State School Facilities Fund,² for the purposes of this article. Funds reserved for the purposes of this article shall be placed in those accounts, as appropriate, and shall be available exclusively for projects eligible under this article until the funds are made available for other purposes of this chapter pursuant to Section 17078.30.

(Added by Stats.2002, c. 33 (A.B.16), § 24, eff. April 29, 2002.)

§ 17078.15. Application of other articles of this chapter to projects funded under this article; criteria for application of this article; state share of project costs and state per-unhoused-pupil new construction apportionments for eligible programs; election to utilize per-unhoused-pupil eligibility

(a) Unless this article expressly provides otherwise, the provisions contained in the other articles of this chapter shall apply with equal force to a project funded under this article. This article shall control over the provisions of this chapter contained in other articles only to the extent that this article expressly conflicts with those provisions.

(b) This article shall apply only to a project that is otherwise eligible under this chapter and that meets both of the following criteria:

(1) The project meets the criteria set forth in Section 17078.18.

(2) The project is to be funded from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election, or the 2004 direct primary election or the 2004 statewide general election, as the case may be, that were expressly reserved in the bond act or acts for the purposes set forth in this article.

(c) The state share of project costs and the state per-unhoused-pupil new construction apportionments for programs eligible under this article shall be equal to the share and amounts otherwise provided by the board pursuant to this chapter, including, but not limited to, any applicable adjustments or supplements otherwise authorized pursuant to this chapter.

(d) A school district that elects to utilize per-unhoused-pupil eligibility pursuant to this chapter to support a project pursuant to this article, shall not simultaneously utilize that same eligibility to support any other application pursuant to this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 24, eff. April 29, 2002.)

§ 17078.18. Criteria for funded projects to meet under this article

Projects funded under this article shall meet all of the following criteria:

(a) The project is a new construction project to build new pupil capacity to relieve overcrowding.

(b) The proposed school facility shall be located in the proposed general location, as set forth in Section 17078.22, of the school or schools that have the conditions and pupils that establish the eligibility pursuant to this article as set forth in subdivision (c).

(c) At least 75 percent of the projected pupil occupancy of the project facilities shall come from a source school or source schools that have a site pupil population density greater than 115 pupils per acre in grades kindergarten to six, inclusive, or a site pupil population density greater than 90 pupils per acre in grades seven to 12, inclusive, as determined by the Superintendent of Public Instruction using enrollment data from the California Basic Educational Data System for the 2001-02 school year. For source schools with grades that include a combination of kindergarten to six, inclusive, and seven to 12, inclusive, the controlling source school site pupil population density shall be the one applicable to the grade levels in which the majority of the pupils are enrolled at the source school.

(Added by Stats.2002, c. 33 (A.B.16), § 24, eff. April 29, 2002.)

§ 17078.20. Dissemination of information to school districts regarding availability of funding; applications; funding

(a) The board shall disseminate information to school districts regarding the availability of funding pursuant to this article and the appropriate deadlines for applications.

(b) Applicants for funding pursuant to this article shall submit preliminary applications to the board.

(c) The preliminary applications shall be submitted by May 1, 2003, for projects to be funded with the proceeds of bonds approved by the voters at the November 5, 2002, statewide general election.

(d) Preliminary applications shall be accepted by the board during the period between 60 days before and 120 days after, the 2004 direct primary election, or the 2004 statewide general election, as appropriate for projects to be funded with the proceeds of bonds approved by the voters at the 2004 direct primary election, or the 2004 statewide general election, as appropriate.

(e) If funds are insufficient to fully fund all of the preliminary applicants, the board shall apportion first to those projects that would house pupils from source schools with the highest pupil density levels relative to the State Department of Education standards.

(Amended by Stats.2002, c. 935 (A.B.14), § 12.)

§ 17078.22. Preliminary application requirements; variances

(a) The preliminary applications shall do all of the following:

(1) Establish per-unhoused-pupil eligibility as set forth in Article 3 (commencing with Section 17071.75).

(2) Identify the unhoused pupil population that the proposed project will serve by determining the number of pupils to be served and the likely source school or schools from which the pupils population will be drawn.

(3) Identify the proposed general location of the needed new facilities pursuant to any of the following:

(A) Within that portion of the attendance area from which one or more elementary schools that would be a source of the per-pupil eligibility for the proposed facility draws its enrollment, or within a one-mile radius of a source school, or within a one-mile radius of any one of the source schools if there are more than one, whichever is greater.

(B) Within the attendance area of a high school, middle school, or junior high school that would be a source of the per-pupil eligibility for the proposed facility or within a three-mile radius of a source school, or within a three-mile radius of any one of the source schools if there are more than one, whichever is greater.

(4) Estimate the total facility cost on a per-pupil basis and estimate the total site acquisition and development costs pursuant to the regulations adopted pursuant to subdivision (c) of Section 17078.24.

(b) The State Department of Education may grant a variance from the distance maximums set forth in paragraph (3) of subdivision (a) if the school district demonstrates to the satisfaction of the department that the variance is necessary in order to adequately provide facilities for the identified source school pupils.

(Added by Stats.2002, c. 33 (A.B.16), § 24, eff. April 29, 2002.)

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§ 17078.24. Preliminary apportionment for applicants

(a) On the basis of the preliminary application and upon confirmation by the board of the applicant's eligibility, the board shall in a timely manner make a preliminary apportionment for applicants under this article exclusively from funds reserved expressly for the purposes of this article.

(b) Preliminary apportionments for site development and acquisition included in the preliminary application pursuant to subdivision (a) of Section 17078.22 shall be based either on the preliminary appraisal, if available, or on the median costs of appropriately sized parcels within the qualifying area, as determined by the board.

(c) Preliminary apportionments shall include the total estimated state costs of the project, including, but not limited to, site acquisition and development costs related to evaluations and elimination of hazardous materials, an inflation factor, any applicable excess cost allowances, and hardship costs, if any. The board shall adopt regulations establishing standards and methods for setting these costs and for making related estimates.

(Added by Stats.2002, c. 33 (A.B.16), § 24, eff. April 29, 2002.)

Historical and Statutory Notes

Appropriation, effective date and ballot information relating to Stats.2002, c. 33 (A.B.16), eff. April 29, 2002, see Historical and Statutory Notes under Education Code § 17070.15.

Cross References

Kindergarten-University Public Education Facilities Bond Act of 2002, see Education Code § 100600 et seq.

Kindergarten-University Public Education Facilities Bond Act of 2004, see Education Code § 100800 et seq.

§ 17078.25. Time period to complete application for final apportionment; extensions; regulations setting forth standards with respect to substantial progress; reports; hearings; rescission

(a) Within the maximum time period set forth in Section 17078.30, the applicant shall have a period of up to four years from the date of the preliminary apportionment in which to complete the application for final apportionment.

(b) The applicant may request a single one-year extension of the period set forth in subdivision (a). The board shall grant the request for the single one-year extension if it determines that the applicant has made substantial progress towards completing the requirements for filing an application for final apportionment. The board may grant only one one-year extension for the project and may only grant the extension if granting the extension would not, in total, cause the project to exceed the maximum time period set forth in Section 17078.30.

(c) The board shall adopt regulations setting forth standards for determining the existence of substantial progress within the meaning of subdivision (b).

(d) The governing board of a school district shall report annually to the State Allocation Board regarding the progress made toward completing the requirements for filing an application for final apportionment, and shall annually hold, at a regularly scheduled meeting of the governing board, a public hearing pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code) to discuss, and to receive public comment regarding, the report.

(e) In its first annual report the governing board of the school district shall certify that the State Department of Education has determined in writing that there is at least one approvable site within the proposed general location of the proposed facility identified pursuant to paragraph (3) of subdivision (a) of Section 17078.22, or within the variance location authorized pursuant to subdivision (b) of Section 17078.22.

(f) If the applicant for the one-year extension pursuant to subdivision (b) has not made substantial progress to complete the application process within the allotted time period, the preliminary apportionment shall be rescinded and shall be utilized by the board for funding of other projects that have received a preliminary apportionment pursuant to this article, or at the expiration of the maximum time allowed pursuant to Section 17078.30, the board shall use the funds for any other new construction purpose of this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 24, eff. April 29, 2002.)

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§ 17078.27. Adjustment of preliminary apportionment; conversion of adjusted preliminary apportionment to final apportionment; cost increases

(a) Upon completion of the preliminary process authorized pursuant to this article, and when a preliminary applicant has complied with the conditions set forth in this chapter for a final apportionment, including, but not limited to, Section 17070.50, the board shall adjust the preliminary apportionment as set forth in subdivision (b) and as necessary to reflect the current eligible grant amounts for final apportionments pursuant to this chapter consistent with regulations adopted pursuant to subdivision (c) of Section 17078.24. The board shall then convert the adjusted preliminary apportionment to a final apportionment and proceed to completion of the project in the same manner as for any project funded under provisions of this chapter other than this article.

(b) The board may adjust for cost increases only if uncommitted funds reserved expressly for the purposes of this article remain available for those purposes.

(Added by Stats.2002, c. 33 (A.B.16), § 24, eff. April 29, 2002.)

Historical and Statutory Notes

Appropriation, effective date and ballot information relating to Stats.2002, c. 33 (A.B.16), eff. April 29, 2002, see Historical and Statutory Notes under Education Code § 17070.15.

Cross References

Kindergarten–University Public Education Facilities Bond Act of 2002, see Education Code § 100600 et seq.
Kindergarten–University Public Education Facilities Bond Act of 2004, see Education Code § 100800 et seq.

§ 17078.30. Funds available for apportionment from proceeds of state bonds approved by voters at election; amount

(a)(1) A portion of the funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election that are not included in a preliminary apportionment for an application that is received by the deadline specified in subdivision (c) of Section 17078.20 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(2) The amount of funds that shall be made available to the board for purposes other than this article, pursuant to this subdivision, shall be calculated as follows:

(A) Add the total amount preliminarily apportioned to 15 percent of that amount.

(B) Take the number calculated pursuant to subparagraph (A) and subtract that number from the amount originally reserved for the purposes of this article.

(C) The number calculated pursuant to subparagraph (B) shall thereafter be available to the board for any new construction purpose under any other article of this chapter.

(3) All funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election pursuant to a preliminary apportionment that are not included within a final apportionment within the timeframes permitted by Section 17078.25 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(b)(1) A portion of the funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the 2004 direct primary election, or the 2004 statewide general election, as appropriate, that are not included in a preliminary apportionment for an application that is received by the deadline specified in subdivision (d) of Section 17078.20 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(2) The amount of funds that shall be made available to the board for purposes other than this article, pursuant to this subdivision, shall be calculated as follows:

(A) Add the total amount preliminarily apportioned to 15 percent of that amount.

(B) Take the number calculated pursuant to subparagraph (A) and subtract that number from the amount originally reserved for the purposes of this article.

(C) The number calculated pursuant to subparagraph (B) shall thereafter be available to the board for any new construction purpose under any other article of this chapter.

(3) All funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the 2004 direct primary election, or the 2004 statewide general election, as appropriate, pursuant to a preliminary apportionment that are not included within a final apportionment within the timeframes permitted by Section 17078.25 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(Amended by Stats.2002, c. 935 (A.B.14), § 13.)

§ 17080. State school building lease-purchase fund; state school deferred maintenance fund; establishment; continuing appropriation

(a) Notwithstanding any other provision of law, whenever moneys transferred to the General Fund each year from (1) moneys deposited in the Public School Building Loan Fund pursuant to Section 15735, and (2) moneys deposited in the State School Building Aid Fund pursuant to Section 16080, are in excess of the amounts required to reimburse the General Fund on account of principal and interest due and payable for that fiscal year on all school building aid bonds outstanding against the state, an amount equal to such excess is appropriated from the General Fund for purposes of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000)) and Section 17584. The Controller shall transfer, as directed by the State Allocation Board, such appropriated amount to the State School Building Lease-Purchase Fund and to the State School Deferred Maintenance Fund, which is hereby established.

(b) In addition to the amount transferred pursuant to subdivision (a), the Controller shall transfer annually from the General Fund to the State School Deferred Maintenance Fund an amount equal to any amount transferred to or deposited in the General Fund as a result of repayment of any loan made by the board pursuant to Section 17005.15.

(c) Notwithstanding Section 13340 of the Government Code, the State School Deferred Maintenance Fund is continuously appropriated for the purposes for which it is established.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17085. Short title

This chapter may be cited as the State Relocatable Classroom Law of 1979.
(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17086. Legislative intent

In adopting this chapter, the Legislature recognizes that the ad valorem tax is no longer available as a source of revenue for the construction of necessary school facilities. The Legislature considers that the greatest need in school construction is for classrooms for the education of public school pupils. It is the intent of the Legislature to satisfy this primary need to the greatest extent possible before providing any additional educational facilities, regardless of how desirable such additional facilities may be.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17087. Definitions

As used in this chapter:

(a) "Board" means the State Allocation Board.

(b) "State School Building Aid Fund" means that fund established pursuant to Section 16096.

(c) "Lessee" means a school district or county superintendent of schools to whom the board has leased a portable classroom pursuant to this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17088. Powers and duties of board

In addition to any other powers and duties as are granted the board by this chapter, other statutes, or the State Constitution, the board has the power to do each of the following:

(a) Establish any qualifications not in conflict with other provisions of this chapter, as it deems will best serve the purposes of this chapter, for determining

the eligibility of school districts and county superintendents of schools to lease portable classrooms under this chapter.

(b) Establish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(c) Adopt any rules and regulations for the administration of this chapter requiring such procedure, forms, and information, as it may deem necessary.

(d) Have constructed, furnished, equipped, or otherwise require whatever work is necessary to place, portable classrooms on schoolsites where needed.

(e) Own, have maintained, and lease portable classrooms to qualifying school districts and county superintendents of schools.

(f) From any moneys in the State School Building Aid Fund available for purposes of this chapter, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance, pursuant to this chapter, required by Section 15504 of the Government Code.

(g) Notwithstanding any other provision of law, from any funds available to the board, the board may, no later than January 15 of any year, make available to the Director of General Services up to thirty-five million dollars (\$35,000,000) for expenditure in the subsequent school year. It is the intent of the Legislature that this allocation be annually funded from an appropriation made for this purpose by the Legislature in the Budget Act for the fiscal year in which the board is to act to make that funding available. These funds shall be utilized to purchase portable classrooms for the purposes of this section.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17088.3. Qualification for lease; submission of year-round multitrack educational program study; emergency or urgency approval; uninhabitable facilities

(a) No school district shall qualify for the lease under this chapter, after January 1, 1990, of one or more portable classrooms except upon submitting a study examining the feasibility of implementing in the district a year-round multitrack educational program that is designed to increase pupil capacity in the district by at least 20 percent.

(b) Emergency or urgency conditions within a school district shall constitute grounds for approval by the board, pending submission of the report.

(c) Subdivision (a) does not apply to facilities that are designated as uninhabitable after July 1, 1989, due to fire or other health or safety conditions.

(d) Subdivision (a) does not apply to a school district for leases or subleases under this chapter for the purpose of providing facilities, pursuant to subdivision (c) of Section 17091, for licensed child day care programs or recreation or enrichment activities or programs for schoolage children.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17088.5. Lessee acting as agent of board; purchase of portable classrooms by district or superintendent when funds unavailable to board

(a) The board may empower any lessee to act as its agent in the performance of acts authorized under this chapter with regard to portable classrooms to be made available to that lessee, including, but not necessarily limited to, contracting for architectural and construction services and purchasing furniture and equipment.

(b) In addition, where any qualifying school district or county superintendent of schools is deemed by the board to be eligible under this chapter for the lease of portable classrooms, but adequate funds are not at that time available to the board for the purchase of those classrooms, the board may authorize the school district or county superintendent of schools to purchase portable classrooms, to the extent of that eligibility, pursuant to the following conditions:

(1) The portable classrooms are purchased under a procedure determined by the board, pursuant to either a bidding process implemented by the school district or county superintendent of schools or by the State Office of Procurement.

(2) To the extent that funding for purposes of this chapter is subsequently made available to the board, the board shall purchase the portable classroom or classrooms from the school district or county superintendent of schools, for lease to that entity under this chapter, for an amount, not to exceed the purchase price the board determines it would have paid for the classroom or classrooms at the time they were acquired pursuant to paragraph (1), as necessary to reimburse the school district or county superintendent of schools for the purchase price, less the amount that would have been charged to the school district or county superintendent of schools for the lease of the classroom or classrooms under Section 17089 from the date of purchase. The sale of the portable classroom or classrooms under this paragraph shall be at the discretion of the school district or county superintendent of schools.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17088.7. Purchase of portable classrooms; eligibility; costs; procedure; lease of classrooms; joint powers agreement; contents

(a) Any school district, or, under a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, any combination of one or more school districts or county superintendents of schools, may, to the extent of the eligibility of the school district or of the parties to the joint powers agreement to lease portable classrooms under this chapter, purchase portable classrooms as provided in this section.

(b) The number of portable classrooms which may be purchased pursuant to this section, on a statewide basis, shall not exceed 200 in any given year, and shall not exceed 600 in total. Portable classrooms purchased prior to September 22, 1989, are exempt from the yearly limit of 200, but shall be counted towards the total limit of 600.

(c) The purchase costs of the portable classrooms, which include costs of site preparation, furniture and equipment, toilet facilities as described in Section 65980 of the Government Code, and the transportation of classrooms, may be funded from revenues received by the school district or districts pursuant to Section 17620. The purchase shall comply with any procedures and policies established by the board under this chapter for the purchase of portable classrooms. All portable classrooms purchased pursuant to this section are the property of the state.

(d) The board shall lease the portable classrooms purchased pursuant to the authority granted in this section to the purchaser, as described in subdivision (a), in accordance with this chapter, including applicable eligibility standards, and the purchase costs paid shall be credited toward the rent the purchaser would otherwise be required to pay under this chapter as a lessee.

(e) In the event that the purchase of portable classrooms under this section occurs pursuant to a joint powers agreement, as described in subdivision (a), the agreement shall identify the school district or districts and county superintendent or superintendents of schools that are party to the agreement, identify the district or districts providing the revenues, specify the manner in which the revenues are to be expended, and specify the distribution of portable classrooms subsequent to purchase, which distribution shall be in accordance with the eligibility requirements of this chapter. The agreement shall be subject to approval of the board, pursuant to subdivision (b) and any applicable procedures and policies established by the board under this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17089. Lease of portable classrooms; amount; maintenance, repairs; costs

(a) The board shall lease portable classrooms to qualifying school districts and county superintendents of schools for not less than one dollar (\$1) per year, nor more than four thousand dollars (\$4,000) per year, for each portable classroom, which amount shall be annually increased according to the adjustment for inflation set forth in the statewide cost index for classroom construction, as determined by the board at its January meeting.

(b) The board shall require each lessee to undertake all necessary maintenance, repairs, renewal, and replacement to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17089.5. Lease of portable classrooms to districts or county superintendents serving infant or preschool individuals with exceptional needs

The board may lease portable classrooms to any school district or county superintendent of schools which serves infant or preschool individuals with exceptional needs, as defined in Section 56026, and which operates programs pursuant to Part 30 (commencing with Section 56000). These portable classrooms shall be adequately equipped to meet the educational needs of these students, including, but not limited to, sinks and restroom facilities.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17090. Insurance

The board shall require lessees to insure at their own expense for the benefit of the state, any leased portable classroom which is the property of the state, against such risks, including liability from the use thereof, in such amounts as the board may deem necessary to protect the interest of the state. All payments resulting from claims made against the insurance shall be made payable to and retained by the board for deposit in the State School Building Aid Fund.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17091. Rules; priorities; placement of additional portable classrooms

(a) The board shall have authority to adopt rules establishing priorities for the acquisition and leasing of classrooms to those school districts and county superintendents of schools whose pupils will benefit most. The board may make exceptions from the established priorities if it determines that the pupils affected will benefit.

(b) If at any time the number of portable classrooms available exceeds the number of those required by applicant districts, as determined by basic loading standards and eligibility requirements, the board may authorize additional portable classrooms to be placed in any school district that agrees to hire an additional teacher for each additional portable classroom placed in the district pursuant to this subdivision.

(c) If at any time the number of portable classrooms available exceeds the number of those required by applicant districts, as determined by basic loading standards and eligibility requirements, the board shall authorize additional portable classrooms to be placed in any school district, upon request of the school district, for the purpose of providing licensed child day care programs or recreation or enrichment activities or programs for schoolage children on a schoolsite, unless the surplus classrooms are needed for emergency purposes. (Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17092. Eligibility of district; evidence; new teaching stations

(a) No portable classrooms shall be made available to any school district unless the district furnishes evidence, satisfactory to the board, that the district has no available bond proceeds that could be used for the purchase of classroom facilities.

(b) Notwithstanding any other provision of law, a school district or county superintendent of schools that has received approval for a project that includes a justified number of new teaching stations pursuant to Chapter 12 (commencing with Section 17000) or Chapter 12.5 (commencing with Section 17070.15) shall be eligible for at least the same number of emergency portable classrooms as approved new teaching stations.

(c) Subdivision (a) does not apply to leases or subleases under this chapter for the purpose of providing facilities, pursuant to subdivision (c) of Section 17091, for licensed child day care programs or any recreation or enrichment activities or programs for schoolage children.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998. Amended by Stats.2000, c. 590 (S.B.2066), § 3.)

§ 17092.3. Portable classrooms; subleasing

A school district may sublease any portable classroom obtained by the district pursuant to subdivision (c) of Section 17091 to a private provider that has entered into a contract with the district to provide any child care and development program or programs or any recreation or enrichment activities or programs for schoolage children on a schoolsite. The terms of the sublease for rental payments and other related costs shall not exceed the costs of the portable classroom to the district.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17093. Performance specifications; bids

The board shall have prepared for its use, performance specifications for portable classrooms complying with Sections 17280 to 17314, inclusive, which are capable of being economically moved, and bids for the construction of which can be solicited from more than one responsible bidder. The board may from time to time solicit bids from, and award to, the lowest responsible competitive bidder, contracts for the construction or purchase of the number of portable classrooms it deems will be required by eligible school districts and county superintendents of schools during the next 12 months.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17094. Cessation of lessee's need for portable classrooms; disposition

If at any time the board determines that a lessee's need for particular portable classrooms which were made available to the lessee pursuant to this chapter has ceased, the board may take possession of the portable classrooms and may lease them to other eligible districts or county superintendents of schools, or if there is no longer a need for any portable classrooms, the board may dispose of them to public or private parties in any manner that it deems to be in the best interests of the state.

Any revenue which is derived from a lease or other disposition of the portable classrooms pursuant to this section shall be deposited in the State School Building Aid Fund.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17095. Waiver of penalty provisions

The State Board of Education may waive application of the penalty provisions of Section 41376 for school districts which during the school year used portable classrooms leased pursuant to this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17096. Leases of portable classrooms; necessity of provision for telephone in each portable classroom; connection to public switched telephone network

Commencing with leases entered into on or after January 1, 2000, the plans and specifications for portable classrooms funded pursuant to this chapter shall include a provision for a telephone in each portable classroom. The connection from the portable classroom to a public switched telephone network, as set forth in Section 17077.10, shall be made by the school district at the time of the installation of the building. However, a school district may meet this requirement by utilizing wireless technology equivalent to a hard-wired connection to a public switched telephone network.

(Added by Stats.1999, c. 709 (A.B.1136), § 2.)

§ 17100. Findings and declarations

The Legislature hereby finds and declares that the State School Building Lease-Purchase Fund, pursuant to Section 17008, and the proceeds from the sale or lease of surplus school property are the two sources available to school districts to finance the construction of school facilities to relieve overcrowding. However, these sources are still insufficient to meet the construction needs statewide of school districts.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17110. Issuance for sale; definitions

The governing board of a school district may issue for sale revenue bonds to finance the construction of joint occupancy facilities as prescribed in Article 8 (commencing with Section 17515) of Chapter 4 of Part 10.5, which facilities are necessary to relieve overcrowded schools. Proceeds from the rental and lease of the facilities shall be used by the governing board to repay the revenue bonds.

As used in this chapter:

(a) "To finance the construction of joint occupancy facilities" means to offset either the cost of constructing the joint occupancy facilities or the cost of financing the construction of joint occupancy facilities, or both.

(b) "Joint occupancy facilities" means any building constructed pursuant to this chapter which is occupied jointly by a school district and a private entity specified in Section 17811 or one or more buildings which are constructed pursuant to this chapter on the same property used by the district and the private entity, but are not occupied jointly. Facilities to be acquired by purchase pursuant to this article for occupancy by pupils shall meet the requirements of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365) of Chapter 3 of Part 10.5.

(c) "Construction" includes acquisition by purchase.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17111. Contracts with private entities

The governing board may contract with any person, firm, partnership, joint venture, or other private entity for the purpose of issuing revenue bonds pursuant to Section 17810 and for the purpose of renting or leasing the facilities constructed pursuant to this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17112. Facilities constructed on district-owned property; exception

No revenue bonds may be issued for sale by the governing board unless the facilities are to be constructed on district-owned property, except as to facilities to be acquired by purchase.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17150. Issuance of certificates of participation or revenue bonds; repayment schedules and evidence of ability to repay; public comment

(a) Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 18 (commencing with Section 17170), the school district shall notify the county superintendent of schools and the county auditor. The superintendent of the school district shall provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools and the county auditor may comment publicly to the governing board of the school district regarding the capability of the school district to repay that debt obligation.

(b) Upon the approval by the county board of education to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing pursuant to Chapter 18 (commencing with Section 17170), the county superintendent of schools or superintendent of a school district for which the county board serves as governing board shall notify the Superintendent of Public Instruction. The county superintendent of schools or the superintendent of a school district for which the county board serves as the governing board shall provide the repayment schedules for that debt obligation and evidence of the ability of the county office of education or school district to repay that obligation, to the Superintendent of Public Instruction, the governing board, and the public. Within 15 days of the receipt of the information the Superintendent of Public Instruction may comment publicly to the county board of education regarding the capability of the county office of education or school district to repay that debt obligation.

(c) Prior to delivery of the notice required by subdivision (a) neither the county nor any of its officers shall have any responsibility for the administration of the school district's indebtedness. Failure to comply with the requirements of this section will not affect the validity of the indebtedness.

(Amended by Stats.2002, c. 1168 (A.B.1818), § 4, eff. Sept. 30, 2002.)

§ 17170. Short title

This chapter shall be known and may be cited as the California School Finance Authority Act.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17171. Legislative findings

The Legislature hereby finds and declares that it is in the interest of the state and its people for the state to do all of the following:

(a) Reconstruct, remodel, or replace existing school buildings which are educationally inadequate or which do not meet current structural safety requirements.

(b) Acquire new schoolsites and buildings to be made available to school districts and community college districts for the pupils of the public education system, which is a matter of general concern inasmuch as the education of the state's children is an obligation and function of the state.

(c) Assist school districts and community college districts by providing access to financing for working capital and capital improvements.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17173. Definitions

As used in this chapter, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

- (a) "Act" means the California School Finance Authority Act.
- (b) "Agent" means a county or city board of education or superintendent of schools acting with its consent on behalf of one or more school districts for any purpose of this chapter, and the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges acting with its consent on behalf of one or more community college districts for any purpose of this chapter.
- (c) "Authority" means the California School Finance Authority, or any board, body, commission, department, or officer succeeding to the principal functions of the authority, or to which the powers conferred upon the authority by this chapter shall be given by law.
- (d) "Bonds" means bonds, notes, bond anticipation notes, commercial paper, and any other evidences of indebtedness.
- (e) "Cost," as applied to all or part of a project financed pursuant to this chapter, means and includes all or any part of the cost of any of the following:
 - (1) Construction.
 - (2) Acquisition or improvement of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project.
 - (3) Demolition or removal of any buildings or structures on land acquired for a project, including the acquisition of any lands to which the buildings or structures may be moved.
 - (4) All machinery and equipment.
 - (5) Financing charges.
 - (6) Interest prior to, during, and for a period following, the completion of such construction or improvement as determined by the authority.
 - (7) Provisions for working capital.
 - (8) Reserves for principal and interest, and for extensions, enlargements, additions, replacements, renovations, and improvements.

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(9) Engineering, architectural, financial, and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incident to the construction, acquisition, or improvement of any project or any financing under this chapter.

(f) "Educational facility" means any property, facility, structure, equipment, or furnishings used or operated in conjunction with one or more public schools or community colleges, including, but not limited to, all of the following:

- (1) Classrooms.
- (2) Auditoriums.
- (3) Student centers.
- (4) Administrative offices.
- (5) Sports facilities.
- (6) Maintenance, storage, or utility facilities.

(7) All necessary or usual attendant and related facilities and equipment, including streets, parking, and supportive service facilities or structures required or useful for the effective operation of the educational facility.

(g) "Participating district" means a school district or community college district which undertakes, itself or through an agent, the financing or refinancing of a project or of working capital pursuant to this chapter. "Participating district" shall also be deemed to refer to the agent to the extent the agent is acting on behalf of the school district or community college district for any purpose of this chapter.

(h) "Project" means the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an educational facility to be financed or refinanced pursuant to this chapter. "Project" may include any combination of the foregoing undertaken jointly by any participating district with one or more other participating districts.

(i) "Working capital" means funds to be used by, or on behalf of, a participating district to pay maintenance or operating expenses, or any other costs which would be treated as an expense item under generally accepted accounting principles in connection with the ownership or operation of an educational facility, including, but not limited to, all of the following:

- (1) Reserves for maintenance or operating expenses.
- (2) Interest for a period not to exceed one year on any loan for working capital made pursuant to this chapter.
- (3) Reserves for debt service, and any other costs necessary or incidental to, financing pursuant to this chapter.

(j) "Certificate of participation" means an undivided interest in one or more bonds, leases, loans, installment sales, or other agreements of a participating district or districts.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17180. Powers of authority

The authority is hereby authorized to do all of the following:

- (a) Adopt bylaws for the regulation of its affairs and the conduct of its business.
- (b) Adopt an official seal.
- (c) Sue and be sued in its own name.
- (d) Receive and accept gifts, grants, or donations of money for any of the purposes of this chapter from any of the following:
 - (1) A federal agency.
 - (2) A state agency.
 - (3) A municipality, county, or other political subdivision of the state.
 - (4) An individual, association, or corporation.
- (e) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this chapter .
- (f)(1) Determine the location and character of any project to be financed under this chapter, and acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, or regulate the same.
 - (2) Designate a participating district as its agent, with authority to enter into contracts, for any of the purposes specified in paragraph (1).
 - (3) Enter into contracts for any of the purposes specified in paragraph (1).
 - (4) Enter into contracts for the management and operation of a project owned by the authority.
- (g) Acquire, directly or by and through a participating district as its agent, by purchase solely from funds provided pursuant to this chapter, or by gift or devise, and sell, by installment or otherwise, property, rights, rights-of-way, franchises, easements, and other interests in lands, including, but not limited to, lands lying under water, and riparian rights, located within the state which the authority deems necessary or convenient for the acquisition, construction, financing, or operation of a project. The authority may do so upon the terms, and at the prices, it considers reasonable and upon which it can agree with the owner, and may take the title to the interest in the name of the authority or in the name of a participating district as its agent.
- (h) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of all or part of a project, in the form of money, property, labor, or other things of value.
- (i) Pursuant to an agreement between the authority and the participating district, make, directly or through a lending institution, secured or unsecured loans to, or purchase secured or unsecured loans from, or purchase all or part of any rights to or possibilities regarding the state share of funding for school facilities approved by the State Allocation Board pursuant to Chapter 12.5 (commencing with Section 17070.10). The purchase of all or part of any rights to, or possibilities regarding, the state contribution for funding for school facilities approved by the State Allocation Board shall be limited to amounts approved and funded or amounts approved but not yet funded from proceeds of state bonds already authorized by the electors but not yet issued. Loans or purchases completed pursuant to this section may be used for either of the following purposes:
 - (1) To finance a project or provide working capital. No loan to finance a project shall exceed the total cost of the project, as determined by the participating district and approved by the authority.
 - (2) To refinance indebtedness incurred by the participating district in connection with projects undertaken, educational facilities acquired, or working capital financed.

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(j) Upon the terms and conditions the authority deems proper, lease a project being financed pursuant to this chapter to a participating district, and charge and collect rent therefor. The authority may terminate a lease pursuant to this subdivision upon the lessee's failure to comply with any of its obligations under the lease. The lease may include any of the following provisions:

(1) That the lessee shall have the option to renew the term of the lease for the period or periods, and at the rent, determined by the authority, or to purchase any or all of the project.

(2) That upon payment by the participating district of all of the indebtedness incurred by the authority for the financing of the project or for the refinancing of the district's outstanding indebtedness, the authority may convey any or all of the project to the lessee or lessees, with or without further consideration.

(k) Charge and equitably apportion among participating districts its administrative costs and expenses incurred pursuant to this chapter.

(l)(1) Obtain, or aid in obtaining, from any state or federal agency or any private company, any insurance, guarantee, letter, or line of credit regarding, or of, or for, the payment or repayment of all or part of the interest, principal, or both, on any loan, lease, or obligation, or any instrument evidencing or securing the same, made or entered into pursuant to this chapter, or on any bonds issued pursuant to this chapter.

(2) Notwithstanding any other provision of this chapter, enter into any agreement, contract, or any other instrument regarding any insurance, guarantee, letter, or line of credit specified in paragraph (1), and accept payment in the manner and form provided therein in the event of default by a participating district.

(3) Assign any insurance, guarantee, letter, or line of credit specified in paragraph (1) as security for bonds issued by the authority.

(m) Enter into any agreements or contracts, including, but not limited to, agreements for liquidity or credit enhancement, execute any instruments, and any other act or thing necessary, convenient, or desirable for the purposes of the authority or to carry out any express power granted the authority pursuant to this chapter.

(n) At the discretion of the authority, invest any moneys held in reserve or in sinking funds, or any moneys not required for immediate use or disbursement, in obligations authorized by the resolution authorizing the bonds secured by the investment, or by law governing the investment of trust funds in the custody of the Treasurer.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998. Amended by Stats.1999, c. 718 (A.B.636), § 1, eff. Oct. 10, 1999; Stats.2000, c. 193 (A.B.2586), § 1.)

§ 17181. California school finance authority fund

(a) The California School Finance Authority Fund is hereby created in the State Treasury, to be administered by the authority. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated without regard to fiscal year for the purposes of this chapter. The authority may pledge any or all of the moneys in the fund as security for payment of the principal of, and interest on, any particular issuance of bonds pursuant to this chapter. For that purpose, or as necessary or convenient to the accomplishment of any other purpose of this chapter, the authority may divide the fund into separate accounts. All moneys accruing to the authority pursuant to this chapter from any source shall be deposited in the fund.

(b) Subject to any priorities created by the pledge of particular moneys in the fund to secure any issuance of bonds of the authority, and to reasonable administrative costs incurred by the authority in implementing this chapter, all moneys in the fund, regardless of the source, shall be held in trust for the security and payment of bonds of the authority, and shall not be used or pledged for any other purpose while any bonds are outstanding and unpaid. Nothing in this subdivision shall be construed to limit the power of the authority to make loans with bond proceeds in accordance with the terms of the resolution authorizing the issuance of those bonds.

(c) Pursuant to any agreements with the holders of particular bonds pledging any particular assets, revenues, or moneys, the authority may create separate accounts in the fund to manage the assets, revenues, or moneys in the manner prescribed by the agreements.

(d) From time to time, the authority may direct the Treasurer to do any of the following:

(1) Invest moneys in the fund which are not required for its current needs, including, but not limited to, proceeds from the sale of any bonds in eligible securities specified in Section 16430 of the Government Code and designated by the authority, or in any other securities or obligations designated by the authority, in the resolution authorizing the issuance of the bonds payable or secured by the moneys.

(2) Deposit moneys in the fund in interest bearing accounts in state or national banks or other financial institutions having principal offices in the state.

(3) Transfer moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 4 of Division 4 of Title 2 of the Government Code.

Notwithstanding Section 16305.7 of the Government Code, all interest or other earnings resulting from an investment or deposit pursuant to this subdivision shall be deposited in the fund.

(e) Except as otherwise provided in paragraph (3) of subdivision (d), no moneys in the fund shall be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17183. Revenue bonds; issuance; source of payment; sale; immunity from personal liability; purchase by authority; other means of financing; commercial paper

(a) From time to time, the authority may, by resolution, issue its revenue bonds in order to provide funds for any of the purposes of this chapter. Bonds may be issued to finance any of the following:

- (1) A single project or financing of working capital for a single participating district.
- (2) A series of projects or financings of working capital for a single participating district.
- (3) A single project or financing of working capital for several participating districts.
- (4) Several projects or financing of working capital for several participating districts.
- (5) A joint venture school facilities construction project undertaken pursuant to Article 5 (commencing with Section 17060) of Chapter 12.

(b) Except as otherwise expressly provided by the authority, all revenue bonds shall be payable from any available revenues or moneys of the authority not otherwise pledged, subject only to any agreements with holders of particular bonds or notes pledging any particular revenue or moneys. Notwithstanding that revenue bonds issued pursuant to this section may be payable from a special fund, the revenue bonds shall be, and shall be deemed to be for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds for registration.

(c) The revenue bonds of the authority may be issued as serial bonds, term bonds, or the authority, in its discretion, may issue bonds of both types. The issuance shall be in accordance with the indenture, trust agreement, or resolution relating to the revenue bonds, which shall provide all of the following:

- (1) The date or dates of the bonds.
- (2) The date or dates upon which the bonds will mature, not to exceed 40 years from their respective dates.
- (3) The interest rate or rates, or methods of determining the interest rate or rates, of the bonds.
- (4) When the bonds are payable.
- (5) The denominations of the bonds.
- (6) The form of the bonds, which shall be either bearer or registered.
- (7) The registration privileges of the bonds.
- (8) The manner in which the bonds are to be executed.
- (9) The place or places at which the bonds shall be payable in lawful money of the United States of America.
- (10) The terms of redemption of the bonds.

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(d) After giving due consideration to the recommendations of the participating district or districts, the revenue bonds of the authority shall be sold by the Treasurer at either a public or private sale at a price or prices, and upon the terms and conditions prescribed by the authority. The revenue bonds of the authority may be sold at, above, or below the par value of the bonds.

(e) Pending the preparation of the definitive bonds, the authority may issue interim receipts or certificates or temporary bonds which shall be exchanged for the definitive bonds.

(f) Any resolution authorizing the issuance of any bonds of the authority, or any issue of revenue bonds of the authority, may include any of the following provisions:

(1) Provisions pledging all or any part of the proceeds of the bonds or revenue of a project or loan.

(2) Provisions concerning the replacement of mutilated, destroyed, stolen, or lost bonds.

(3) Provisions specifying insurance to be maintained on the project and the authorized uses of the proceeds of the insurance.

(4) Covenants against the mortgaging or otherwise encumbering, selling, leasing, pledging, placing a charge upon, or otherwise disposing of the project prior to the payment of the bonds issued to finance the project.

(5) Provisions specifying the events of default, terms upon which the bonds may be declared due before maturity, and the terms upon which the declaration and its consequences may be waived.

(6) The rights, liabilities, powers, and duties arising upon the breach of any covenants, conditions, or obligations.

(7) Vesting of the right to enforce covenants in a trustee.

(8) The terms upon which all or any percentage of the bondholders may enforce covenants or duties.

(9) Procedures for amending the terms of the resolution, with or without the consent of the holders of a specified number of bonds.

(10) Provision for any other acts or things deemed necessary, convenient, or desirable by the authority to secure the bonds or improve their marketability.

(g) The validity of the authorization and issuance of any bond issue shall not be affected by proceedings for the acquisition, construction, or improvement of any project, or by contracts relating to those proceedings. Any resolution authorizing the issuance of any bonds of the authority may provide authorization for the bonds to bear a statement certifying that they are issued pursuant to this chapter. Bonds bearing that statement shall be conclusively deemed valid and issued in conformity with this chapter. Reference on the face of the bonds to the resolution by its date of adoption shall incorporate the provisions of the resolution and of this chapter into the terms of the bonds.

(h) Members of the authority, or any person executing the revenue bonds of the authority, shall not incur personal liability on the bonds, nor shall these

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persons incur personal liability or accountability by reason of the issuance of the revenue bonds of the authority.

(i) The authority is authorized, out of any funds available for that purpose, to purchase revenue bonds of the authority. The authority may hold, pledge, cancel, or resell any bonds purchased under the authority of this subdivision, subject to, and in accordance with, agreements with bondholders.

(j) The financing or refinancing of projects or working capital may be provided pursuant to this chapter by means other than revenue bonds, at the discretion of the authority, including financing or refinancing through certificates of participation, or other interests, in bonds, loans, leases, installment sales, or other agreements of the participating district or districts. In this connection, the authority may do all things and execute and deliver all documents and instruments as may be necessary or desirable with regard to issuance of the certificates of participation or other means of financing or refinancing.

(k) The authority may by resolution issue its revenue bonds in the form of commercial paper.

(Formerly § 17883, added by Stats.1997, c. 893 (S.B.161), § 93. Renumbered § 17183 and amended by Stats.1998, c. 485 (A.B.2803), § 48.)

§ 17183.5. Financial feasibility of project

In enacting this chapter, it is the intent of the Legislature to provide financing only for projects demonstrated by the participating district to be financially feasible. In demonstrating financial feasibility, the participating district may take into account all district funds, and may base future projections upon historical experience or reasonable expectations, or a combination thereof. Nothing in this section shall be construed to imply that any project is required to produce revenue in order to be financed under this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17184. Revenue bonds; trust agreements, indentures, or resolution security provisions

(a) In the discretion of the authority, any revenue bonds of the authority issued under this chapter may be secured by a trust agreement, or by indenture by and between the authority and a corporate trustee or trustees, including the Treasurer or any trust company or bank having the powers of a trust company within or outside the state.

(b) Any trust agreement, indenture, or any resolution providing for the issuance of bonds of the authority, may pledge or assign the proceeds of the bonds, and the revenues to be received by, a participating district or districts.

(c) Any trust agreement, indenture, or resolution providing for the issuance of revenue bonds of the authority may include any provisions for the protection of, and the enforcement of the rights and remedies of, bondholders as may be reasonable and proper and not in violation of any law, including provisions included in any resolution or resolutions of the authority provided under subdivision (a) or (b).

(d) Any trust agreement or indenture may prescribe the rights and remedies of the bondholders, and of the trustee or trustees, and may restrict the individual right of action of the bondholders.

(e) Any trust agreement, indenture, or resolution may include any other provisions deemed by the authority to be reasonable and proper for the security of the bondholders.

(f) Notwithstanding any other provision of law, the Treasurer shall not be deemed to have a conflict of interest by reason of his or her capacity as trustee pursuant to this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17185. Revenue bonds; not liability or pledge of faith and credit of state or political subdivision

(a) Revenue bonds issued under this chapter are not and shall not be deemed to constitute a debt or liability of the state, or any political subdivision thereof, and are not and shall not be deemed to be a pledge of the faith and credit of the state, or any political subdivision thereof, other than the authority. Revenue bonds of the authority shall be payable solely from funds provided under this chapter.

(b) Each revenue bond of the authority shall include a statement on the face of the bond that neither the State of California nor the authority is obligated to pay the principal or interest thereon, except from revenues of the authority, and shall also include a statement that neither the faith or credit, nor the taxing power of the State of California, or any political subdivision, is pledged to the payment of the principal or interest of the bonds.

(c) The issuance of revenue bonds under this chapter shall not directly, indirectly, or contingently obligate the state, or any political subdivision thereof, to levy or pledge any form of taxation, or make any appropriation for their payment.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17186. Revenue bonds; right of action to enforce rights or duties

(a) Any holder of revenue bonds issued under this chapter, or any coupons appertaining thereto, or the trustee or trustees under any trust agreement, indenture, or resolution, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any rights conferred under state law, by this chapter, or under the terms of any trust agreement, indenture, or resolution, except to the extent that these rights may be otherwise restricted by any resolution authorizing the issuance of these bonds, or by any trust agreement or indenture securing these bonds.

(b) Any holder of revenue bonds issued under this chapter, or any coupons appertaining thereto, ~~or~~ the trustee or trustees under any trust agreement, indenture, or resolution, may enforce and compel the performance of all duties required under this chapter, or by any trust agreement, indenture, or resolution, to be performed by the authority, or by any officer, employee, or agent of the authority.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17187. Moneys received as trust funds; depository as trustee

All moneys received under this chapter, whether received as proceeds from the sale of revenue bonds or as revenues, are trust funds to be held and applied solely as provided in this chapter. Any officer, bank, or trust company with whom those moneys have been deposited, shall act as trustee of those moneys and shall hold and apply them for those purposes, subject to the requirements of this chapter and the resolution authorizing the bonds of any issue, or the trust agreement or indenture securing those bonds, may provide.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17193. Rents; pledge of revenues; additional revenue bonds; leases or agreements with participating school districts

(a) The authority shall fix, revise, charge, and collect rents for the use of each project owned by the authority, and may contract with any person, partnership, association, corporation, or other body, whether public or private, for that purpose. Any lease entered into by the authority with a participating district, and each agreement, note, or other instrument evidencing the obligations of a participating district to the authority, shall provide that the rents or principal, interest, and other charges payable by the participating district shall be sufficient to provide for all of the following:

(1) To pay the principal, sinking fund payments, if any, premiums, if any, and the interest on outstanding bonds of the authority issued in respect of the project when due and payable.

(2) To create and maintain reserves which may, but need not necessarily be required or provided for, in the resolution relating to the revenue bonds of the authority.

(3) To pay its share of the administrative costs and expenses of the authority.

(b) The authority shall pledge the revenues derived and to be derived from a project or from a participating district for the purposes specified in paragraphs (1), (2), and (3) of subdivision (a). The authority may issue additional revenue bonds which may be ranked on a parity with other bonds relating to the project to the extent, and under the terms and conditions provided, in the bond resolution.

(c) The authority and a participating district may include in any lease or agreement between them or with a credit provider any terms and conditions relating to insurance, liquidity, or credit enhancement of the bonds, or any other lawful terms and conditions the authority deems necessary or desirable to facilitate the purposes of this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17193.5. Public credit provider; credit enhancement for evidences of indebtedness; required conditions; apportionment

(a) For purposes of this section, "public credit provider" means any financial institution or combination of financial institutions, which consists either solely, or has as a member or participant, a public retirement system. Notwithstanding any other provision of law, a public credit provider may, in connection with providing credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of a school district or county office of education, require the school district or county office of education to agree to the following conditions:

(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds, notes, certificates of participation, or other evidence of indebtedness and identify the public credit provider that provided credit enhancement. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason a public credit provider is required to make principal or interest payments or both pursuant to a credit enhancement agreement, the public credit provider shall immediately notify the Controller of that fact and of the amount paid out by the public credit provider.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the public credit provider in the amount of the payments made by the public credit provider for the purpose of reimbursing the public credit provider for its expenditures made pursuant to the credit enhancement agreement. The Controller shall make that apportionment only from moneys designated for apportionments to the school district pursuant to Section 42238 or to the county office of education pursuant to Section 2558 or to the community college district pursuant to Section 84750.

(b) The amount apportioned for a school district, a county office of education, or a community college district pursuant to this section shall be deemed to be an allocation to the district or the county office of education or the community college district for purposes of subdivision (b) or Section 8 of Article XVI of the California Constitution. For purposes of computing revenue limits or revenue levels pursuant to Section 42338 for any school district or pursuant to Section 2558 for any county office of education or pursuant to Section 84750 for any community college district, the revenue limit or revenue level for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraph (3) of subdivision (a).

(Added by Stats.1998, c. 1076 (S.B.2126), § 1.)

§ 17194. Participating district as agent for authority

The authority may authorize any participating district to act as its agent in the performance of acts specifically approved by the authority, and all acts required under Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5. The authorizations may include, but are not necessarily limited to, all of the following:

- (a) The selection of school or college sites.
- (b) The securing of appraisals.
- (c) Contracts for architectural services.
- (d) The advertisement for construction bids and the entry into contracts for construction.
- (e) The purchase of furniture and equipment.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17195. Release of interest in project to districts

Whenever the principal and interest on bonds issued by the authority to finance the cost of a project, or to refinance the outstanding indebtedness of one or more participating districts, including any refunding bonds issued to refund and refinance those bonds, have been fully paid or retired, or whenever adequate provision has been made to fully pay and retire the bonds, and all other conditions of the resolution, lease, trust indenture and any security interest, or any other instrument or instruments authorizing and securing the bonds have been satisfied and the lien of security interest has been released in accordance with those provisions, the authority shall promptly provide for and execute any releases, release deeds, reassignments, deeds, and conveyances as are necessary and required to convey or release its rights, title, and interest in the project financed, to the participating districts.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17196. Applicability of other laws

(a) This chapter shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized in this chapter, and shall be deemed as being supplemental and additional to the powers conferred by other applicable laws, except that the issuance of revenue bonds and refunding bonds and the undertaking or projects or financings under this chapter need not comply with the requirements of any other laws applicable to the issuance of bonds, including, without limitation, Division 13 (commencing with Section 21000) of the Public Resources Code.

(b) Except as provided in subdivision (a), the financing of a project under this chapter shall not exempt a project from any of the requirements of law which are otherwise applicable to the project.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17197. Inconsistency with other laws

To the extent that the provisions of this chapter are inconsistent with any other provisions of any general statute, or a special act or parts thereof, the provisions of this chapter shall be deemed controlling.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 17199.1. District financing agreements with authority; liquidity or credit enhancement; agents; applicability of other laws

(a) Any participating district, exclusively for the purpose of securing financing or refinancing of projects or working capital pursuant to this chapter through the issuance, by the authority, of revenue bonds, certificates of participation, or other means, and notwithstanding any other provision of law, may: (1) sell to the authority all or part of any rights to or possibilities regarding the state's share of funding for school facilities approved by the State Allocation Board pursuant to Chapter 12.5 (commencing with Sec. 17070.10) including amounts apportioned and funded and amounts approved but not yet funded by the State Allocation Board from proceeds of state bonds already authorized by the electors but not yet issued; (2) issue bonds to the authority; or (3) borrow money or purchase or lease educational facilities from the authority, and in connection therewith, sell or lease property to the authority, in each case at any interest rate or rates, rental provisions, with any maturity date or dates or term, and with any other transfer, assignment, payment, security, default, remedy, and other terms or provisions as may be specified in the sale of rights agreement or the bonds of the participating district or a loan, loan purchase, installment sale, lease, or other agreement between the authority and the participating district, subject to the following conditions:

(A) The sum of the amount borrowed to finance working capital and the interest payable thereon at the initial interest rate if interest is variable, shall not exceed 85 percent of the estimated amount of uncollected taxes, income, revenue, cash receipts, and other district funds which will be available in any fiscal year for the repayment of the loan and the interest thereon. For purposes of this paragraph, "revenue" includes, but is not limited to, federal and state funds received by the district.

(B) In computing the maximum amount which may be borrowed in any fiscal year pursuant to subparagraph (A), the district may exclude the amount of any principal or interest which is secured by a pledge of the amount in any inactive or term deposit of the district which has a term scheduled to terminate during that fiscal year.

(C) A participating district that borrows money to finance working capital pursuant to this subdivision shall be required to repay and discharge the loan, including interest, within 15 months of the loan date.

(D) In enacting this chapter, it is the intent of the Legislature to provide financing of working capital needed to cover temporary or cash-flow deficits and needs for working capital and not long-term budget deficits or shortfalls in funding. The participating school district must demonstrate to the satisfaction of the authority that, during the term of any working capital loan received pursuant to this chapter, the participating district will receive or otherwise have (without additional borrowing) sufficient funds to repay and discharge the loan. The participating district may take into account all district funds and may base future projections upon historical experience or reasonable expectations, or a combination thereof.

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(b) Notwithstanding Sections 700, 703, and 1045 of the Civil Code, the rights and possibilities that a participating district may have or obtain in the future to an approved state contribution to funding for school facilities pursuant to Chapter 12.5 (commencing with Sec. 17070.10) that remains unfunded pending the issuance of state bonds already authorized by the electors shall constitute property for all purposes and may be transferred as provided in subdivision (a). In the case of any transfer or assignment of rights or possibilities relating to funds for which bonds have been approved by the voters but are not yet available, the transfer or assignment shall be approved by resolution of the State Allocation Board prior to becoming effective.

(c) Any participating district may enter into any agreement for liquidity or credit enhancement, with any reimbursement, payment, interest, security, default, remedy, and other terms it may deem necessary or appropriate in connection with the issuance of bonds, the borrowing of money or the lease or purchase of educational facilities, whichever is applicable. Any participating district or districts may also do all things and execute all documents as may be necessary or desirable in connection with the issuance of certificates of participation, or other interests, in any bond, loan, installment sale, lease, or other agreement of the district.

(d) A school district may by resolution authorize any county or city board of education or superintendent of schools, and a community college district may by resolution authorize the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges, to act as its agent in the performance of any of the matters permitted by this section or any other provision of this chapter. Notwithstanding any other provision of law, the agent shall have the powers granted by the resolution for purposes of this chapter. The resolution shall be deemed to bind the school district or community college district, as the case may be, to any contract, agreement, instrument, or other document executed by the agent on behalf of the school district or community college district, and all duties, obligations, or responsibilities contained therein on the part of the school district or community college district, to the same extent as if duly authorized, executed, and delivered by the school district or community college district.

(e) This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this section, and the sale or transfer of any rights to or possibilities regarding the state share of funding for school facilities approved by the State Allocation Board including amounts apportioned and funded and amounts approved but not yet funded from proceeds of state bonds already authorized by the electors but not yet issued, issuance of bonds to, borrowing of money from, or sale or purchase or lease of educational facilities from or to, the authority. Any agreement entered into in connection with the transfer of any rights to or possibilities regarding the state contribution for funding for school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10), including amounts apportioned and funded and amounts approved but not yet funded by the State Allocation Board from proceeds of state bonds already authorized by the electors but not yet issued, or the issuance of bonds, the borrowing of money or the sale, purchase,

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or lease of educational facilities, including, without limitation, any agreement for liquidity or credit enhancement under this section, need not comply with the requirements of any other law applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge, encumbrance, or credit, as the case may be, by a school district or community college district, or by a county or city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998. Amended by Stats.1999, c. 718 (A.B.636), § 2, eff. Oct. 10, 1999; Stats.2000, c. 193 (A.B.2586), § 2.)

§ 17199.3. Amount of revenue bonds outstanding; restriction

(a) The total amount of revenue bonds which may be issued and outstanding at any time for purposes of this chapter, other than those revenue bonds issued under Section 17199.4, shall not exceed four hundred million dollars (\$400,000,000).

(b) The total amount that may be outstanding at any time under this chapter, for purposes of Section 17199.4 only, shall not exceed four billion dollars (\$4,000,000,000).

(c) For purposes of subdivisions (a) and (b), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17188.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

(Added by Stats.1997, c. 893 (S.B.161), § 94. Amended by Stats.1998, c. 741 (A.B.89), § 1.)

§ 17199.4. Financing of projects; guarantee or payment of bonds under specified conditions; application to authority; priorities; report to legislature

(a) Notwithstanding any other law, any participating school district or county office of education, in connection with securing financing or refinancing of projects, except working capital, pursuant to this chapter may elect to guarantee or provide for payment of the bonds in accordance with the following conditions:

(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds and identify a trustee appointed by the participating school district or county office of education or the authority for purposes of this section. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason, the school district or county office of education will not make the payment of principal and interest at the time the payment is required, the participating school district or county office of education shall notify the trustee of that fact and of the amount of the deficiency. The trustee shall immediately communicate that information to the Controller.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the trustee in the amount of the deficiency for the

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purpose of making the required payment of principal or interest, or both. The Controller shall make that apportionment only from moneys in Section A of the State School Fund designated for apportionment to the district pursuant to Section 42238 or to the county office of education pursuant to Section 2558.

(4) As an alternative to the procedures set forth in paragraphs (2) and (3), the participating school district or county office of education may provide a transfer schedule in its notice to the Controller of its election to participate under this section. The transfer schedule shall set forth amounts to be transferred to the trustee and the date for the transfers. The Controller shall, subject to the limitation in the last sentence of paragraph (3), make apportionments to the trustee of those amounts on the specified date for the purpose of making those transfers.

(b) The amount apportioned for a school district or for a county office of education pursuant to this section shall be deemed to be an allocation to the district or the county office of education for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution. For purposes of computing revenue limits pursuant to Section 42238 for any school district or pursuant to Section 2558 for any county office of education, the revenue limit for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraphs (3) and (4) of subdivision (a).

(c)(1) School districts or county offices of education that elect to participate under this section shall apply to the authority. The authority shall consider each of the following priorities in making funds available:

(A) First priority shall be given to school districts or county offices of education that apply for funding for instructional classroom space.

(B) Second priority shall be given to school districts or county offices of education that apply for funding of modernization of instructional classroom space.

(C) Third priority shall be given to all other eligible costs, as defined in Section 17173.

(2) The authority shall prioritize applications at appropriate intervals.

(3) A school district electing to participate under this section that has applied for revenue bond moneys for the purposes of joint venture school facilities construction projects, pursuant to Article 5 (commencing with Section 17060) of Chapter 12, shall not be subject to the priorities set forth in paragraph (1).

(d) This section shall not be construed to make the State of California liable for any payment of principal or interest on any bonds or certificates of participation within the meaning of Section 1 of Article XVI of the California Constitution or otherwise, except as expressly provided in this section.

(e) A school district that has a qualified or negative certification pursuant to Section 42131, or a county office of education that has a qualified or negative certification pursuant to Section 1240, may not participate under this section.

(f) The authority shall report to the Legislature by January 1, 2001, on the number of school districts or county offices of education electing to participate under this section and on the financial stability of the participating school districts and county offices of education.

(Added by Stats.1997, c. 893 (S.B.161), § 95. Amended by Stats.1998, c. 741 (A.B.89), § 2.)

§ 17199.5. Credit enhancement agreement; payment by public credit provider; apportionment allocation

Notwithstanding Section 17199.4, if the bonds were subject to a credit enhancement agreement provided by a public credit provider pursuant to Section 17193.5 for which a payment for principal or interest, or both, has been made by the public credit provider, the Controller shall allocate to the public credit provider, rather than the trustee, the percentage of the apportionment to be made pursuant to this paragraph equal to the percentage of the outstanding indebtedness which is subject to the credit enhancement agreement.

(Added by Stats.1998, c. 1076 (S.B.2126), § 2.)

§ 67330. Short title

This chapter shall be known and may be cited as the Higher Education Facilities Bond Act of 1988.

(Added by Stats.1988, c. 44, § 1.)

§ 67331. Legislative findings and declaration

The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the California State University, the California community colleges, and the California Maritime Academy. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California community colleges to assess their long-term and short-term capital needs, which studies demonstrate that these needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of 1988 is to assist in meeting the capital outlay financing needs of California's public higher education system.

(Added by Stats.1988, c. 44, § 1.)

§ 67332. Definitions

As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Higher Education Facilities Finance Committee created pursuant to Section 67353.

(b) "Fund" means the 1988 Higher Education Capital Outlay Bond Fund created pursuant to Section 67333.

(Added by Stats.1988, c. 44, § 1.)

§ 67333. Higher education capital outlay bond fund; creation; deposit of proceeds

The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the 1988 Higher Education Capital Outlay Bond Fund, which is hereby created.

(Added by Stats.1988, c. 44, § 1.)

§ 67334. Creation of state debt or liabilities; purposes; loans to community colleges

(a) The committee shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California community colleges, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, for the equipping of new, renovated, or reconstructed facilities, and to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings.

(b) Moneys made available under Section 67340 or 67342 may be used to provide short-term loans to community colleges for the purchase of instructional equipment. Those loans shall be repaid from the first moneys available in the Capital Outlay Fund for Public Higher Education beginning in the 1989-90 fiscal year, or from proceeds of the bonds.

(Added by Stats.1988, c. 44, § 1.)

§ 67335. Bonds as general obligations of state; amount; authority of treasurer to sell bonds

(a) Bonds in the total amount of six hundred million dollars (\$600,000,000), not including the amount of any refunding bonds issued in accordance with Section 67343, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at such different times as necessary to service expenditures required by the apportionments.

(Added by Stats.1988, c. 44, § 1.)

§ 67337. Issuance of bonds; determination of necessity

The committee shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 67334 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Added by Stats.1988, c. 44, § 1.)

§ 67342. Request for loan from pooled money investment account

The board may request the Pooled Money Investment Board for a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, and may execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. The loan shall be deposited in the fund for the purpose of carrying out the provisions of this chapter. The amount of the loan shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purposes of this chapter.

(Added by Stats.1988, c. 44, § 1.)

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§ 67345. Title

This chapter shall be known and may be cited as the Higher Education Facilities Bond Act of June 1990.

(Added by Stats.1990, c. 6 (S.B.147), § 1, eff. Feb. 22, 1990, (Prop. 121), approved June 5, 1990.)

§ 67345.1. Findings and declarations

The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the California State University, the California Community Colleges, and the California Maritime Academy. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of June 1990 is to assist in meeting the capital outlay financing needs of California's public higher education system.

(Added by Stats.1990, c. 6 (S.B.147), § 1, eff. Feb. 22, 1990, (Prop. 121), approved June 5, 1990.)

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§ 67346. Higher Education Outlay Bond Fund

The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the June 1990 Higher Education Capital Outlay Bond Fund, which is hereby created.

(Added by Stats.1990, c. 6 (S.B.147), § 1, eff. Feb. 22, 1990, (Prop. 121), approved June 5, 1990.)

§ 67346.5. Authority to create debts and liabilities

(a) The committee shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California Community Colleges, and the Hastings College of the Law, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures, the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, and for the equipping of new, renovated, or reconstructed facilities, and to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans

and working drawings. The addition of the Hastings College of the Law to this section is not intended to mark a change from the funding authorizations made by Section 67354, as contained in the Higher Education Facilities Bond Act of 1986, or Section 67334, as contained in the Higher Education Facilities Bond Act of 1988, but is intended to more clearly state what was intended by the Legislature in those sections as well.

(b) Moneys made available under Section 67347.5 or 67347.7 may be used to provide short-term loans to community colleges for the purchase of instructional equipment. Those loans shall be repaid from the first moneys available in the Capital Outlay Fund for Public Higher Education beginning in the 1990-91 fiscal year, or from proceeds of the bonds.

(Added by Stats.1990, c. 6 (S.B.147), § 1, eff. Feb. 22, 1990, (Prop. 121), approved June 5, 1990.)

§ 67347. Issuance of bonds

(a) Bonds in the total amount of four hundred fifty million dollars (\$450,000,000), not including the amount of any refunding bonds issued in accordance with Section 67347.8, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.1990, c. 6 (S.B.147), § 1, eff. Feb. 22, 1990, (Prop. 121), approved June 5, 1990.)

EDUCATION CODE

§ 67347.2. Limitation on issuance of bonds

The committee shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 67346.5 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Added by Stats.1990, c. 6 (S.B.147), § 1, eff. Feb. 22, 1990, (Prop. 121), approved June 5, 1990.)

EDUCATION CODE

§ 67347.7. Pooled Money Investment Board loans

The board may request the Pooled Money Investment Board for a loan from the Investment Account, in accordance with Section 16312 of the Government Code, and the documents required by the Pooled Money Investment Board to obtain and repay the loan shall be deposited in the fund for the purpose of carrying out the provisions of this chapter. The loan shall not exceed the amount of the unsold bonds that the committee is authorized to be sold for the purposes of this chapter.

For the purposes of requesting Pooled Money Investment Board loans in accordance with this section, "board" means: the President of the University of California, the Dean of the Humanities, the Law, the Chancellor of the California State University, the President of the State Bar of California, the President of the California Community Colleges, each acting in her own behalf.

(Added by Stats.1990, c. 6 (S.B.147), § 1, eff. Feb. 22, 1990, (Prop. 121), approved June 15, 1990.)

EDUCATION CODE

§ 67350. Short title

This chapter shall be known and may be cited as the Higher Education Facilities Bond Act of 1986.

(Added by Stats.1986, c. 424, § 2.)

§ 67352. Definitions

As used in this chapter, and for the purposes of this chapter as used in the State General Obligation Bond Law, the following words shall have the following meanings:

(a) "Board" means the State Public Works Board.

(b) "Committee" means the Higher Education Facilities Finance Committee, created pursuant to Section 67353.

(c) "Fund" means the Higher Education Capital Outlay Bond Fund, created pursuant to subdivision (e) of Section 67354.

(Added by Stats.1986, c. 424, § 2.)

§ 67353. Finance committee; creation; membership

The Higher Education Facilities Finance Committee is hereby created, consisting of the Governor, the Controller, the Treasurer, the Director of Finance, the President of the University of California, the Chancellor of the California State University, and the Chancellor of the California Community Colleges, or their designees. The Treasurer shall serve as chairperson of the committee.

(Added by Stats.1986, c. 424, § 2.)

§ 67354. Authorization to create debts or liabilities of state; purposes; apportionment amounts; sales of bonds; deposit of proceeds

(a) For the purpose of funding aid to the University of California, the California State University, the California Community Colleges, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, for the equipping of new, renovated, or reconstructed facilities, which equipment shall have a useful life of at least 10 years, to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings, and to provide funds to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code, the committee shall be and is hereby authorized and empowered to create a debt or debts, liability or liabilities, of the State of California, in the aggregate amount of four hundred million dollars (\$400,000,000) in the manner provided in this chapter, but not in excess thereof.

(b) The committee shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine when the bonds authorized under this chapter shall be issued in order to fund the authorized apportionments, and the amount of the bonds to be issued and sold.

(c) Up to two hundred fifty million dollars (\$250,000,000) shall be available for apportionment in the 1986-87 fiscal year, and up to one hundred fifty million dollars (\$150,000,000) shall be available for apportionment for the 1987-88 fiscal year, and in each subsequent fiscal year, except that the maximum aggregate debt or liability amount set forth in subdivision (a) shall not be exceeded.

(d) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at such different times as necessary to service expenditures required by the apportionments.

(e) The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Higher Education Capital Outlay Bond Fund, which is hereby created in the State Treasury.

(Added by Stats.1986, c. 424, § 2.)

§ 67354.5. Use of bond proceeds for short-term loans to community colleges for purchasing instructional equipment

The proceeds of the bonds may also be used to provide short-term loans to community colleges for the purchase of instructional equipment. Those loans shall be repaid from the first moneys available in the Capital Outlay Fund for Public Higher Education beginning in the 1987-88 fiscal year.

(Added by Stats.1986, c. 424, § 2.)

EDUCATION CODE

§ 67358. Short title

This chapter shall be known and may be cited as the Higher Education Facilities Bond Act of June 1992.

(Added by Stats.1992, c. 13 (S.B.119), § 1, eff. March 11, 1992, operative June 2, 1992 (Prop.153, approved June 2, 1992).)

§ 67358.1. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California containing nine campuses, the California State University containing 20 campuses, the California Community Colleges consisting of 71 districts containing 107 campuses, the Hastings College of the Law, the California Maritime Academy, and their respective off-campus centers. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of June 1992 is to assist in meeting the capital outlay financing needs of California's public higher education system.

(Added by Stats.1992, c. 13 (S.B.119), § 1, eff. March 11, 1992, operative June 2, 1992 (Prop.153, approved June 2, 1992).)

EDUCATION CODE

§ 67358.2. Definitions

As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Higher Education Facilities Finance Committee created pursuant to Section 67353.

(b) "Fund" means the 1992 Higher Education Capital Outlay Bond Fund created pursuant to Section 67358.3.

(Added by Stats.1992, c. 13 (S.B.119), § 1, eff. March 11, 1992, operative June 2, 1992 (Prop.153, approved June 2, 1992).)

§ 67358.3. 1992 higher education capital outlay bond fund

The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the 1992 Higher Education Capital Outlay Bond Fund, which is hereby created.

(Added by Stats.1992, c. 13 (S.B.119), § 1, eff. March 11, 1992, operative June 2, 1992 (Prop.153, approved June 2, 1992).)

EDUCATION CODE

§ 67358.4. Debt authorized; purpose; Hastings College of the Law

The committee shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California Community Colleges, the Hastings College of the Law, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures; the equipping of new, renovated, or reconstructed facilities; funding for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings; renovation and reconstruction of facilities; and the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990, including the acquisition of sites upon which these facilities are to be constructed.

The addition of the Hastings College of the Law to this section is not intended to mark a change from the funding authorizations made by Section 67354, as contained in the Higher Education Facilities Bond Act of 1986, or Section 67334, as contained in the Higher Education Facilities Bond Act of 1988, but is intended to state more clearly what was intended by the Legislature in those sections as well.

(Added by Stats.1992, c. 13 (S.B.119), § 1, eff. March 11, 1992, operative June 2, 1992 (Prop.153, approved June 2, 1992).)

§ 67358.5. Amount of bonds; state obligation; sale

(a) Bonds in the total amount of nine hundred million dollars (\$900,000,000), not including the amount of any refunding bonds issued in accordance with Section 67359.3, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.1992, c. 13 (S.B.119), § 1, eff. March 11, 1992, operative June 2, 1992 (Prop.153, approved June 2, 1992).)

EDUCATION CODE

§ 67358.7. Issuance of bonds

The committee shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 67358.4 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Added by Stats.1992, c. 13 (S.B.119), § 1, eff. March 11, 1992, operative June 2, 1992 (Prop.153, approved June 2, 1992).)

EDUCATION CODE

§ 67359. General fund withdrawal; limits on expenditures; seismic retrofitting

(a) For the purposes of carrying out this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, together with interest at the rate paid on moneys in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this chapter.

(b) No funds shall be expended pursuant to this chapter for the acquisition and development of new campuses that would increase the number of campuses designated in Section 67358.1.

(c) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in Section 67358.4 by the University of California, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan of the particular university or college and shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, by the 2000-01 fiscal year, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college.

(Added by Stats.1992, c. 13 (S.B.119), § 1, eff. March 11, 1992, operative June 2, 1992 (Prop.153, approved June 2, 1992).)

EDUCATION CODE

§ 67359.2. Pooled money investment account loan

The board may request the Pooled Money Investment Board for a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, and may execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. The loan shall be deposited in the fund for the purpose of carrying out the provisions of this chapter. The amount of the loan shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purposes of this chapter.

(Added by Stats.1992, c. 13 (S.B.119), § 1, eff. March 11, 1992, operative June 2, 1992 (Prop.153, approved June 2, 1992).)

EDUCATION CODE

§ 67359.20. Northridge earthquake damage; repairs

Any funds from the 1988 Higher Education Capital Outlay Bond Fund, the June 1990 Higher Education Capital Outlay Bond Fund, and the 1992 Higher Education Capital Outlay Bond Fund, not to exceed a combined total of seventy-five million dollars (\$75,000,000), are hereby appropriated to the Director of Finance for allocation to the University of California, the California State University, and the California Community Colleges to meet the timely allocation of matching grants to repair, replace, reconstruct, renovate, or retrofit on-campus buildings or facilities, including utilities, and streets and roads that were damaged in the Northridge earthquake of January 17, 1994.

* * *

(Added by Stats.1996, c. 896 (S.B.1613), § 1. Amended by Stats.2001, c. 745 (S.B.1191), § 34, eff. Oct. 12, 2001.)

§ 100000. Short title

This chapter shall be known and may be cited as the Public Education Facilities Bond Act of 1996.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100010. State School Building Lease-Purchase Fund; deposit of bond sale proceeds

(a) Two billion twenty-five million dollars (\$2,025,000,000) of the proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the State School Building Lease-Purchase Fund.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100015. State School Building Lease-Purchase Fund; use of deposited moneys

All moneys deposited in the State School Building Lease-Purchase Fund shall be available to provide aid to school districts of the state in accordance with the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10), and of all acts amendatory thereof and supplementary thereto, to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with Sections 100020, 100025, 100030, and 100035, to provide funds to repay any money advanced or loaned to the State School Building Lease-Purchase Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. (Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100020. Bond sale proceeds; amount limitation for specified purposes

Of the proceeds from the sale of bonds pursuant to this chapter, not more than nine hundred million dollars (\$900,000,000) may be used for one or more of the following purposes:

(a) The acquisition of portable classrooms for use in accordance with Chapter 25 (commencing with Section 17785) of Part 10.

(b) The reconstruction or modernization of facilities pursuant to Chapter 22 (commencing with Section 17700) of Part 10. In addition to the current program requirements, the State Allocation Board may allocate funding pursuant to this subdivision for the reconstruction or modernization of any existing structure, including the wiring and cabling in that structure, to enable that structure to accommodate computers and other high technology equipment.

(c) The purchase and installation of air-conditioning equipment and insulation materials, and related costs, pursuant to Section 42250.1, for schools operated on a year-round multitrack schedule in a manner that increases school capacity and reduces or eliminates the school district's need for the construction of additional classroom space.

(d) Project funding for applicant districts under Chapter 22 (commencing with Section 17700) of Part 10 that have incurred or will incur enrollment increases due to the locating or expansion of state or federal prisons.

(e) The acquisition of relocatable child care and development facilities for the purpose of providing extended day care services pursuant to Article 22 (commencing with Section 8460) of Chapter 2 of Part 6.

(f) Project funding, without regard to funding priorities, for applicant county boards of education under Chapter 22 (commencing with Section 17700) of Part 10 that are eligible for that funding for classrooms for severely handicapped pupils.

(g) Project funding for applicant districts under Chapter 22 (commencing with Section 17700) of Part 10 that are eligible for that funding, but that lack funding priority due to the size of pupil enrollment in the district.

(h) Project funding for high priority roof replacement projects.

(i) Construction projects or the purchase of furniture or equipment designed to increase school security.

(j) The identification, assessment, or abatement in school facilities of hazardous asbestos pursuant to either Chapter 22 (commencing with Section 17700) of Part 10 or Section 39619.6 and of lead.

(k) The reconstruction or modernization of facilities pursuant to Chapter 22 (commencing with Section 17700) of Part 10. Notwithstanding Section 17721.3, the State Allocation Board may allocate funding pursuant to this subdivision for the reconstruction or modernization of an existing structure in an amount that exceeds 25 percent of the replacement cost of that structure in order to finance structural improvements needed to avert future earthquake damage.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100025. Bond sale proceeds; amount limitation for use on seismic retrofit projects; existing public school facilities

Of the proceeds from the sale of bonds pursuant to this chapter, not more than one hundred million dollars (\$100,000,000) may be used for seismic retrofit projects of existing public school facilities.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100030. Bond sale proceeds; amount limitation for use on school district projects; school district contribution

Of the proceeds from the sale of bonds pursuant to this chapter, not more than forty million dollars (\$40,000,000) may be used for projects for school districts that agree to contribute 60 percent or more of the cost of those projects.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100035. Bond sale proceeds; amount limitation for use on projects including joint use of facilities

Of the proceeds from the sale of bonds pursuant to this chapter, not more than twenty-five million dollars (\$25,000,000) may be used for projects that include joint use of facilities pursuant to Section 17750 or 17751.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100110. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, comprising nine campuses, the California State University, comprising 22 campuses, including the California Maritime Academy, a specialized institution, the California Community Colleges, consisting of 71 districts and 107 campuses, the Hastings College of the Law, and their respective off-campus centers. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, several billion dollars.

(d) The purpose of this article is to assist in meeting the capital outlay financing needs of California's public higher education system.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

**§ 100115. 1996 Higher Education Capital Outlay Bond Fund; creation;
deposit of bond sale proceeds**

Nine hundred seventy-five million dollars (\$975,000,000) of the proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the 1996 Higher Education Capital Outlay Bond Fund, which is hereby created.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100120. Higher Education Facilities Finance Committee; debt authorized; purposes; Hastings College of Law

The Higher Education Facilities Finance Committee created pursuant to Section 67353 shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California Community Colleges, and the Hastings College of the Law for the construction, including the construction of buildings and the acquisition of related fixtures; the equipping of new, renovated, or reconstructed facilities; funding for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings; renovation and reconstruction of facilities; and the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990, including the acquisition of sites upon which these facilities are to be constructed.

The addition of the Hastings College of the Law to this section is not intended to mark a change from the funding authorizations made by Section 67354, as contained in the Higher Education Facilities Bond Act of 1986, or Section 67334, as contained in the Higher Education Facilities Bond Act of 1988, but is intended to state more clearly what was intended by the Legislature in those sections as well.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203,-approved March 26, 1996).)

§ 100121. Community college district buildings; renovation, reconstruction, or demolition; historic significance

The Board of Governors of the California Community Colleges shall consider the historic significance of community college district buildings that are 50 years of age or older if those buildings are to be renovated, reconstructed, or demolished in connection with the construction of buildings utilizing the funds provided by this chapter.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100125. Sale and issuance of bonds; total amount; state obligation

(a) Bonds in the total amount of three billion dollars (\$3,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 100175, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee created pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100130. State School Building Finance Committee; continued existence; composition; advisors

The State School Building Finance Committee, created by Section 15909 and composed of the Governor, Controller, Treasurer, Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall be designated to chair the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide the assistance to the committee as it may require. The Attorney General of the state shall be the legal adviser of the committee. (Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100135. General obligation bond law; application; board

(a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the State School Building Lease-Purchase Fund.

(c) For purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 1996 Higher Education Capital Outlay Bond Fund is designated as the "board" for projects funded by those appropriations.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100140. Apportionments funding; issuance of bonds; committee authorization

(a) Upon request of the State Allocation Board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Sections 100015, 100020, 100025, 100030, and 100035, the State School Building Finance Committee created pursuant to Section 15909 shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(b) The Higher Education Facilities Finance Committee created pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in Section 100120 that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 100120 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100145. Revenue collection

There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100150. Appropriation

Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum that is necessary to carry out the provisions of Section 100165, appropriated without regard to fiscal years.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100155. Pooled Money Investment Account; loans

The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee has, by resolution, authorized to be sold for the purpose of carrying out this chapter. The board shall execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100160. Interest exemption; separate accounts; use of proceeds or earnings

Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), if the Treasurer sells bonds that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes subject to designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and for the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds that is required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100165. General fund withdrawal; deposit and return; seismic retrofitting

(a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee or the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the State School Building Lease-Purchase Fund and the 1996 Higher Education Capital Outlay Bond Fund. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in Section 100120 by the University of California, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan of the particular university or college and shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, by the 2002-03 fiscal year, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100170. Specified funds transfer to General Fund

All money deposited in the State School Building Lease-Purchase Fund, the Education Technology Fund, and the 1996 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100175. Refunding bonds

The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds described in this chapter shall include approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds. (Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100180. Bond sale proceeds; disbursements; constitutional limitations

The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article. (Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

§ 100185. Remaining funds; transfer and apportionment; sale of unsold bonds

(a) Any remaining funds resulting or derived from the sale of bonds pursuant to Chapter 9 (commencing with Section 16400), Chapter 10 (commencing with Section 16500), Chapter 11 (commencing with Section 16600), Chapter 12 (commencing with Section 16700), Chapter 13 (commencing with Section 16800), Chapter 15 (commencing with Section 17000), Chapter 16 (commencing with Section 17100), Chapter 17 (commencing with Section 17200), Chapter 18 (commencing with Section 17300), Chapter 19 (commencing with Section 17400), and Chapter 20 (commencing with Section 17500), of Part 10, shall be transferred to the State School Building Lease-Purchase Fund and may be apportioned by the State Allocation Board for the purposes of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10).

(b) Any unsold bonds, authorized for issuance under Chapter 9 (commencing with Section 16400), Chapter 10 (commencing with Section 16500), Chapter 11 (commencing with Section 16600), Chapter 12 (commencing with Section 16700), Chapter 13 (commencing with Section 16800), Chapter 15 (commencing with Section 17000), Chapter 16 (commencing with Section 17100), Chapter 17 (commencing with Section 17200), Chapter 18 (commencing with Section 17300), Chapter 19 (commencing with Section 17400), and Chapter 20 (commencing with Section 17500), of Part 10 may be sold by the Treasurer, upon authorization by the State School Building Finance Committee for the purposes of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10).

(Added by Stats.1996, c. 1 (A.B.1168), § 1, eff. Jan. 8, 1996 (Prop. 203, approved March 26, 1996).)

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§ 100400. Short title

This part shall be known and may be cited as the Class Size Reduction Kindergarten–University Public Education Facilities Bond Act of 1998.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100401. Incorporation of provisions

The incorporation of, or reference to, any provisions of California statutory law in this part includes all acts amendatory thereof and supplementary thereto.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100403. Bonds

(a) Bonds in the total amount of nine billion two hundred million dollars (\$9,200,000,000), not including the amount of any refunding bonds issued in accordance with Chapter 2 (commencing with Section 100410) and Chapter 3 (commencing with Section 100450), or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 and the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100405. Statutory references

For purposes of this part, "Chapter 12" means Chapter 12 (commencing with Section 17000) of Part 10 and "Chapter 12.5" means Chapter 12.5 (commencing with Section 17070.10) of Part 10.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100410. 1998 State School Facilities Fund

(a) Three billion three hundred fifty million dollars (\$3,350,000,000) of the proceeds of bonds issued and sold pursuant to this part shall be deposited in the 1998 State School Facilities Fund, which is established by Section 17070.40, and allocated by the State Allocation Board pursuant to this chapter. Before requesting the sale of bonds pursuant to Section 100432 for deposit in the State School Facilities Fund, the State Allocation Board shall request, pursuant to Section 100432, the sale of bonds sufficient to finance all projects for which application was made pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part 10) and for which an application was approved for construction, but funding was not available, prior to November 4, 1998.

(b) In addition to the amount specified in subdivision (a), three billion three hundred fifty million dollars (\$3,350,000,000) of the bonds authorized by this chapter shall only be issued and sold pursuant to this chapter on or after July 1, 2000, and the proceeds of those bonds shall be deposited in the 1998 State School Facilities Fund and allocated by the State Allocation Board pursuant to this chapter.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100415. Funds for school construction

(a) All moneys deposited in the 1998 State School Facilities Fund pursuant to this chapter shall be available and, notwithstanding any other provision of law to the contrary, are hereby appropriated to provide aid to school districts of the state in accordance with the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part 10) and in accordance with the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10), to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with Section 100420, to provide funds to repay any money advanced or loaned to the 1998 State School Facilities Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

(b) The bonds issued and sold pursuant to this chapter shall fund kindergarten and grades 1 through 12, inclusive, school constructions for a four-year period.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100420. Schedule

(a) Of the proceeds from the sale of bonds, issued and sold pursuant to this chapter, as specified in subdivision (a) of Section 100410, not more than three billion three hundred fifty million dollars (\$3,350,000,000) shall be allocated beginning in the 1998–99 fiscal year in accordance with the following schedule:

(1) Not less than one billion three hundred fifty million dollars (\$1,350,000,000) for project funding related to the growth in enrollment of applicant school districts under Chapter 12 and Chapter 12.5 that have incurred or will incur enrollment increases.

(2) Not less than eight hundred million dollars (\$800,000,000) for the reconstruction or modernization of facilities pursuant to Chapter 12 and Chapter 12.5.

(3) Not more than five hundred million dollars (\$500,000,000) shall be deposited in the Public School Critical Hardship Account, which is hereby established in the 1998 State School Facilities Fund and shall be allocated by the State Allocation Board to fund critical hardships as defined in Chapter 12.5. These funds may be expended for the acquisition of portable classrooms for use in accordance with Chapter 14 (commencing with Section 17085) of Part 10.

(4)(A) Not more than seven hundred million dollars (\$700,000,000) may be allocated to assist school districts with site acquisition and facilities-related costs of kindergarten and grades 1 to 3, inclusive, that are in the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28 and Chapter 19 (commencing with Section 17200) of Part 10, and to assist districts with the restoration of facilities that previously accommodated other programs and were displaced as a result of the implementation of class size reduction. On and after July 1, 2000, if applications for the total funds available under this paragraph have not been filed with the State Allocation Board, the funds for which applications have not been received may be allocated by the board to other high priority needs as the board determines. On and after July 1, 2003, any funds not allocated are available for other high priority needs.

(B) The funds allocated in subparagraph (A) shall be allocated to the State Department of Education to provide class size reduction facilities grants necessary to implement the K–3 Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 and Chapter 19 (commencing with Section 17200) of Part 10. The department shall certify to the State Allocation Board the amount of funds needed for this purpose. The board shall transfer the amount of funds needed to the department. From these funds, the department shall award eligible districts forty thousand dollars (\$40,000) for each new option one class established for class size reduction for which the district had not previously received funding under class size reduction facilities programs.

(C) The remaining funds provided pursuant to subparagraph (A) shall be to provide funding for schoolsites that were eligible to receive a class size reduction land-locked waiver pursuant to Section 52122.6. The funds may be provided to districts to provide 50 percent of the cost of funding a facilities mitigation plan developed for the impacted site pursuant to Section 52122.7.

(D) Any funds not expended pursuant to subparagraphs (A), (B), or (C) may be allocated to districts that request funding of forty thousand dollars (\$40,000)

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for each teaching station that (1) was displaced as a result of the implementation of class size reduction and (2) received less than forty thousand dollars (\$40,000) per teaching station in 1996-97 pursuant to Chapter 19 (commencing with Section 17200) of Part 10. Programs for which teaching stations may be restored may include child care, extended day care, school libraries, computer labs, and special education classrooms.

(b) Of the proceeds from the sale of bonds issued and sold pursuant to this chapter, as specified in subdivision (b) of Section 100410, not more than three billion three hundred fifty million dollars (\$3,350,000,000) shall be allocated beginning in the 2000-01 fiscal year in accordance with the following schedule:

(1) Not less than one billion five hundred fifty million dollars (\$1,550,000,000) for project funding related to the growth in enrollment of applicant school districts under Chapter 12.5 that have incurred or will incur enrollment increases.

(2) Not less than one billion three hundred million dollars (\$1,300,000,000) for the reconstruction or modernization of facilities pursuant to Chapter 12.5.

(3) Not more than five hundred million dollars (\$500,000,000) shall be deposited in the Public School Critical Hardship Account in the 1998 State School Facilities Fund and shall be allocated by the State Allocation Board to fund critical hardships as defined in Chapter 12.5. These funds may be expended for the acquisition of portable classrooms for use in accordance with Chapter 14 (commencing with Section 17085) of Part 10.

(c) Districts may use funds allocated pursuant to paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) for one or more of the following purposes in accordance with Chapter 12.5:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other renovation or modernization of facilities pursuant to Chapter 12.5.

(d) Funds allocated pursuant to paragraph (1) of subdivision (a) and paragraph (1) of subdivision (b) may be utilized to provide new construction grants, without regard to funding priorities, for applicant county boards of education under Chapter 12.5 that are eligible for that funding or classrooms for severely handicapped pupils and funding for classrooms for county community school pupils.

(e)(1) The Legislature may amend this section to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (a) and the maximum funding amounts specified in paragraphs (3) and (4) of subdivision (a), and to adjust the minimum funding amounts specified in paragraphs (1) and (2)

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of subdivision (b) and the maximum funding amount specified in paragraph (3) of subdivision (b), by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) or paragraphs (1) to (3), inclusive, of subdivision (b) or both, but may not increase or decrease the total amount to be expended pursuant to either subdivision.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998). Amended by Stats.1999, c. 858 (A.B.695), § 14.)

§ 100425. Issuance and sale of bonds

(a) Bonds in the total amount of six billion seven hundred million dollars (\$6,700,000,000), not including the amount of any refunding bonds issued in accordance with Section 100444, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established pursuant to Section 15909 at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100427. State School Building Finance Committee

The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide the assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100430. Applicable provisions

(a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the 1998 State School Facilities Fund.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100432. Determination whether or not to issue bonds

Upon request of the State Allocation Board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Sections 100415 and 100420, the State School Building Finance Committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100434. Annual collection to pay bond principal and interest

There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100435. Appropriations

Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100440, appropriated without regard to fiscal years.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100436. Loan

The State Allocation Board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100438. Bond counsel opinion; bond interest excluded from gross income for federal tax purposes

Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100440. Withdrawal from General Fund

For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 1998 State School Facilities Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100442. Money reserved for transfer to General Fund

All money deposited in the 1998 State School Facilities Fund, that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100444. Refunding

The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100446. Disbursement of proceeds

The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100450. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, and their respective off-campus centers. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the California Postsecondary Education Commission, the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, seven hundred fifty million dollars (\$750,000,000) per year into the next century.

(d) Proceeds from the sale of bonds issued and sold pursuant to this chapter may be used to fund construction on existing or new campuses and off-campus centers, including the construction of buildings and the acquisition of related fixtures, the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings at the University of California, the Hastings College of the Law, the California State University and the California Community Colleges.

(e) The purposes of this article include assisting in meeting the capital outlay financing needs of California's public higher education system.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100455. 1998 Higher Education Capital Outlay Bond Fund

(a) Two billion five hundred million dollars (\$2,500,000,000) of the proceeds of bonds issued and sold pursuant to this part shall be deposited in the 1998 Higher Education Capital Outlay Bond Fund which is hereby established in the State Treasury. These funds shall be available for expenditure when appropriated.

(b) One billion two hundred fifty million dollars (\$1,250,000,000) of the bonds described in subdivision (a), shall only be issued and sold pursuant to this chapter on or after July 1, 2000.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100457. Development of new campuses

(a) Of the amount of bonds issued and sold pursuant to subdivision (b) of Section 100455, one hundred sixty-five million dollars (\$165,000,000) shall be allocated in the 2000-01 fiscal year to be available only for the following purposes:

(1) The development of new campuses of the University of California.

(2) The development of new campuses, small campuses with enrollments of less than 5,000 full-time equivalent students, and off-campus centers at the California State University and the California Community Colleges.

(b) The amount of the allocation of funds required pursuant to this section for the development of new campuses may be reduced by a future legislative act if the Legislature finds that state funds have been provided from sources other than the proceeds of bonds for capital outlay costs. The reduction shall be limited to the amount actually provided from sources other than bond proceeds.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100460. Authority of Higher Education Facilities Finance Committee

The Higher Education Facilities Finance Committee established pursuant to Section 67353 is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of providing funds to aid the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges. (Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100500. Issuance and sale of bonds

(a) Bonds in the total amount of two billion five hundred million dollars (\$2,500,000,000), not including the amount of any refunding bonds issued in accordance with Section 100555, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100510. Applicable provisions

(a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) For the purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 1998 Higher Education Capital Outlay Bond Fund is designated as the "board" for projects funded pursuant to this chapter.

(c) The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of funding aid to the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges, for the construction on existing or new campuses, and their respective off-campus centers, including the construction of buildings and the acquisition of related fixtures, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, for the equipping of new, renovated, or reconstructed facilities, which equipment shall have a useful life of at least 10 years, to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100520. Determination whether or not to issue bonds

The Higher Education Facilities Finance Committee established pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in this chapter that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the purposes described in this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100525. Annual collection to pay bond principal and interest

There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100530. Appropriations

Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100545, appropriated without regard to fiscal years.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100535. Loan

The board, as defined in subdivision (b) of Section 100510, may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board, as defined in subdivision (b) of Section 100510, shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100540. Bond counsel opinion; bond interest excluded from gross income for federal tax purposes

Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100545. Withdrawal from General Fund

(a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 1998 Higher Education Capital Outlay Bond Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in this chapter by the University of California, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan. Requests forwarded by a university or college shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, by the 2002–03 fiscal year, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college. Requests forwarded by the California Community Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs and priorities of the community college system, prioritized on a statewide basis.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100550. Money reserved for transfer to General Fund

All money deposited in the 1998 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100555. Refunding

The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

(Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100560. Disbursement of proceeds

The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article. (Added by Stats.1998, c. 407 (S.B.50), § 16, eff. Aug. 27, 1998, operative Nov. 3, 1998 (Prop. 1A approved Nov. 3, 1998).)

§ 100600. Short title

Section effective if approved at November 5, 2002 election.

This part shall be known and may be cited as the Kindergarten-University Public Education Facilities Bond Act of 2002.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100601. Incorporation of provisions

Section effective if approved at November 5, 2002 election.

The incorporation of, or reference to, any provision of California statutory law in this part includes all acts amendatory thereof and supplementary thereto.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100603. Bonds

Section effective if approved at November 5, 2002 election.

Bonds in the total amount of thirteen billion fifty million dollars (\$13,050,000,000), not including the amount of any refunding bonds issued in accordance with Sections 100644 and 100755, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b)¹ Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 or the Higher Education Facilities Finance Committee established pursuant to Section 67353, as the case may be, at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100610. 2002 State School Facilities Fund

Section effective if approved at November 5, 2002 election.

The proceeds of bonds issued and sold pursuant to Article 2 (commencing with Section 100625) shall be deposited in the 2002 State School Facilities Fund, which is established in Section 17070.40, and shall be allocated by the State Allocation Board pursuant to this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100615. Funds for school construction

Section effective if approved at November 5, 2002 election.

All moneys deposited in the 2002 State Facilities Fund for the purposes of this chapter shall be available and, notwithstanding any other provision of law to the contrary, are hereby appropriated to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10), as set forth in Section 100620, to provide funds to repay any money advanced or loaned to the 2002 State School Facilities Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100620. Schedule for allocation of proceeds from sale of bonds

Section effective if approved at November 5, 2002 election.

(a) The proceeds from the sale of bonds, issued and sold for the purposes of this chapter, shall be allocated in accordance with the following schedule:

(1) The amount of three billion four hundred fifty million dollars (\$3,450,000,000) for new construction of school facilities of applicant school districts under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school districts that file an application with the Office of Public School Construction after February 1, 2002, including, but not limited to, hardship applications.

(A) Of the amount allocated pursuant to this paragraph, up to one hundred million dollars (\$100,000,000) shall be available for providing school facilities to charter schools pursuant to a statute enacted after the effective date of the act enacting this section.

(B) If the Housing and Emergency Shelter Trust Fund Act of 2002 is submitted to the voters at the November 5, 2002, general election and fails passage by the voters, of the amount allocated pursuant to this paragraph, twenty-five million dollars (\$25,000,000) shall be available for the purposes of Sections 51451.5, 51453, and 51455 of the Health and Safety Code.

(2) The amount of one billion four hundred million dollars (\$1,400,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school districts that file an application with the Office of Public School Construction after February 1, 2002, including, but not limited to, hardship applications.

(3) The amount of two billion nine hundred million dollars (\$2,900,000,000) for new construction of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school districts that have filed an application with the Office of Public School Construction on or before February 1, 2002, including, but not limited to, hardship applications. If the amount made available for purposes of this paragraph is not needed and expended for the purposes of this paragraph, the State Allocation Board may allocate the remainder of these funds for purposes of paragraph (1).

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(4) The amount of one billion nine hundred million dollars (\$1,900,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, for those school districts that have filed an application with the Office of Public School Construction on or before February 1, 2002, including, but not limited to, hardship applications. If the amount made available for purposes of this paragraph is not needed and expended for the purposes of this paragraph, the State Allocation Board may allocate these funds for purposes of paragraph (2).

(5) The amount of one billion seven hundred million dollars (\$1,700,000,000) for deposit into the 2002 Critically Overcrowded School Facilities Account established within the 2002 State School Facilities Fund pursuant to subdivision (e) of Section 17078.10, for the purposes set forth in Article 11 (commencing with Section 17078.10) of Chapter 12.5 of Part 10 relating to critically overcrowded schools, including, but not limited to, hardship applications, and any other new construction or modernization projects as authorized pursuant to Section 17078.30.

(6) The amount of fifty million dollars (\$50,000,000) for the purposes set forth in Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10 relating to joint-use projects, including, but not limited to, hardship applications.

(b) School districts may use funds allocated pursuant to paragraphs (2) and (4) of subdivision (a) only for one or more of the following purposes in accordance with Chapter 12.5 (commencing with Section 17070.10) of Part 10:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10.

(c) Funds allocated pursuant to paragraphs (1) and (3) of subdivision (a) may, also, be utilized to provide new construction grants for eligible applicant county boards of education under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for funding classrooms for severely handicapped pupils, or for funding classrooms for county community school pupils.

(d)(1) The Legislature may amend this section to adjust the funding amounts specified in paragraphs (1) to (6), inclusive, of subdivision (a), only by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

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(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (6), inclusive, of subdivision (a), but may not increase or decrease the total amount to be expended pursuant to that subdivision.

(e) From the total amounts set forth in paragraphs (1) to (6), inclusive, of subdivision (a), a total of no more than twenty million dollars (\$20,000,000) shall be used for the costs of energy conservation adjustments authorized pursuant to Section 17077.35.

(f) Funds available pursuant to this section may be used for acquisition of school facilities authorized pursuant to Section 17280.5.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100625. Insurance and sale of bonds

Section effective if approved at November 5, 2002 election.

(a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 100600), bonds in the total amount of eleven billion four hundred million dollars (\$11,400,000,000) not including the amount of any refunding bonds issued in accordance with Section 100644, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established pursuant to Section 15909 at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100627. State School Building Finance Committee

Section effective if approved at November 5, 2002 election.

The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers granted to, and duties imposed upon, those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100630. Application of State General Obligation Bond Law provisions

Section effective if approved at November 5, 2002 election.

(a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the 2002 State School Facilities Fund.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100632. Determination whether or not to issue bonds

Section effective if approved at November 5, 2002 election.

Upon request of the State Allocation Board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Sections 100615 and 100620, the State School Building Finance Committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100634. Annual collection to pay bond principal and interest

Section effective if approved at November 5, 2002 election.

There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100635. Appropriations

Section effective if approved at November 5, 2002 election.

Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100640, appropriated without regard to fiscal years.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100636. Loans

Section effective if approved at November 5, 2002 election.

The State Allocation Board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100638. Bound counsel opinion; bond interest excluded from gross income for federal tax purposes

Section effective if approved at November 5, 2002 election.

Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100640. Withdrawal from General Fund

Section effective if approved at November 5, 2002 election.

For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2002 State School Facilities Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100642. Money reserved for transfer to General Fund

Section effective if approved at November 5, 2002 election.

All money deposited in the 2002 State School Facilities Fund, that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100644. Refunding

Section effective if approved at November 5, 2002 election.

The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100646. Disbursement of proceeds

Section effective if approved at November 5, 2002 election.

The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100650. System of public higher education; 2002 Higher Education Capital Outlay Bond Fund; creation of debts and liabilities for purpose of providing funds

Section effective if approved at November 5, 2002 election.

(a) The system of public higher education in this state includes the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, and their respective off-campus centers.

(b) The 2002 Higher Education Capital Outlay Bond Fund is hereby established in the State Treasury for deposit of funds from the proceeds of bonds issued and sold for the purposes of this chapter.

(c) The Higher Education Facilities Finance Committee established pursuant to Section 67353 is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of providing funds to aid the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges. (Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100652. Deposits in 2002 Higher Education Capital Outlay Bond Fund for purposes of article; use of proceeds

Section effective if approved at November 5, 2002 election.

(a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100700), the sum of four hundred eight million two hundred sixteen thousand dollars (\$408,216,000) shall be deposited in the 2002 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the University of California and the Hastings College of the Law.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the University of California and the Hastings College of the Law.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100653. Deposits in 2002 Higher Education Capital Outlay Bond Fund for purposes of article; use of proceeds

Section effective if approved at November 5, 2002 election.

(a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100700), the sum of four hundred ninety-five million nine hundred thirty-two thousand dollars (\$495,932,000) shall be deposited in the 2002 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California State University.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California State University.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100654. Deposits in 2002 Higher Education Capital Outlay Bond Fund for purposes of article; use of proceeds

Section effective if approved at November 5, 2002 election.

(a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100700), the sum of seven hundred forty-five million eight hundred fifty-three thousand dollars (\$745,853,000) shall be deposited in the 2002 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California Community Colleges.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California Community Colleges.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100700. Issuance and sale of bonds; legislative intent; report of findings

Section effective if approved at November 5, 2002 election.

(a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 100600), bonds in the total amount of one billion six hundred fifty million dollars (\$1,650,000,000), not including the amount of any refunding bonds issued in accordance with Section 100755, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) It is the intent of the Legislature that the University of California, the California State University, and the California Community Colleges annually consider, as part of their annual capital outlay planning process, the inclusion of facilities that may be used by more than one segment of public higher education (intersegmental), and, that on or before May 15th of each year, those entities report their findings to the budget committees of each house of the Legislature.

(c) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100710. Application of State General Obligation Bond Law provisions; availability of proceeds

Section effective if approved at November 5, 2002 election.

(a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For the purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 2002 Higher Education Capital Outlay Bond Fund is designated as the "board" for projects funded pursuant to this chapter.

(c) The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of funding aid to the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges, for the construction on existing or new campuses; and their respective off-campus centers and joint use and intersegmental facilities, as set forth in this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100720. Determination whether or not to issue bonds

Section effective if approved at November 5, 2002 election.

The Higher Education Facilities Finance Committee established pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in this chapter that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the purposes described in this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100725. Annual collection to pay bond principal and interest

Section effective if approved at November 5, 2002 election.

There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100730. Appropriations

Section effective if approved at November 5, 2002 election.

Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100745, appropriated without regard to fiscal years.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100735. Loans

Section effective if approved at November 5, 2002 election.

The board, as defined in subdivision (b) of Section 100710, may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board, as defined in subdivision (b) of Section 100710, shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100740. Bound counsel opinion; bond interest excluded from gross income for federal tax purposes

Section effective if approved at November 5, 2002 election.

Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100745. Withdrawal from General Fund

Section effective if approved at November 5, 2002 election.

(a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2002 Higher Education Capital Outlay Bond Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in this chapter by the University of California, the Hastings College of the Law, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan. Requests forwarded by a university or college shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college. Requests forwarded by the California Community Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs and priorities of the community college system, prioritized on a statewide basis.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100750. Money reserved for transfer to General Fund

Section effective if approved at November 5, 2002 election.

All money deposited in the 2002 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (effective if approved at November 5, 2002 election).)

§ 100755. Refunding

Section effective if approved at November 5, 2002 election.

The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds. (Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100760. Disbursement of proceeds

Section effective if approved at November 5, 2002 election.

The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

(Added by Stats.2002, c. 33 (A.B.16), § 30, (Prop. 47, effective if approved at November 5, 2002 election).)

§ 100800. Short title

Section effective if approved at 2004 direct primary election.

This part shall be known and may be cited as the Kindergarten-University Public Education Facilities Bond Act of 2004.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100801. Incorporation of provisions

Section effective if approved at 2004 direct primary election.

The incorporation of, or reference to, any provision of California statutory law in this part includes all acts amendatory thereof and supplementary thereto.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100803. Bonds

Section effective if approved at 2004 direct primary election.

(a) Bonds in the total amount of twelve billion three hundred million dollars (\$12,300,000,000), not including the amount of any refunding bonds issued in accordance with Sections 100844 and 100955, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 or the Higher Education Facilities Finance Committee established pursuant to Section 67353, as the case may be, at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100810. 2004 State School Facilities Fund

Section effective if approved at 2004 direct primary election.

The proceeds of bonds issued and sold pursuant to Article 2 (commencing with Section 100825) shall be deposited in the 2004 State School Facilities Fund, which is established in Section 17070.40, and shall be allocated by the State Allocation Board pursuant to this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100815. Funds for school construction

Section effective if approved at 2004 direct primary election.

All moneys deposited in the 2004 State Facilities Fund for the purposes of this chapter shall be available and, notwithstanding any other provision of law to the contrary, are hereby appropriated to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10), as set forth in Section 100820, to provide funds to repay any money advanced or loaned to the 2004 State School Facilities Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. (Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100820. Schedule for allocation of proceeds from sale of bonds

Section effective if approved at 2004 direct primary election.

(a) The proceeds from the sale of bonds, issued and sold for the purposes of this chapter, as specified in subdivision (a) of Section 100810 shall be allocated in accordance with the following schedule:

(1) The amount of five billion two hundred sixty million dollars (\$5,260,000,000) for project funding for new construction of school facilities of applicant school districts under Chapter 12.5 (commencing with Section 17070.10) of Part 10, including, but not limited to, hardship applications.

(A) Of the amount allocated pursuant to this paragraph, up to three hundred million dollars (\$300,000,000) shall be available for providing school facilities to charter schools pursuant to a statute enacted after the effective date of the act enacting this section.

(B) If the Housing and Emergency Shelter Trust Fund Act of 2002 is submitted to the voters at the November 5, 2002, general election and fails passage by the voters, of the amount allocated pursuant to this paragraph, twenty-five million dollars (\$25,000,000) shall be available for the purposes of Sections 51451.5, 51453, and 51455 of the Health and Safety Code.

(2) The amount of two billion two hundred fifty million dollars (\$2,250,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, including, but not limited to, hardship applications.

(3) The amount of two billion four hundred forty million dollars (\$2,440,000,000) for deposit into the 2004 Critically Overcrowded School Facilities Account established within the 2004 State School Facilities Fund pursuant to subdivision (e) of Section 17078.10 for the purposes set forth in Article 11 (commencing with Section 17078.10) of Chapter 12.5 of Part 10 relating to critically overcrowded schools, including, but not limited to, hardship applications, and any other new construction or modernization projects as authorized pursuant to Section 17078.30.

(4) The amount of fifty million dollars (\$50,000,000) for the purposes set forth in Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10 relating to joint-use projects, including, but not limited to, hardship applications.

(b) School districts may use funds allocated pursuant to paragraph (2) of subdivision (a) only for one or more of the following purposes in accordance with Chapter 12.5 (commencing with Section 17070.10) of Part 10:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10.

(c) Funds allocated pursuant to paragraph (1) of subdivision (a) may, also, be utilized to provide new construction grants for eligible applicant county boards of education under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for funding classrooms for severely handicapped pupils, or for funding classrooms for county community school pupils.

(d)(1) The Legislature may amend this section to adjust the funding amounts specified in paragraphs (1) to (4), inclusive, of subdivision (a), only by either of the following methods:

§ 100820

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a), but may not increase or decrease the total amount to be expended pursuant to that subdivision.

(e) From the total amounts set forth in paragraphs (1) to (6), inclusive, of subdivision (a), a total of no more than twenty million dollars (\$20,000,000) shall be used for the costs of energy conservation adjustments authorized pursuant to Section 17077.35.

(f) Funds available pursuant to this section may be used for acquisition of school facilities authorized pursuant to Section 17280.5.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100825. Issuance and sale of bonds

Section effective if approved at 2004 direct primary election.

(a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 100800), bonds in the total amount of ten billion dollars (\$10,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 100844, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established pursuant to Section 15909 at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100827. State School Building Finance Committee

Section effective if approved at 2004 direct primary election.

The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers granted to, and duties imposed upon, those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100830. Application of State General Obligation Bond Law provisions

Section effective if approved at 2004 direct primary election.

(a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the 2004 State School Facilities Fund.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100832. Determination whether or not to issue bonds

Section effective if approved at 2004 direct primary election.

Upon request of the State Allocation Board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Sections 100815 and 100820, the State School Building Finance Committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100834. Annual collection to pay bond principal and interest

Section effective if approved at 2004 direct primary election.

There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100835. Appropriations

Section effective if approved at 2004 direct primary election.

Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100840, appropriated without regard to fiscal years.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100836. Loans

Section effective if approved at 2004 direct primary election.

The State Allocation Board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100838. Bond counsel opinion; bond interest excluded from gross income for federal tax purposes

Section effective if approved at 2004 direct primary election.

Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100840. Withdrawal from General Fund

Section effective if approved at 2004 direct primary election.

For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2004 State School Facilities Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100842. Money reserved for transfer to General Fund

Section effective if approved at 2004 direct primary election.

All money deposited in the 2004 State School Facilities Fund, that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100844. Refunding

Section effective if approved at 2004 direct primary election.

The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds. (Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100846. Disbursement of proceeds

Section effective if approved at 2004 direct primary election.

The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article. (Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100850. System of public higher education; 2004 Higher Education Capital Outlay Bond Fund; creation of debts and liabilities for purpose of providing funds

Section effective if approved at 2004 direct primary election.

(a) The system of public higher education in this state includes the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, and their respective off-campus centers.

(b) The 2004 Higher Education Capital Outlay Bond Fund is hereby established in the State Treasury for deposit of funds from the proceeds of bonds issued and sold for the purposes of this chapter.

(c) The Higher Education Facilities Finance Committee established pursuant to Section 67353 is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of providing funds to aid the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges. (Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

**§ 100852. Deposits in 2004 Higher Education Capital Outlay Bond Fund;
use of proceeds**

Section effective if approved at 2004 direct primary election.

(a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100900), the sum of six hundred ninety million dollars (\$690,000,000) shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the University of California and the Hastings College of the Law.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the University of California and the Hastings College of the Law.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100853. Deposits in 2004 Higher Education Capital Outlay Bond Fund for purposes of article; use of proceeds

Section effective if approved at 2004 direct primary election.

(a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100900), the sum of six hundred ninety million dollars (\$690,000,000) shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California State University.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California State University.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100854. Deposits in 2004 Higher Education Capital Outlay Bond Fund for purposes of article; use of proceeds

Section effective if approved at 2004 direct primary election.

(a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100900), the sum of nine hundred twenty million dollars (\$920,000,000) shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California Community Colleges.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California Community Colleges.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100900. Issuance and sale of bonds; legislative intent; report of findings

Section effective if approved at 2004 direct primary election.

(a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 100800), bonds in the total amount of two billion three hundred million dollars (\$2,300,000,000), not including the amount of any refunding bonds issued in accordance with Section 100955, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) It is the intent of the Legislature that the University of California, the California State University, and the California Community Colleges annually consider, as part of their annual capital outlay planning process, the inclusion of facilities that may be used by more than one segment of public higher education (intersegmental), and, that on or before May 15th of each year, those entities report their findings to the budget committees of each house of the Legislature.

(c) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100910. Application of State General Obligation Bond Law provisions; availability of proceeds

Section effective if approved at 2004 direct primary election.

(a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For the purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 2004 Higher Education Capital Outlay Bond Fund is designated as the "board" for projects funded pursuant to this chapter.

(c) The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of funding aid to the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges, for the construction on existing or new campuses, and their respective off-campus centers and joint use and intersegmental facilities, as set forth in this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100920. Determination whether or not to issue bonds

Section effective if approved at 2004 direct primary election.

The Higher Education Facilities Finance Committee established pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in this chapter that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the purposes described in this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100925. Annual collection to pay bond principal and interest

Section effective if approved at 2004 direct primary election.

There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100930. Appropriations

Section effective if approved at 2004 direct primary election.

Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100945, appropriated without regard to fiscal years.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100935. Loans

Section effective if approved at 2004 direct primary election.

The board, as defined in subdivision (b) of Section 100910, may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board, as defined in subdivision (b) of Section 100910, shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100940. Bond counsel opinion; bond interest excluded from gross income for federal tax purposes

Section effective if approved at 2004 direct primary election.

Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100945. Withdrawal from General Fund

Section effective if approved at 2004 direct primary election.

(a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in this chapter by the University of California, the Hastings College of the Law, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan. Requests forwarded by a university or college shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college. Requests forwarded by the California Community Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs and priorities of the community college system, prioritized on a statewide basis.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100950. Money reserved for transfer to General Fund

Section effective if approved at 2004 direct primary election.

All money deposited in the 2004 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

(Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100955. Refunding

Section effective if approved at 2004 direct primary election.

The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds. (Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

§ 100960. Disbursement of proceeds

Section effective if approved at 2004 direct primary election.

The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article. (Added by Stats.2002, c. 33 (A.B.16), § 31, (effective if approved by voters at 2004 direct primary election).)

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served to the Board and to other agencies by law or by these regulations and shall provide such staff assistance to the Board as may be necessary.

(b) He shall adopt such policies and operating procedures as he deems essential to carrying out the provisions of the Act that are not in conflict with said Act.

§ 1854. Department of Education.

(a) An application may be approved and an apportionment made only after the Board has received the reports, recommendations, and approvals from the Department of Education which are required by the Act.

§ 1855. Compliance with Laws.

(a) All laws, ordinances, rules and regulations otherwise applicable to any project undertaken pursuant to an apportionment made under the Act shall remain applicable to said project otherwise provided by the Act or these regulations.

§ 1856. Limitation of State Responsibility.

(a) In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

§ 1857. References to Education Code Prior to Recodification of 1977.

(a) Reference in any document, instruction, procedure, or policy action to any part of the Education Code prior to its recodification in 1977 shall be deemed applicable to the corresponding provisions of such recodified code.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16000–16207, Education Code.

HISTORY

1. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1858. Unforeseen Emergency Conditions Justifying an Emergency Meeting of the Board with Less Than One Week's Notice.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 1125, Government Code.

HISTORY

1. New section filed 6–29–76 as an emergency; effective upon filing (Register 76, No. 27).
2. Repealed by operation of Section 11422.1(c), Government Code (Register 76, No. 44).

Subgroup 5.5. Regulations Relating to the Leroy F. Greene School Facilities Act of 1998: (School Facility Program)

Article 1. General Provisions and Definitions

§ 1859. Purpose.

These regulations implement the Leroy F. Greene School Facilities Act of 1998, which establishes a State program to provide State per pupil funding for new construction and modernization of existing school facilities.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.10 and 17070.35, Education Code.

HISTORY

1. New subgroup 5.5 (articles 1–11), article 1 (sections 1859–1859.2) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.

2. New subgroup 5.5 (articles 1–11), article 1 (sections 1859–1859.2) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.

3. New subgroup 5.5 (articles 1–11), article 1 (sections 1859–1859.2) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).

§ 1859.1. General Services Director.

The General Services Director, or his or her legal designee shall perform all acts necessary to carry out the provisions of the Act except such functions as are reserved to the Board and to other agencies by law or by Sections 1859 through 1859.107 inclusive. The acts to be performed include, but are not limited to, entering into contracts to administer the Act. NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.20, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).

5. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

“Act” means the Leroy F. Greene School Facilities Act of 1998.

“Adjacent” means the HSAs that will make up the Super HSAA are adjoining, touching, or share a common geographical boundary.

“Alternative District Owned Site” means a district owned site that is deemed available for the project by the California Department of Education.

“Application” means a request pursuant to the Act to receive an eligibility determination and/or funding for a school project.

“Apportionment” shall have the meaning set forth in Education Code Section 17070.15(a).

“Approved Application(s)” means a district has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application as identified in the General Information Section of Forms SAB 50–01, *Enrollment Certification/Projection*, (Revised 07/01); SAB 50–02, *Existing School Building Capacity*, (Revised 07/01); SAB 50–03, *Eligibility Determination*, (Revised 07/01); and SAB 50–04, *Application for Funding*, (Revised 09/01), as appropriate, and the Office of Public School Construction has completed and accepted a preliminary approval review pursuant to Education Code Section 17072.25(a).

“Attendance Area” shall have the meaning set forth in Education Code Section 17070.15(b).

“Board” means the State Allocation Board as established by Section 15490 of the Government Code.

“CBEDS Report” means the enrollment information provided through the California Basic Education Data System by school districts to the CDE.

“California Department of Education” (CDE) means the offices within that department that have responsibility for school facilities matters.

“Certification” means the act of affirmatively representing, asserting or verifying circumstances, data or information as required by the Act or this subgroup.

"Class B Construction Cost Index" is a construction factor index that is provided monthly by Marshall and Swift, for the Western area, for structures made of reinforced concrete or steel frames, concrete floors, and roofs, and accepted and used by the Board.

"Classroom" means a teaching station that has the same meaning as the term used in Education Code Section 17071.25(a)(1).

"Classroom Provided" means a classroom acquired by lease, lease-purchase, or purchase for which a contract has been signed for the construction or acquisition of the classroom.

"Committee" shall have the meaning set forth in Education Code Section 17070.15(e).

"County Fund" shall have the meaning set forth in Education Code Section 17070.15(j).

"Current Replacement Cost" means \$300 per square foot for toilet space and \$150 per square foot for all other spaces. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

"Department" shall have the meaning set forth in Education Code Section 17070.15(d).

"District Representative" means a member of a school district staff or other agent authorized to serve as "District Representative" to execute and file an application with the Board on behalf of the district and/or act as liaison between the Board and the district.

"Division of the State Architect (DSA)" means the State office within the Department of General Services that reviews school building plans and specifications for structural, fire safety and access compliance.

"Elementary School Pupil" means a student housed in a school serving Kindergarten through sixth grade, or any combination of Kindergarten through sixth grade.

"Encumbered for Specific Purposes" means a commitment of funds by the school district to meet a legally binding obligation.

"Energy Audit" means an energy analysis and report which sets forth the utility savings that could be generated if the proposed project was designed, constructed, and equipped with energy efficiency and renewable technologies that would make the proposed project exceed the minimum building energy-efficiency standards mandated for new public buildings pursuant to the applicable California Building Standards Code.

"Environmental Hardship" means the State funding for site acquisition as authorized by Section 1859.75.1.

"Excessive Cost Hardship Grant" means the funding provided pursuant to Education Code Sections 17075.10 and 17075.15.

"Executive Officer" means the individual appointed by the Governor to direct the Office of Public School Construction, and who concurrently serves as Executive Officer to the Board.

"Existing School Building Capacity" means the district's total capacity to house pupils as calculated pursuant to Sections 1859.30 through 1859.33.

"Facility" means all or a portion of any real property, site improvements, utilities and/or buildings or other improvements contained in the project.

"Facility Hardship" means new or replacement facilities authorized by Section 1859.82(a) or (b).

"Field Act Facility" means a school building meeting the requirements contained in Education Code Section 17280, et seq.

"Financial Hardship" means State funding for all or a portion of the district's matching share required by Section 1859.77.1 or 1859.79.

"Fund" shall have the meaning set forth in Education Code Section 17070.15(i).

"Government Agency" shall include but is not limited to a public entity as defined in Government Code Section 7260(a) including California federally recognized or historically established tribal governments.

"High School Attendance Area (HSAA)" means an attendance area.

"High School Pupil" means a student in a school serving ninth through twelfth grade or any combination of ninth through twelfth grade.

"In Escrow, Governmental Entities" means the approval and signature of instrument(s) that will convey a specified school parcel or site from the public/government entity including the federal government for a deter-

minable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"In Escrow, Non-Governmental Entities" means the deposit of signed instrument(s) and/or funds with instructions with a title company or escrow agent to carry out the provisions of an agreement or contract to acquire a specified school parcel or site for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"Independent Audit" means an examination and report of the district's accounts by a certified public accounting firm.

"Instrument" means a written, legally enforceable agreement, approved and signed by all parties to the escrow, for the conveyance to the district of real estate for a specified parcel or site, that includes a compensation clause and either a purchase option agreement, a purchase agreement, promissory note, lease agreement, installment sales contract, gift, or other real estate conveyance valid in the State of California for property conveyed from a public/government entity, including the federal government.

"Interim Housing" means the rental or lease of classrooms used to house pupils temporarily displaced as a result of the modernization of classroom facilities.

"Individual With Exceptional Needs" shall have the meaning set forth in Education Code Section 56026 as further defined and classified in 34 Code of Federal Regulations Part 300.5.

"Joint Use Project" means a project approved by the Board pursuant to Education Code Sections 17050 and 17051.

"Lease-Purchase Program (LPP)" means the Leroy F. Greene State School Building Lease-Purchase Law of 1976, commencing with Education Code Section 17000.

"Major Maintenance" shall have the meaning set forth in Education Code Section 17070.77(b).

"Material Inaccuracy" means any falsely certified eligibility or funding application related information submitted by school districts, architects or other design professionals that allowed the school district an advantage in the funding process.

"Mello-Roos Bonds" means the bonds that are authorized under the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Government Code Section 53311.

"Middle School Pupil" means a student in a school serving sixth through eighth grade, or seventh and eighth grades.

"Modernization" shall have the meaning set forth in Education Code Section 17070.15(f) for purposes of projects subject to Subgroup 5.5, Article 2, commencing with Section 1859 or Education Code Section 17021 under the Lease-Purchase Program.

"Modernization Additional Grant" means the funding provided pursuant to Education Code Section 17074.10(c) and (e).

"Modernization Adjusted Grant" means the Modernization Grants, plus any Excessive Cost Hardship Grant.

"Modernization Grant" means the funding provided pursuant to Education Code Section 17074.10(a).

"Modernization Grants" means the Modernization Grant plus any Modernization Additional Grant.

"Modernization Eligibility" means the result of the calculation contained in either Option A or B of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01).

"Multi-Track Year-Round Education (MTYRE)" means a school education program in which the students are divided into three or more groups on alternating tracks, with at least one group out of session, and the other groups in session during the same period.

"New Construction Additional Grant" means funding provided pursuant to Education Code Section 17072.10(c), (d) and (e); Education Code Section 17072.12, Education Code Section 17072.13 and Education Code Section 17072.18.

"New Construction Adjusted Grant" means the New Construction Grants, plus any Excessive Cost Hardship Grant.

"New Construction Eligibility" means the result of the calculation determined in Education Code Section 17071.75.

"New Construction Grant" means the funding provided pursuant to Education Code Section 17072.10(a).

"New Construction Grants" means the New Construction Grant plus any New Construction Additional Grant.

"Non-Severely Disabled Individual with Exceptional Needs" means an individual with exceptional needs not defined in Education Code Section 56030.5 but included in 34 Code of Federal Regulations Part 300.5.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the Act on behalf of the Director.

"Permanent Area" means any area not included in a portable classroom.

"Permanent Classroom" means any classroom not meeting the definition of portable classroom.

"Phase C Approval" means the construction approval by the Board under the Lease-Purchase Program.

"Phase One Environmental Site Assessment (POESA)" shall have the meaning set forth in Education Code Section 17210(g).

"Phase P Approval" means the planning approval by the Board under the Lease-Purchase Program.

"Phase S Approval" means the site approval by the Board under the Lease-Purchase Program.

"Portable Classroom" shall have the meaning set forth in Education Code Section 17070.15(k).

"Preliminary Endangerment Assessment (PEA)" shall have the meaning set forth in Education Code Section 17210(h).

"Priority One" shall have the meaning set forth in Education Code Section 17017.7(a)(1).

"Priority Two" shall have the meaning set forth in Education Code Section 17017.7(a)(2).

"Property" shall have the meaning set forth in Education Code Section 17070.15(g).

"Proposition 39" means the Initiative Measure (Prop. 39) enacted by passage at the November 7, 2000 general election which amended Sections 15102, 15106, 35233, and 72533 and added Chapter 1.5 (commencing with Section 15264) to Part 10, of the Education Code, and added applicable sections of the California Constitution relating to passage of local school bonds with a 55 percent vote of the electorate at a primary or general election, a regularly scheduled local election, or a statewide special election.

"Pupil" means a student enrolled in any grade Kindergarten through grade twelve.

"Quarterly Basis" means a three-month period commencing on January 1, April 1, July 1 and October 1 of each calendar year.

"Ready for Apportionment" means a final review of an Approved Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an apportionment or eligibility determination, and the OPSC will recommend approval to the Board.

"Rehabilitation Cost" means health and safety mitigation cost that is less than 50 percent of the current replacement cost of the facility.

"Remedial Action Plan (RAP)" means a plan approved by the Department of Toxic Substances Control (DTSC) pursuant to Health and Safety Code Section 25356.1.

"Resource Specialist Program" means pupils that meet the definition of Non-Severely Disabled Individual with Exceptional Needs as defined in Section 1859.2 that are not enrolled in a special day class.

"Response Action (RA)" means the removal of hazardous materials and solid waste, the removal of hazardous substances, and other remedial actions in connection with hazardous substances at the site.

"School Building Capacity" shall have the meaning set forth in Education Code Section 17070.15(l).

"School District" shall have the meaning set forth in Education Code Section 17070.15(h).

"School Facilities Improvement District" means a legal entity authorized by Education Code Section 15300, to generate school facilities funding.

"School Facility Program (SFP)" means either the new construction or modernization programs implemented under the Act, by these Subgroup 5.5 regulations.

"Secondary School Pupil" means a student in the seventh through the twelfth grade.

"Section" means a section in these Subgroup 5.5 regulations.

"Severely Disabled Individual with Exceptional Needs" means an individual with exceptional needs as defined in Education Code Section 56030.5.

"Small School District" means a school district with districtwide enrollment reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C on the latest *Enrollment Certification/Projection* Form SAB 50-01 (Revised 07/01) used to determine or adjust the district's baseline eligibility pursuant to Sections 1859.50 and 1859.51 or submitted separately to the OPSC, that is 2,500 or less.

"Special Day Class" means a class that has pupils enrolled that are individuals with exceptional needs.

"Square Footage" means the enclosed area measured from the outside face of exterior structural walls of the building. For interior areas or portions of building areas, the enclosed area shall be measured from the centerline of the interior demising wall.

"Student Yield Factor" means the number of students each dwelling unit will generate for purposes of an enrollment augmentation.

"Substantial Enrollment Requirement (SER)" means a district that is operating on a Multi-Track Year-Round Education basis pursuant to Education Code Sections 17017.6 and 17017.7(c).

"Super High School Attendance Area (Super HSAA)" means two or more HSAA's that are adjacent to each other.

"Unfunded List" means an information list of unfunded projects.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17074.10, 17075.10, 17975.15, 17280 and 56026, Education Code; and Section 53311, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of definition "Modernization Eligibility" filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction adding definition of "Unfunded List" (Register 2001, No. 6).
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of definition "Approved Applications," new definitions "Governmental Agency," "In Escrow, Governmental Agencies," "In Escrow, Non-Governmental Agencies" and "Instrument" and amendment of NOTE filed

- 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
12. Amendment of definition of "Approved Application(s)" filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
13. New definition of "Proposition 39" filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
14. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of definition of "Approved Applications," new definitions of "Major Maintenance" and "Material Inaccuracy" and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 2. Program Transition

§ 1859.10. Lease-Purchase Program and School Facility Program.

Projects approved under the LPP are subject to the regulations contained in Title 2, California Code of Regulations, commencing with Section 1865.1, and the SFP transition rules contained in this Article 2.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New article 2 (sections 1859.10-1859.16) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (sections 1859.10-1859.16) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 2 (sections 1859.10-1859.16) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.11. Previously Approved Joint Use Projects.

Joint Use projects that were approved by the Board prior to November 4, 1998, shall be eligible for funding pursuant to the LPP for all remaining approved but unfunded project costs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.12. Priority One New Construction.

Priority One new construction projects will be funded under the provisions of the LPP if the project received either: 1) Phase C approval by the Board prior to November 4, 1998; or 2) either Phase P or Phase P and Phase S, approvals, and DSA plan approval prior to November 4, 1998.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.13. Priority Two New Construction.

Districts with Priority Two new construction projects which received either: 1) Phase C approval by the Board prior to November 4, 1998; or 2) either a Phase P or a Phase P and Phase S approval with DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP, pursuant to Section 1859.20. If the project is eligible for further funding under the SFP, the New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of second paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.14. Priority One Modernization.

Priority One modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, may proceed under either (a) or (b). Districts may either:

(a) Receive funding under the provisions of the LPP; or,

(b) By January 31, 1999, withdraw the Priority One modernization LPP project and submit a new application for funding under the provisions of the SFP, pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.15. Priority Two Modernization.

Districts with Priority Two modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding. If the project is eligible for further funding under the SFP, the:

(a) New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsections (a) and (c) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 09/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

- or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
 4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
 7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
 8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
 12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
 13. Amendment of form SAB 50-04 (incorporated by reference) and amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
 14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
 15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.22. SFP Application for Funding on Leased Land.

In addition to meeting the requirements of Sections 1859.20 and 1859.21, a district may receive SFP New Construction or Modernization Grants for facilities that are or will be located on real property leased by the district provided all the following are met:

- (a) The real property is leased from a governmental agency.
- (b) The term of the lease for the land for which the district is requesting SFP funding at the time the Approved Application is accepted is one of the following:

(1) At least 25 years if the lease is for real property owned by the federal government.

(2) At least 40 years if the lease is for real property owned by a governmental agency other than the federal government.

(3) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has certified to all the following:

(A) There are no other educationally adequate sites for new construction available under a 40-year lease.

(B) The cost per year to lease the real property for no less than 30 years is no greater than the cost per year to lease the real property for 40 years.

(4) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has provided other evidence satisfactory to the Board that a shorter lease term is necessary.

A district seeking modernization funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(c).

A district seeking new construction funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(a) and (i).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.71, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/01). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

- (l) used for Community School purposes;
- (m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- (a) abandoned and approved for replacement as a hardship under the provisions of the LPP;
- (b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;
- (c) included in any new construction LPP project that has not received a Phase C apportionment;
- (d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;
- (e) that is a trailer and is transported/towed on its own wheels and axles;
- (f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;
- (g) of less than 700 interior square feet;
- (h) originally built for instructional use, but converted to one of the following:
 - (1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
 - (2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
 - (3) used for school library purposes during the previous school year.
 - (i) owned but leased to another district.
 - (j) any portable classroom excluded by Education Code Section 17071.30.
 - (k) that is permanent space and leased for less than five years.
 - (l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (l) filed 1-10-2000; operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).
6. Amendment of section heading filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/01).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HSAA, multiply the K-12 pupil capacity within the boundaries of the HSAA by eight percent. When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.41. High School Attendance Area Reporting.

(a) A district may request that its eligibility determination for New Construction Grants be based on a HSAA or Super HSAA basis if it meets all the following criteria:

(1) The district demonstrates that the eligibility determination for New Construction Grants in at least one of the district's HSAA or Super HSAA results in negative eligibility for maximum funding at any grade level within the HSAA or Super HSAA.

(2) The New Construction Grants eligibility determination for the HSAA or Super HSAA is based on the capacity and projected enrollment of the HSAA or Super HSAA as shown in the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01).

(3) The eligibility determination for the HSAA or Super HSAA includes a high school that serves any combination of grades nine through twelve and the high school is not a continuation high school.

(b) If a district meets the criteria in subsection (a) and requests its eligibility determination to be based on an HSAA or Super HSAA, eligibility for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or Super HSAA must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility under that HSAA or Super HSAA. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or Super HSAA, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA or Super HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

If a district requests to re-file its eligibility determination from HSAA or Super HSAA to district-wide after the five year time period has elapsed, the existing school building capacity in the district will be determined based on classrooms available in the HSAA or Super HSAA at the time of initial request for eligibility determination and the current classrooms in the remaining portion of the district. Once the baseline eligibility has been determined for the district, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

Existing boundaries of a HSAA or Super HSAA may only be changed as a result of Section 1859.51(f).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the

numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third plus year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

ificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01). Eligibility determination for New Construction Grants may be requested on either a district-wide basis or on a HSAA or Super HSAA basis.

If a district requests to have its eligibility determination made on a district-wide basis, eligibility for future grants in the district must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility determined on a district-wide basis.

If a district requests to re-file its eligibility determination from district-wide to HSAA to Super HSAA after the five year time period has elapsed, the existing school building capacity in the HSAA or Super HSAA will be determined based on the classrooms available in the HSAA or Super HSAA at the time of the initial district-wide request for eligibility determination. Once the baseline eligibility has been determined for the HSAA or Super HSAA, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

If the district requests to have its eligibility determination made on a HSAA or Super HSAA, it must meet the criteria of Section 1859.41.

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), is the initial eligibility of the district, the HSAA or Super HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 09/01), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50–1859.51) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12–23–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50–1859.51) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7–12–99 as an emergency; operative 7–12–99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50–1859.51) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
7. Certificate of Compliance as to 7–12–99 order, including further amendments, transmitted to OAL 11–5–99 and filed 12–22–99 (Register 99, No. 52).
8. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
11. Amendment of second paragraph filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1–2–2001 order, including amendment of first paragraph, transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
13. Amendment of second paragraph filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
14. Amendment of second paragraph filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
15. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

16. Amendment of penultimate paragraph filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.
- (f) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (g) Adjusted as a result of amendments to these Regulations that effect the eligibility.
- (h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).
 - (i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:
 - (1) That is a trailer and transportable/towed on its own wheels and axles.
 - (2) Of less than 700 interior square feet.
 - (3) Excluded pursuant to Education Code Section 17071.30.
 - (4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.
 - (5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.
 - (6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.
 - (j) For small school districts, decreased:
 - (1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
 - (2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a re-organization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.31, 17071.25, 17071.75, 17071.76 and 17072.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first paragraph, subsections (e) and (i)(5) and new subsection (l) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first paragraph and subsections (i)(5) and (i)(6) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
12. New subsection (m) and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

- (1) Permanent and at least 25 years old and not previously modernized with State funds.
- (2) Portable and at least 20 years old and not previously modernized with State funds.
- (3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

- (1) Permanent area and at least 25 years old and not previously modernized with State funds.
- (2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of first and last paragraphs filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(h) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51, 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
7. New subsection (h) and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 09/01), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
 2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
- New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first and second paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.71.1. New Construction Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

(a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$11,084 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any new construction grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading and first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.72. New Construction Additional Grant for an Individual with Exceptional Needs.

New Construction Grant will be increased for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs. The district may request an increase in the New Construction Grant for therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The grant amount will be increased by \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of section and NOTE filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
7. Amendment of section heading and section filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73.1. New Construction Additional Grant for Project Assistance.

New Construction Grant will be increased by \$3,750 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B

Construction Cost index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 09/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of second paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment of second paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.73.2. Construction Additional Grant for Replaced Facilities.

(a) The New Construction Grant will be increased by the amount(s) in (b) below for the replacement cost of one-story buildings that are demolished at a school in order to increase pupil capacity of that school if all the following conditions are met:

(1) The school must be on MTYRE at the time the Approved Application is accepted.

(2) The site size as determined by the CDE for the existing capacity of the school is less than 75 percent of the recommended CDE site size.

(3) The pupil capacity of the school must be increased by at least the greater of (A) or (B) below:

(A) Twenty percent of the existing pupil capacity (before replacement) of the school. Existing pupil capacity shall be determined by multiplying classrooms intended for grades kindergarten through six by 25, classrooms intended for grades seven through 12 by 27, classrooms intended for Non-Severely Disabled Individuals with Exceptional Needs by 13 and classrooms intended for Severely Disabled Individuals with Exceptional Needs by nine. Classrooms shall not include any classrooms reduced from the Gross Classroom Inventory pursuant to Section 1859.32.

(B) 200 pupils.

(4) The sum of (A) and (B) below is less than the amount determined in (E) below:

(A) Determine the estimated cost of demolition of the one-story buildings to be replaced. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Cost Publication.

(B) Multiply the square footage of the buildings to be replaced by the Current Replacement Cost.

(C) Multiply the New Construction Grants requested in box 2 of the *Application for Funding*, Form SAB 50-04 (Revised 09/01), by .01775 for K-6, .021 for 7-8 and .02472 for 9-12.

(D) Determine the average appraised value of land per acre, including relocation costs, within the attendance boundaries of the school. The appraisal must be consistent with Section 1859.74.1.

(E) Multiply the sums of the products determined in (C) above by the average appraised value of land per acre determined in (D) above.

(5) The CDE has determined that the replacement of the one-story buildings on the existing site with multilevel building(s) would be the

best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.

(6) The one-story buildings to be replaced on the existing site may not be leased facilities.

(7) With the exception of portables acquired with Class Size Reduction funds, the one-story buildings to be replaced on the site may not have been funded for either new construction or modernization funds from Proposition 1A funds within the past five years from the date the Approved Application is accepted.

(b) If the criteria in (a) are met, the New Construction Grant will be increased by \$150 per square foot for toilet facilities and by \$75 per square foot for all other facilities included in the one-story buildings to be replaced adjusted for the following:

(1) The amounts shall be adjusted annually in the manner prescribed in Section 1859.71.

(2) The amounts shall be increased by the percentage authorized in Section 1859.73 if the replacement area will be multilevel building(s).

(3) The amounts shall be increased for excessive cost grants as provided pursuant to Section 1859.83(a) and (d).

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the New Construction Grant for the SFP project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.46, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of subsection (a)(4)(C) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
3. Amendment of subsection (a)(4)(C) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
4. Amendment of subsection (a)(4)(C) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation

of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 09/01), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100 percent of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph and subsection (a)(2) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below;

(a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(1) The costs may include the costs for preparation of the RA.

(2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(3) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.3. Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes, the New Construction Grant will be increased for the lesser of one half of the amounts allowed in (a) or (b) below:

(a) The sum of all of the following:

(1) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section

6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.

(4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the costs for preparation of the RA.

(B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(C) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.71, 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.74.4. Additional Grant for Hazardous Waste Removal Required on an Existing School Site.

(a) With the exception of projects that received initial site acquisition funds under the SFP, the New Construction Grant may be increased for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the New Construction Grants will be used if all the following are met:

(1) The New Construction Grant request is for additional school facilities on an existing school site.

(2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.

(3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.

(4) The hazardous material cleanup costs are required by the DTSC.

(b) If all criteria in subsection (a) are met, the allowable hazardous waste removal cleanup costs shall be one half of all the following:

(1) The costs for preparation of the POESA, the PEA and the RA.

(2) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(B) The costs may not include continuous operational and maintenance costs associated with the RA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.18, Education Code.

HISTORY

1. New section filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lesser of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 09/01).

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

4. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

7. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

8. Amendment of subsection (b)(4) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.76. New Construction Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for multilevel parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.

(D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the street, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(6) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees, installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 09/01).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a pro-rated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. New subsections (a)(11)-(a)(11)(D) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

8. New subsection (a)(12) and amendment of subsections (c) and (c)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

9. Amendment of antepenultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

11. Amendment of section heading and subsection (c)(5) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

13. Amendment of antepenultimate paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

14. Amendment of subsection (c)(5) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

15. Amendment of subsection (c)(5) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

16. Amendment of antepenultimate paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.30 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.77.2. Use of New Construction Grant Funds.

New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

Authorization for use of New Construction Grants may be requested as follows:

(a) A district may request new construction grants that do not to exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the district has adopted a school board resolution that includes the following:

(1) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81.

(2) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(3) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(b) A district may utilize new construction grant eligibility determined at a different grade level than the proposed project that do not exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2)

and any loading standards adopted by the SAB by these regulations subject to all of the following:

(1) The district has adopted a school board resolution that includes the following:

(A) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81.

(B) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(C) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(2) The district must use its New Construction Grant eligibility, pursuant to subsections (b) and (d), in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(c) When the priority point mechanism described in Section 1859.91 has not been implemented, a district may request New Construction Grants that exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations provided all the conditions in subsections (a)(1), (a)(2) and (a)(3) are met.

(d) When the priority point mechanism described in Section 1859.91 has not been implemented, a district may utilize new construction grants eligibility determined at a different grade level than the proposed project that exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations provided all the conditions in subsections (b)(1) and (b)(2) are met.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17072.35, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Repealer filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.78.2. Modernization Additional Grant for Project Assistance.

The Modernization Grant will be increased by \$2,000 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 09/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.78.3. Modernization Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in approved project for modernization funding:

- (a) \$7,158 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

- (b) \$4,788 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any modernization grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading, first paragraph and subsection (b) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

- (a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

- (b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking a modernization grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 09/01) for at least 101 grants, or the remaining modernization eligibility at the school site if less than .01 grants.

Application for Funding, Form SAB 50-04 (Revised 09/01) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
6. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
7. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution. The analysis is subject to approval by the Board.

From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the

manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unboxed pupils shall be the sum of the positive numbers determined in (a)(7) as follows:

Determine the current enrollment of the district by grade level as shown on the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Rev. 07/01).

(2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted an *Expenditure Report*, Form SAB 50-06 (Rev. 01/00) indicating that the project is 100 percent complete.

(3) Subtract (a)(2) from (a)(1).

(4) Determine the number of classrooms by grade level reported in Part I, Line 8 on the latest *Existing School Building Capacity*, Form SAB 50-02 (Rev. 07/01).

(5) Multiply the classrooms determined in (a)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.

(6) Subtract the product determined in (a)(5) from the difference determined in (a)(3) by grade level.

(7) Divide the difference by grade level determined in (a)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unboxed pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (a)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$3 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district shall be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (b)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district received a New Construction Grant on the *Application for Funding*, Form SAB 50-04 (Rev. 09/01) that were denied financial hardship status.

(B) Divide the number by grade level determined in (b)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 09/01) under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit an *Application for Funding*, Form SAB 50-04 (Rev. 09/01) under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits an *Application for Funding*, Form SAB 50-04 (Rev. 09/01) within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
14. Amendment of subsection (b)(5)(A)-(B) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 09/01). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 09/01). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application for Funding*, Form SAB 50-04 (Revised 09/01) must be for at least 50 percent of the New Construction Grant or at least 80 percent of the Modernization Grant the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 09/01)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
17. Amendment of last two paragraphs filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include ap-

pliable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Replacement Cost, the district may qualify for an excessive cost reimbursement grant for rehabilitation costs pursuant to Section 1859.83(e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17011.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to

Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq. ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 09/01) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Com-

pliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of subsection (c) filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of subsection (c) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
13. Amendment of subsection (c) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grant, a district is eligible for an additional funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

- (a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

GEOGRAPHIC PERCENTAGE CHART

<i>County</i>	<i>% Factor</i>	<i>Description</i>
Alpine	5	The entire county.
Amador,	5	All of Amador County except the portion lying west of a line drawn five miles east of, and paralleling State Highway 49.
Eastern Part		
Butte, Eastern	5	All of Butte County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 99.
Part		
Calaveras,	5	All of Calaveras County except that portion lying west of State Highway 49.
Eastern Part		
Del Norte	5	The entire county.
El Dorado	15	That portion lying east of a north-south line drawn 25 miles west of the Nevada State Line and north to the county line and south to State Highway 88.
Eastern Part		
El Dorado	5	El Dorado County except the eastern part and the following areas: <ul style="list-style-type: none"> • West of a line drawn six miles east of and paralleling State Highway 49. • Within five miles of either side of U.S. highway 50 from the western county line to a point on the eastern limit of the community of Pollock Pines. • West of a line drawn three miles easterly from and paralleling a certain county road described as the Pleasant Valley Road which connects the community of Aukum with Diamond Springs and with the city of Plymouth.
Fresno,	5	All of Fresno County lying east of a line drawn ten miles east of, and paralleling the west boundary of the Sierra National Forest.
Eastern Part		
Glenn,	5	All of Glenn County except that portion lying east of a line drawn ten miles west of, and paralleling Interstate Highway 5.
Western Part		
Humboldt,	5	That portion of Humboldt County situated within five miles of the Redwood Highway (U.S. 101) except for that portion situated within ten miles of the Redwood Highway from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Redwood Highway		
Humboldt, State Highway 299 and	5	That portion of Humboldt County situated within five miles of State Highway 299 and State route 96, except for those portions situated within ten miles of the Redwood Highway (U.S. 101) from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Vicinity		
Humboldt, Southeastern Part	15	That portion of Humboldt county adjacent to or east of, the road between Harris to Blocksburg to a point ten miles north of Blocksburg.
Humboldt, Residual Area	10	All areas of Humboldt County not classified in other cost groups except for that portion situated within ten miles of the Redwood Highway from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Imperial	5	The entire county.
Inyo, Southeastern Part	20	That portion of Inyo County situated east of the western boundary of the Death Valley National Monument from the northern boundary of said national monument to the southern boundary of the county.
Inyo, Residual Area	5	All of Inyo County except the southeastern part described above.
Kern, Eastern Part	5	That portion of Kern County lying east of a north-south line drawn through the eastern boundary of the town of Tehachapi.
Lake	5	The entire county.
Lassen, Southern Part	10	That portion of Lassen County lying south of an east-west line drawn through a point ten miles north of Susanville.
Lassen, Northern Part	15	All of Lassen County except the southern part described above.
Los Angeles,	*	The entire Santa Catalina Island.
Santa Catalina Island only		
Madera, Central Part	5	That portion of Madera County lying between a line drawn ten miles west of, and paralleling the western boundary of the Sierra National Forest and a line drawn ten miles east of and paralleling the western boundary of the Sierra National Forest.
Madera, Eastern Part	5	All of Madera County except the western part and the central part described above.
Mariposa, Eastern Part	5	All of Mariposa County except that portion lying west of: <ul style="list-style-type: none"> • A line drawn five miles east of, and paralleling State Highway 49 from the northern county line to Mormon's Bar; and • A line drawn ten miles west of, and paralleling the western boundary of the Sierra National Forest from a point due east of Mormon's Bar to the southern county line.
Mendocino, Fort Bragg Area	10	Those portions of Mendocino County lying west of the Southern Redwood Highway Area, and south of the Ten Mile River.

<i>County</i>	<i>% Factor</i>	<i>Description</i>
Mendocino, Northern Redwood Highway Area	5	That portion of Mendocino County situated within five airline miles of the Redwood Highway (U.S. 101) from a point ten miles north of the Willits City Hall to the northern boundary of the county.
Mendocino, Residual Area	10	Those portions of Mendocino County not otherwise classified except that portion situated within ten airline miles of the Redwood Highway (U.S. 101) from a point ten miles north of the Willits City Hall to the southern boundary of the county. (Comprises the Northeastern part of the county and the coastal strip in the northwestern part).
Modoc	15	The entire county.
Mono	20	The entire county.
Monterey, Southern Part	5	All Monterey County except that portion lying north of an east–west line beginning on the coast two miles south of the City of Carmel and extending due east to the eastern boundary of the county.
Nevada	5	That portion of Nevada County not included in the Eastern Part.
Nevada, Eastern Part	15	That portion lying east of a north–south line drawn 25 miles west of the Nevada State Line and north to the county line and south to the county line.
Placer, Eastern Part	15	That portion lying east of a north–south line drawn 25 miles west of the Nevada State Line and north to the county line and south to the county line.
Placer, Northeastern Part	5	All of Placer County except the Eastern Part and the following: <ul style="list-style-type: none"> • Within five miles of either side of State Highway 65 from the southern boundary of the county and the northern limit of the community of Lincoln. • Five miles either side of Interstate 80 from the southern boundary of the county and the northern limit of the community of Penryn. • West of a line drawn five miles east of, and paralleling State Highway 49. • Within five miles of either side of Interstate 80 between the northern limit of the community of Penryn and the northern limit of the community of Colfax.
Plumas	5	The entire county.
Riverside, Eastern Part	20	That portion lying east of a north–south line drawn 50 miles west of the Arizona State Line and north to the county line and south to the county line.
Riverside, Central Part	5	That portion of Riverside County lying east of a north–south line drawn through the intersection of Interstate 10 and Fields Road extending from the southern county line of Riverside County, north to the southern county line of San Bernardino County to the Eastern Part of the County.
San Benito, Southern Part	5	All of San Benito County except that portion lying north of an east–west line drawn across the county from a point two miles south of the community of Paicines.
San Bernardino, Northeastern	5	That portion of San Bernardino County lying north and east of an east–west line drawn two miles north of Oro Grande, extending from the western boundary of the county to its intersection with the northerly extension of, and thence along a line drawn through the following points: A point five miles east of Victorville, the eastern edge of the communities of Running Springs and Camp Angelus then due south to the San Bernardino County line.
San Bernardino, Eastern Part	20	That portion lying east of a north–south line drawn 150 miles west of the Arizona State Line and north to the county line and south to the county line.
San Diego, Northeastern Part	10	That portion of San Diego County lying east of a north–south line drawn ten miles east of the community of Julian, said line extending from the northern boundary of the county to its intersection with an east–west line extending from the eastern boundary of the county to its intersection with the aforesaid north–south line, said east–west line being at its closest point, three miles due north of the community of Mount Laguna.
San Mateo, Southwestern Part	5	That portion of San Mateo County lying more than two miles westerly from the nearest point on Skyline Boulevard and south of an east–west line drawn through a point two miles north of the community of Montara.
Santa Cruz, Northwestern Part	5	That portion of the Santa Cruz County lying northerly and westerly from a line drawn from a point one mile north of Swanton on the coast through a point one mile north of Brookdale and situated more than two miles from the nearest point on the eastern boundary of the county.
Shasta, except Valley Area	5	All of Shasta County except that portion lying south of Shasta Lake and situated within ten miles of Interstate Highway 5.
Sierra	5	The entire county.
Siskiyou, Central Part	15	That portion of Siskiyou County situated within ten miles of U.S. Highway 97 from Grass Lake to the Oregon State Line.
Siskiyou, Salmon River	25	All of the drainage area of the Salmon River (including the North and South Forks) except that portion situated within the Soms Bar Area described below.
Siskiyou, Soms Bar Area	20	Those portions of the drainage areas of the Salmon and Klamath Rivers located within the boundaries of the Junction Elementary School District.

<i>County</i>	<i>% Factor</i>	<i>Description</i>
Siskiyou, Western Part	15	That portion of Siskiyou County lying westerly from a line drawn ten miles west of and parallel to Interstate 5, except the Somes Bar and Salmon River areas described above.
you, Yreka and Residual Area	5	All of Siskiyou County except the Salmon River, Somes Bar and Western areas described above.
Sonoma, Northwestern Part	5	That portion of Sonoma County enclosed by a line following the northern boundary of the county from the Pacific Ocean to a point 15 miles inland, thence southerly to a point two miles west of the community of Los Lomas, thence southerly to a point on the coast two miles south of the community of Fort Ross, thence northerly along the coast line to the northern boundary of the county.
Tehama, Residual Area	5	All of Tehama County except those portions situated within ten miles west of Interstate Highway 5 from the north county line to the southern county line; within ten miles east of Interstate Highway 5 from the north county line southward to a point east of Red Bluff, thence within ten miles east of and paralleling State Highway 99 southward to the county line.
Trinity, Residual Area	15	All of Trinity County except the State Highway 299 area described below.
Trinity, State Highway 299	10	That portion of Trinity County situated within five miles of State Highway 299.
Tulare, Eastern Part	5	That portion of Tulare County lying east of a north-south line drawn through the western limits of the community of Silver City.
Tuolumne, Eastern Part	5	All of Tuolumne County except that portion lying west of State Highway 49.
Yuba, Northeastern Part	5	All of Yuba County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 65 and that portion lying south of a line drawn three miles north of, and paralleling State Highway 20.

*As specifically approved by the Board.

(b) Excessive Cost for Projects that House No More than 200 Pupils (Small Size Projects).

A New Construction or Modernization Grant will be increased by 12 percent for a project that will house less than 101 pupils, or by four percent if the project will house no more than 200 pupils.

(c) Excessive Cost to Construct a New School Project.

A New Construction Grant for a new elementary, middle or high school on a site with no existing school facilities shall be increased by the difference in the amount provided for the New Construction Grant and the amount shown below, based on the number of classrooms in the project:

<i>Classrooms in project</i>	<i>Elementary School pupils</i>	<i>Middle School pupils</i>	<i>High School School pupils</i>
1	\$160,000	\$674,000	\$1,466,000
2	\$377,000	\$756,000	\$1,525,000
3	\$566,000	\$840,000	\$1,885,000
4	\$717,000	\$932,000	\$2,205,000
5	\$842,000	\$1,028,000	\$2,428,000
6	\$1,021,000	\$1,125,000	\$2,651,000
7	\$1,202,000	\$1,222,000	\$2,874,000
8	\$1,341,000	\$1,328,000	\$3,046,000
9	\$1,341,000	\$1,440,000	\$3,184,000
10	\$1,577,000	\$1,553,000	\$3,321,000
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

Excessive Cost Grant funds provided under this subsection for a school project shall be offset against future New Construction Grant funds provided for that same school. The amount of the offset shall be determined by dividing the additional New Construction Grant pupil re-

quest by the difference in the New Construction Grant pupil request when the initial Excessive Cost Grant was made and 325 for an elementary school, 324 for a middle school, and 621 for a high school project and multiplying the quotient by the Excessive Cost Grant funds provided for that project.

(d) Excessive Cost Due to Urban Location, Security Requirements and Impacted Site.

A New Construction or Modernization Grant will be increased if site acreage for the project is:

(1) at least 50 percent but less than 75 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction or Modernization Grant will be increased by eight percent.

(2) at least 30 percent but less than 50 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction or Modernization Grant will be increased by 15 percent.

(3) less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Grant will be increased by 50 percent.

(4) Less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The modernization Grant will be increased by 25 percent.

(e) Excessive Cost for rehabilitation of facilities the Board has determined are a health and safety risk to the pupils pursuant to Section 1859.82(a)(1) and the cost/benefit analysis to mitigate the problem and remain in the facility is less than 50 percent of the Current Replacement Cost of the facility. If the district qualifies, the district is eligible for funding of rehabilitation costs as a modernization project. The grant amount provided is 80 percent of the amount of the cost estimate required in Section 1859.82(a)(1) that has been reviewed by the OPSC and approved by the Board.

(f) Excessive cost due to handicapped access and fire code requirements:

(1) A modernization grant will be increased by three percent for handicapped access and fire code requirements.

(2) A modernization grant will be increased by \$80,000 for each new two-stop elevator required to be included in the project by the Division of the State Architect (DSA). The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(3) A modernization grant will be increased by \$14,400 for each additional stop of the new elevator required in (2) above. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Amendment adding second paragraph following the table in subsection (c) filed 4-5-2001; operative 4-5-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 14).
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Section 1859.81.1(c), the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (Revised 01/01), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (Revised 01/01), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be trans-

mitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

(a) The OPSC shall report to the Board on a monthly basis the amount of funds available for New Construction Grants and Modernization Grants and the estimated amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned. The Board shall implement a priority point mechanism described in (b) for New Construction Grants requests when either of the following occur:

(1) The amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned exceed the funds available for New Construction Grants and Modernization Grants.

(2) The funds available for New Construction Grants are \$300 million or less.

(b) Once either (1) or (2) in (a) occurs, the Board shall approve and apportion the funds available for New Construction Grants requests based on the following priority point mechanism:

(1) From the funds available for New Construction Grants, the Board shall establish a final allotment equal to the lesser of \$450 million or the balance of the funds available for New Construction Grants, to be apportioned in accordance with (2) below. After deducting the final allotment, the Board shall divide the remaining funds into seven equal allotments, to be apportioned on a quarterly basis, commencing with the last quarter of calendar year 2000 and ending the second quarter of calendar year 2002. Quarterly apportionments are subject to the following:

(A) The Board shall apportion Approved Applications for New Construction Grants requests received prior to the beginning of the quarter that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (d), until the funds available for New Construction Grants for that quarter are exhausted. New Construction Grants requests eligible for an apportionment shall be apportioned in the following order:

(1) To projects that meet the criteria of subsection (d) where the Approved Application date adjusted back in time would have qualified the project for an apportionment.

(2) To projects exempt from priority points pursuant to Section 1859.92(e).

(3) To projects having the greatest number of priority points.

(B) If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(C) No New Construction Grants request will be recommended for apportionment unless the project can be entirely apportioned from the funds available for that quarter.

(D) If the Approved Applications for New Construction Grants received prior to the quarter that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List prior to the quarter and New Construction Grants requests that meet the criteria of subsection (d) are less than the quarterly allotment, plus any funds remaining from the previous quarter(s), the excess funds shall be added to the next quarterly allotment.

(E) If the Approved Applications for New Construction Grants requests received prior to the quarter that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List prior to the quarter and New Construction Grants requests that meet the criteria of subsection (d) are greater than the quarterly allotment, plus any funds remaining from the previous quarter(s), any New Construction

Grants requests not apportioned by the Board shall be placed on an Unfunded List.

(F) All New Construction Grants requests, as described in (A) above, that are Ready for Apportionment in a quarter shall not be apportioned by the Board at the last regularly scheduled Board meeting for that quarter with the exception of New Construction Grants requests that meet the criteria of subsection (b)(1)(A)(1) or (2). Any New Construction Grants request that is Ready for Apportionment in a quarter that meets the criteria of subsection (b)(1)(A)(1) or (2) may be apportioned at any of the regularly scheduled Board meetings during that quarter.

(2) The final allotment shall be apportioned subject to the following:

(A) The Board shall apportion Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (e), until the final allotment, plus any funds remaining from the previous quarters are exhausted. New Construction Grants requests eligible for an apportionment shall be apportioned in the following order:

(1) To projects that meet the criteria of subsection (e) where the Approved Application date adjusted back in time would have qualified the project for an apportionment.

(2) To projects exempt from priority points pursuant to Section 1859.92(e).

(3) To projects having the greatest number of priority points.

(4) If two or more projects have the same number of priority points, these projects shall be first ranked according to the Approved Application date.

(C) If the Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (e) are greater than the final allotment, plus any remaining funds from the previous quarter(s), any New Construction Grants requests not apportioned by the Board shall be placed on an Unfunded List.

(D) All New Construction Grants requests, as described in (A) above, that are Ready for Apportionment shall be apportioned at the regularly scheduled Board meeting in August 2002 with the exception of New Construction Grants requests that meet the criteria of subsection (b)(2)(A)(1) or (2). Any New Construction Grants request that is Ready for Apportionment that meets the criteria of subsection (b)(2)(A)(1) or (2) may be apportioned at either the regularly scheduled Board meeting in July or August 2002.

(E) If the Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (e) are less than the final allotment, plus any remaining funds from the previous quarter(s), the excess funds shall be apportioned on a monthly basis beginning in September 2002 for Approved Applications for New Construction Grants received after June 26, 2002 that are Ready for Apportionment, in descending order, commencing with the project having the greatest number of priority points. This process shall continue until the funds available are exhausted. If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(c) The Board shall declare that State funds are not available for new facility construction when the New Construction Grants requests Ready for Apportionment exceed the funds available for that purpose. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

Approved Applications for New Construction Grants requests received during a quarter may, at the discretion of the Board, be considered

for funding available for that quarter or a future quarter if all the following criteria are met:

(1) Either the Executive Officer of the Board, the State Architect, the Director of School Facilities Planning Division within the CDE, or the Chief of the School Property Evaluation and Cleanup Division within the Department of Toxic Substances Control (DTSC) certify to the OPSC that the district's application was delayed for a specified number of calendar days in relation to other similar applications submitted to that agency at the same time.

(2) The Approved Application date adjusted back in time for the number of calendar days the application was delayed is prior to the beginning of the quarter in which the application was received.

(e) Approved Applications for New Construction Grants requests received after June 26, 2002 may, at the discretion of the Board, be considered for funding available for the final allotment if all the following criteria are met:

(1) Either the Executive Officer of the Board, the State Architect, the Director of School Facilities Planning Division within the CDE, or the Chief of the School Property Evaluation and Cleanup Division within the DTSC certify to the OPSC that the district's application was delayed for a specified number of calendar days in relation to other similar applications submitted to that agency at the same time.

(2) The Approved Application date adjusted back in time for the number of calendar days the application was delayed is prior to June 27, 2002.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
7. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a New Construction Grants request shall be based on the following computations rounded up to the nearest whole number. The computation shall be made on a districtwide basis if the district utilized districtwide CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), in effect at the time the district's application for funding was submitted to the OPSC for the project. The computation shall be made on a HSAA basis if the district utilized HSAA CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), in effect at the time the district's application for funding was submitted to the OPSC for the project. Notwithstanding the provisions of Section 1859.41, a district that has previously reported its enrollment on a HSAA basis may calculate both its eligibility and its priority points on a districtwide basis. A project shall receive priority points based on the total of (a), (b) and (c):

(a) Priority points for the percent of unboxed pupils for both of the following:

- (1) Six points for each percent of current unboxed pupils.
- (2) Four points for each percent of projected unboxed pupils.

(b) Priority points for the number of unhoused pupils for both of the following:

- (1) One point for each 100 currently unhoused pupils.
- (2) One point for each 200 projected unhoused pupils.

(c) A maximum of 100 priority points for the following:

(1) Twenty points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.

(2) Twenty points for a County Superintendent of Schools' project that only includes classroom space solely for Non-Severely Disabled Individuals with Exceptional Needs.

(3) Twenty points if the site acreage for the project is less than 50 percent of the site size recommended by the CDE for the master planned pupil capacity.

(4) Twenty points for a project that either used "stock plans" pursuant to Education Code Section 17070.33(b)(6) or re-used plans that were previously used to construct at least two other schools.

(5) Twenty points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

(6) Twenty points for a project that uses 20 percent less energy than the Energy Budget as defined and calculated in a manner consistent with the California Energy Code, Part 6, Subchapter 5, Section 141 — Performance Approach: Energy Budgets.

(7) Twenty points for a project that is a new high school serving any grades nine through twelve.

(8) Twenty points for a project that received financial hardship assistance pursuant to Section 1859.81.

(9) Twenty points for a project where the site acquisition qualified and received an apportionment authorized under Section 1859.75.1, Separate Site Apportionment for Environmental Hardship.

(10) One hundred points if the Approved Application was accepted prior to the date the priority point mechanism is implemented by the Board pursuant to Section 1859.91(a)(1) or (a)(2).

(d) The calculation of priority points in (a), (b) and (c) above shall be determined at the time the Approved Application is accepted.

(e) The following projects are exempt from priority points:

(1) A project that received Facility Hardship approval pursuant to Section 1859.82.

(2) A county superintendent of schools' project that includes classroom space for Severely Disabled Individuals with Exceptional Needs.

(3) A county superintendent of schools' project that only includes classroom space solely for community school pupils.

(4) A school district's project that only includes classroom space solely for Severely Disabled Individuals with Exceptional Needs.

(f) If the project received a separate site and/or design apportionment under the provisions of the LPP or pursuant to Sections 1859.75.1 or 1859.81.1, the district's funding priority of the project shall be determined by the Approved Application date for the New Construction Grant request.

NOTE: Authority cited: Sections 17070.35, 17072.25 and 100420(d), Education Code. Reference: Sections 17070.33 and 17072.25, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of section and NOTE filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

8. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an Approved Application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an Excessive Cost Hardship Grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship, the district may elect to either:

(1) Accept funding for the project less any hardship funding grants that are not available. When this option is selected, the hardship funding grants not allocated for the project shall be placed on the Unfunded List. If the project was previously placed on the Unfunded List, the project shall retain the original date it was placed on that Unfunded List.

(2) Decline to accept funding for the project. When this option is selected, the project shall be placed on the Unfunded List. If the project was previously placed on the Unfunded List, the project shall retain the original date it was placed on that Unfunded List.

A project or portion of a new construction project not funded as a result of subdivision (c) shall be subject to the Board's priority point mechanism pursuant to Sections 1859.91 and 1859.92.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
7. Amendment of subsections (c)-(2) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to apportion or the application does not qualify for funding because of the Board's priority point mechanism pursuant to Sections 1859.91 and 1859.92, the Board will continue to accept and process applications for eligibility determination. The Board will also accept and process applications for apportionment for purposes of developing an Unfunded List based on the date the application is Ready for Apportionment.

If either the Executive Officer of the Board, the State Architect, the Director of School Facilities Planning Division within the CDE or the Chief of the School Property Evaluation and Cleanup Division within the Department of Toxic Substances Control certify to the OPSC that the district's application was delayed for a specified number of calendar days in relation to other similar applications submitted to that agency at the same time, the application may, at the discretion of the Board, receive a date on the Unfunded List or receive funding pursuant to Section 1859.91 based on the date the application is Ready for Apportionment, adjusted back in time for the number of calendar days the application was delayed.

Applications for New Construction Adjusted Grants for a project where the site was apportioned pursuant to Section 1859.75.1 shall receive a date on the Unfunded List based on the date the environmental hardship site apportionment was made for the project.

With the exception of financial hardship eligibility, a district with an application included on an Unfunded List shall not be required to re-establish eligibility for that application prior to apportionment.

An application for funding included on an Unfunded List is eligible for reimbursement subject to adjustments in the New Construction Grants amount pursuant to Section 1859.77.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 filed 6-13-2001 (Register 2001, No. 24).
8. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 09/01), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 09/01), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99

or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of section and NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 09/01), that it has developed and implemented an on-going and major maintenance plan in accordance with Education Code Section 17070.75 and 17070.77. In each fiscal year following the fiscal year in which the district received funds as a result of an application funded on or after January 1, 2002, the district shall certify that the plan has been reviewed and updated as required in Education Code Section 17070.77. The certification shall be made on the Deferred Maintenance Five Year Plan, which shall be required annually from those districts receiving such funding.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17070.77, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of section and NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon comple-

tion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104.1. Material Inaccuracy Penalties.

When the Board makes a finding that a Material Inaccuracy occurred for a New Construction or Modernization Project, the district shall be subject to the following penalties:

(a) If the Material Inaccuracy finding occurred prior to the apportionment, the district shall be:

(1) Prohibited from self-certifying New Construction or Modernization Project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(2) Required to file all New Construction and Modernization projects pursuant to Section 1859.104.2. for the time period required in subsection (a)(1).

(3) Subject to the fee prescribed by Section 1859.104.3.

(b) If the Material Inaccuracy finding occurred after the apportionment but no funds have been released for the project:

(1) The Board shall reduce the project apportionment by the additional funding received beyond the amount the district was entitled to for the project.

(2) The school district shall be prohibited from self-certifying New Construction or Modernization Project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy

for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) The school district shall be required to file all New Construction and Modernization Projects pursuant to Section 1859.104.2 for the time period required in subsection (b)(2).

(4) The school district shall be subject to the fee prescribed by Section 1859.104.3.

(c) If the Material Inaccuracy finding occurred after the apportionment and funds were released for the project, the district:

(1) Must repay the additional funding received beyond the amount the district was entitled to for the project with interest within five years from the date the Board made the finding of Material Inaccuracy. Interest shall be assessed as prescribed in Education Code Section 17070.51(b)(1).

(2) Shall be prohibited from self-certifying New Construction or Modernization Project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) Shall be required to file all New Construction and Modernization Projects pursuant to Section 1859.104.2 for the time period required in subsection (c)(2).

(4) Shall be subject to the fee prescribed by Section 1859.104.3.

(d) The Board may direct that adjustments to the school district's New Construction or Modernization baseline eligibility be made pursuant to Sections 1859.51 and 1859.61 based on the determination of Material Inaccuracy.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.104.2. Self-Certification Prohibition.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the OPSC may request supporting documentation as it deems appropriate for any application filed after a finding of material inaccuracy for the time prescribed in 1859.104.1(a)(1), (b)(2) or (c)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.104.3. Self-Certification Prohibition Processing Fee.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the Board shall charge the district an amount of \$100 per hour for the additional hours necessary to process and review the district's applications submitted during the timelines prescribed in 1859.104.2(a)(1), (b)(2) or (c)(2). The maximum hours subject to the fee per application is the greater of 50 hours or one percent of the enrollment of the district as reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C of the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01). The Board will not make a release of funds for any project subject to the fee in this section until the fee has been remitted to the OPSC. All fees collected shall be deposited in the School Facility Fund and available for apportionment as directed by the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

(1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(3) All construction activities are at least 50 percent complete.

(4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be submittal of an Approved Application.

After the Board has received the progress report required in Section 1859.104(b) for items (a) and (b) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a) or (b) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 07/00), to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

(1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.

(2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

(c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(l) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 09/01).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 07/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 09/01).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section

1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 09/01).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 09/01).

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of an *Application for Funding*, Form SAB 50-04 (Revised 09/01). The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grants, may re-file on another eligibility determination basis provided it withdraws all previously submitted *Application for Funding*, Form SAB 50-04 (Revised 09/01) requests for New Construction Grants, including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Subgroup 5.6. Regulations Relating to the Federal School Renovation Program (Federal School Repair and Renovation Program)

Article 1. General Provisions and Definitions

§ 1859.200. Purpose.

These regulations implement the Federal School Repair and Renovation Program, which establish a grant program to administer federal funds to Local Education Agencies authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New subgroup 5.6 (articles 1-5, sections 1859.200-1859.220), article 1 (sections 1859.200-1859.202) and section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.201. Director of General Services.

The Director of General Services, or the Director's legal designee shall perform all acts necessary to carry out the provisions of these regulations except such functions as are reserved to the Board and to other agencies by law or by Sections 1859.200 through 1859.220 inclusive. The acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.202. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the law:

"ADA" means the federal Americans with Disabilities Act of 1990 codified in Section 12101 et seq. Title 42, United States Code.

"Administration Costs" means the costs associated with the preparation and submittal of the Federal Renovation Program application to the State and the costs necessary to assure all state application requirements have been met.

"Apportionment" means a reservation of funds by the Board for eligible Federal Renovation Program applications.

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"CBEDS Report" means the enrollment information provided through the California Basic Education Data System by the Local Educational Agency to the California Department of Education.

"Charter School" means a school established in accordance with the provisions of Education Code Sections 47605 through 47608.

"Community School Pupil" means a pupil meeting one or more of the conditions described in Subdivision (b) of Education Code Section 48662 or any of the conditions described in Education Code Section 1981.

"Deferred Maintenance Program (DMP)" means the state deferred maintenance funding authorized by Education Code Sections 17582 through 17588.

"DMP Critical Hardship Unfunded List" means an information list of critical hardship projects authorized by Education Code Section 17587 approved by the Board.

"Federal Renovation Program (FRP)" means the Federal School Repair and Renovation Program authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

"High Poverty Local Educational Agency" means an LEA that has at least 30 percent of its pupils defined as Poor Children or has at least 10,000 of its pupils defined as Poor Children.

"Impacted LEA" means an LEA that meets the requirements of Section (a)(3) of the United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

"Local Educational Agency" means an entity that meets the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.

"Mello-Roos Bonds" means the bonds that are authorized under the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Government Code Section 53311.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the FRP on behalf of the Director.

"OPSC Deferred Maintenance Program Critical Hardship Workload List" means a list of critical hardship applications authorized by Education Code Section 17587 submitted to the OPSC but not yet included on the DMP Critical Hardship Unfunded List.

"OPSC Modernization Workload List" means a list of SFP modernization projects for which the LEA has submitted all necessary application

(b) The aware of a bid may be made only to a licensed mover having adequate equipment for the purpose and experienced in the moving of similar structures.

§ 1861.17. Option of State to Enter Into Moving Contracts with Vendors or Other Movers.

(a) Except in cases where the Board determines otherwise, any district, to whom portables which are reposing in the district of a former lessee are leased, shall dismantle and move the same at its own expense from where they are situated. However, such district shall receive a credit for such expenses against the rental it would be obliged to pay during the lease period immediately following the moving. In the event the aforesaid credit exceeds the amount of such rental, no reimbursement will be paid the district by the State.

(b) Notwithstanding the foregoing, if the Board deems it more advantageous to the State, it may authorize the Executive Officer, after consultation with the State Traffic Manager, to enter into moving contracts with vendors or other movers for the moving of particular portables (or portables generally) acquired pursuant to Article 5 provided that, in the event it exercises such option, nothing herein shall be construed as preventing the Board from recouping any of the costs of such moving through rentals of said portables to districts affected by this article.

§ 1861.18. Removal of Portable Facilities.

(a) Facilities leased by the Board for location on a particular site shall not be removed for any purpose from said site without the approval of the Board.

§ 1861.19. Storage of Buildings by District Pending Next Lease.

(a) The Executive Officer shall include in any lease agreement with a district otherwise authorized by the Board a provision that the lessee shall allow buildings leased to remain on its premises free of cost to the State, after the expiration of its lease and prior to the time the next lessee of such buildings agrees to remove the same, provided that nothing herein shall be construed to prevent the district on which such buildings are to remain in the interim to use them during such period, if permitted by the terms of the State's agreement therewith.

§ 1861.20. Maintenance and Repair Costs Not Otherwise Provided by District.

(a) Where no district is obligated to provide for the maintenance and repair of portable buildings, or if so obligated fails to do so, the Executive Officer is authorized to expend such sums as he deems appropriate for that purpose from funds appropriated pursuant to this chapter, provided that nothing herein shall be construed to relieve any district from any obligation arising out of any contract entered into pursuant to this chapter.

Article 9. Miscellaneous Provisions

§ 1861.21. Leases Discretionary with Respect to Any Particular School District.

(a) Subject to the provisions of these rules, and in particular to Section 1861.3 thereof, whether a lease shall be entered into with respect to any particular school district, and the provisions of said lease, are within the discretion of the Board.

§ 1861.22. Affidavits of Vendors Regarding Security Interests; Discharge of Same.

(a) No funds shall be authorized by the Executive Officer for the purchase of portable units (including furnishings contained therein) unless the vendor files an affidavit with the Executive Officer in close proximity to the time of the proposed transfer of funds by the State that there are no chattel mortgages, title retentions, security interest, or liens of any kind against such property, recorded or unrecorded, and that he has no knowledge of any that will be given or obtained. In the event that such affidavit cannot be furnished because of the existence of security interests or li-

of any kind, suitable provisions shall be made by the vendor for the release of such security interests prior to or at the time of the payment to such vendors.

§ 1861.23. Insurance.

(a) The Executive Officer may insure in the name of the State, through the insurance adviser of the Department of General Services, portable buildings belonging to the State against vandalism, theft of furnishings, and damage in transit (and against such other risks as he deems advisable, except fire insurance prohibited under the terms of Section 11007 of the Government Code) to such extent and in such amounts as the Executive Officer deems appropriate.

HISTORY

1. Editorial correction of section number (Register 80, No. 26).

§ 1861.24. Actions of the Board to Be Deemed to Embody Provisions of Resolution Forms Approved by It for That Purpose.

(a) Actions of the Board pursuant to Article 5 shall be deemed to incorporate all of the provisions of the resolution form adopted by the Board for the purposes of such action. The Executive Officer shall utilize such resolution form in advising the affected school district of the Board action, but is authorized to modify such form before transmitting it to the district to the extent the specific action of the Board is inconsistent with such form.

HISTORY

1. Editorial correction of section number (Register 80, No. 26).

§ 1861.25. Exceptions.

(a) Exceptions may be made to these regulations where the board finds that the application thereof would be inequitable in practice or would result in an undue hardship on the pupils of the district affected.

Subgroup 8. Children's Center Construction Aid

HISTORY

1. Repealer of Subgroup 8 (Sections 1862-1862.14) filed 12-30-76; effective thirtieth day thereafter (Register 77, No. 1). For prior history see Register 69, Nos. 2, 15, 25, 42, and 50.

Subgroup 8.5. Emergency School Classroom Law of 1979

Article 1. Definitions

§ 1862.50. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

Chapter 25. Chapter 25, Part 10, Education Code.

Board. State Allocation Board.

Executive Officer. Executive Officer of the State Allocation Board.

Eligible District Any school district or county superintendent of schools which demonstrates a need for additional classroom facilities in accordance with priorities established by the Board.

Portable Classrooms. Single classroom factory-built buildings which are constructed in accordance with performance specifications adopted by the Board.

Authorized Agent. A person authorized to act on behalf of the governing board of the eligible district in matters relating to an application for lease of portable classrooms.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

HISTORY

1. New Subgroup 8.5 (Sections 1862.50-1862.56) filed 8-23-79; effective thirtieth day thereafter (Register 79, No.34). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 12-21-79.

2. Certificate of Compliance transmitted to OAH 12-19-79 and filed 1-17-80 (Register 80, No. 3)

Article 2. Acquisition of Portable Classrooms

§ 1862.51. Acquisition of Portable Classrooms by the Board.

(a) The Board may from time to time as it determines the need in accordance with priorities adopted herein authorize the Office of Procurement of the Department of General Services to acquire portable classrooms the Board deems will be required by eligible school districts for up to the next twelve months.

For each portable classroom so acquired a minimum of furniture and equipment necessary to make the classroom functional may be acquired by the Board. The buildings shall be placed on the school site and connected to the nearest electrical energy source at State expense.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

HISTORY

1. Amendment filed 8-7-86; effective thirtieth day thereafter (Register 86, No. 32).

Article 2.5.

§ 1862.51.1. Intent.

NOTE: Authority cited: Section 17788, Education Code. Reference: Sections 10115 et seq., Public Contract Code.

HISTORY

New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).

Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1862.51.2. Regulatory Provisions.

NOTE: Authority cited: Section 17788, Education Code. Reference: Sections 10115 et seq., Public Contract Code, and Section 17788.5, Education Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).

2. Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

Article 3. Applications for Lease

§ 1862.52. Form of Application.

(a) Applications for lease of portable classrooms pursuant to Chapter 25, shall contain the following:

A resolution on forms provided by the Board, by the governing board of the eligible district authorizing the filing of an application and the signing of a lease agreement or agreements for such numbers of portable classrooms as the Board may approve. The leases shall contain such terms and conditions as are required by existing law and by these regulations. A completed application on forms provided by the Board.

Layout plans clearly showing the location on the site of the proposed portable classroom buildings as well as the location of existing buildings.

Certification by the authorized agent that the district has hired or will hire a teacher for each portable classroom leased to the district for the term of the lease.

A certification or other evidence, satisfactory to the Board, that the district has no available bond proceeds which could be used for the purchase of classroom facilities.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

HISTORY

1. Amendment filed 10-31-86; effective thirtieth day thereafter (Register 86, No. 44).

Article 4. Lease Agreements

§ 1862.53. Lease Agreements.

Lease agreements executed by the authorized agent of the school district shall be subject to such conditions as may be required by the board in addition to the following:

A year to year renewable term beginning September 1 and ending August 31 of each year.

Lease payments of \$2,000 per year for each portable classroom. The first year rental shall be prorated on a 12 month basis from the date of installation to the following August 31. Payments are to be made upon execution or renewal of each lease.

The district shall be required at its own expense to provide a near flat surface, not exceeding 9 inches in grade from the highest to the lowest point, for placement of each portable classroom. Access to the site shall also be provided by the district at its own expense.

The district shall be responsible to the State for any damages occurring to the portable classrooms and shall keep them insured, at its own expense, to the benefit of the State, at all times against fire and lightning, with extended coverage, and vandalism and malicious mischief, for the full insurable value of the property less any deductible amount for which the district is willing to accept such responsibility. The district shall at its own expense undertake all necessary maintenance repairs, renewal and replacement to ensure that the portable classrooms, furniture and equipment are at all times kept in good repair, working order and condition.

The district shall hold the State of California harmless from any claims asserted against the State by virtue of alleged negligence of the district or third parties in the operation or maintenance of portable classrooms.

Facilities leased by the Board for location on a particular site may not be altered, relocated or removed from the site without approval of the Board, nor shall any interest held by the district under this lease be assignable.

Upon expiration of a lease, the district shall allow buildings covered by such lease to remain in place on the site free of cost to the State for a period not to exceed 120 days, pending removal by the State.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

HISTORY

1. Amendment filed 10-31-86; effective thirtieth day thereafter (Register 86, No. 44).

Article 5. Priorities

§ 1862.54. Priorities.

Portable classrooms shall be approved and made available to those districts in the following order:

(a) A demonstrated need based upon loading all existing classrooms in the district with the average class sizes shown below using a one year projection of the district's current enrollment converted to average daily attendance by a .97 factor:

	Average Class Sizes:		
Kindergarten	55 *	9-12	27
1-8	30	Special Education	10 **

* If the district's kindergarten has traditionally met as single session, load at 27 (provide documentation with application/worksheet).

** Alternative loading utilizing average class sizes shown in Board regulation 1865.34 of Title 2, Div. 2, Ch. 3, Subch. 4, Group 1, may be used.

(b) A demonstrated need based upon approval of a new construction project on a districtwide basis pursuant to the Lease Purchase Law of 1952⁶ Said district shall be eligible to lease at least the same number of

emergency portable classrooms as approved new teaching stations under the Lease-Purchase Program if the need for applications filed pursuant to subdivision (a) has been met for a period of at least 30 days.

(c) A demonstrated need based upon approval of a new construction project on a High School Attendance Area basis pursuant to the Lease-Purchase Law of 1976. Said district shall be eligible to lease at least the same number of emergency portable classrooms as approved new teaching stations under the Lease-Purchase Program provided a determination has been made by the Board that no portable facilities are available in other High School Attendance Areas within the district which could be economically and practicably utilized as emergency classroom facilities and the need for applications filed pursuant to subdivision (b) has been met for a period of at least 30 days.

(d) A district that is not otherwise eligible pursuant to (a), (b), or (c) and agrees to hire an additional teacher for each additional portable classroom placed in the district and the need for applications filed pursuant to subdivision (c) has been met for a period of at least 30 days.

NOTE: Authority cited: Section 15503, Government Code; and Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

HISTORY

1. Amendment filed 8-7-86; effective thirtieth day thereafter (Register 86, No. 32).

Article 6. Miscellaneous Provisions

§ 1862.55. Maintenance and Repair Costs Not Otherwise Provided by District.

(a) Where a district is not obligated to provide for the maintenance and repair of portable buildings, or if obligated and fails to do so, the Executive Officer is authorized to expend such sums as he deems appropriate for that purpose from funds appropriated pursuant to this chapter, provided that nothing herein shall be construed to relieve any district from any obligation arising out of any contract entered into pursuant to this chapter.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

§ 1862.56. Exceptions.

(a) Exceptions may be made to these regulations where the Board finds that the application thereof would be inequitable in practice or would result in an undue hardship on the pupils of the district affected.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

Subgroup 9. School Housing Aid for Rehabilitation and Replacement of Structurally Inadequate School Facilities

Article 1. Definitions

§ 1863.1. Definitions.

(a) In connection with the administration of the provisions of Article 9, Chapter 8, Part 10, Division 1, Education Code, and for the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) The Act. Article 9, Chapter 8, Part 10, Division 1, Education Code.

(2) Application. A request for an apportionment for a specific purpose, or purposes, as provided by the Act and these regulations, on forms prescribed by the State Allocation Board, properly executed, together with such other information as may be required.

(3) Apportionment or Conditional Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This

amount is based on the formula in Section 16330 of the Education Code. The ratio of State and district matching funds will remain fixed for all apportionments for each application as the ratio established when the application is approved.

(4) Assessed Valuation. For the purposes of determining the basic computed State matching ratio of assistance under Section 16330, the modified assessed valuation for the preceding fiscal year as determined in accordance with Sections 41200, et seq. of the Education Code.

(5) Authorized Agent. An official or staff member of the school district or the office of the county superintendent of schools appointed and authorized by resolution of the governing board of the school district to represent that body in all matters pertaining to the Act other than those requiring action by the governing board of the school district.

(6) Board. The State Allocation Board.

(7) District. An applicant school district.

(8) Executive Officer. The Executive Officer of the State Allocation Board.

(9) Facility. All or a portion of any parcel of land, on or off-site improvement, utility, building or other building area, or furniture and equipment.

(10) Project. The purpose or purposes for which a school district has applied for an apportionment or apportionments under the provisions of the Act.

(11) Replacement. The acquisition or construction of a facility or facilities through an apportionment to replace all or a portion of a substandard school.

(12) Rehabilitation. The reconstruction, renovation, alteration and/or conversion of a substandard building.

(13) Sections. All sections referred to herein, unless the context indicates otherwise, shall be deemed to refer to sections of the Education Code.

(14) Substandard Building. A school building which, pursuant to a determination made by the Board, does not comply with the provisions of the Field Act (Sections 39140 through 39156, Education Code) and constitutes a threat to the safety of those using the facility because of structural instability.

(15) Grade Level. For the purposes of Section 16330, the grade level of a project application made by a high school district, including any project which contains grades 7 and 8, shall be deemed to be the high school grade level. The grade level of a project application made by an elementary school district, including any project which contains grades 7 and 8, shall be deemed to be the elementary grade level. The grade level of a project application made by a unified district shall be deemed to be the high school grade level for any project which includes grades 7 or 8 and any grades above, or the elementary school grade level if it contains any combination of grades below grade 9.

(16) Grade Level for the Purposes of Repayment Under Section 16335.2 The grade level for which an application is made, as defined in Subsection (15) preceding, and for which an apportionment is received, shall also be deemed to be the grade level operated by the district, within the meaning of Section 16335.

(17) "Expended" Funds Derived by Applicant From Taxes Levied under Section 39230. If a school district has been an applicant under Article 9 of Chapter 8 of Part 10 of the Education Code and has levied taxes pursuant to Section 39230 for the purpose of matching apportionments under said Article by the State Allocation Board, such funds shall be deemed to have been "expended" within the meaning of Section 39233, though not actually disbursed, so as not to require, pursuant to Subsection 39233(b), their application to reduce any outstanding Article 9 apportionments to the district where:

(i) Such funds are held or encumbered by the district for the purpose of discharging obligations under contracts entered or to be entered into

NOTE: Authority cited: Sections 39015–39018, Education Code. Reference: Section 39017, Education Code.

HISTORY

1. New section filed 4–24–75 as an emergency; effective upon filing (Register 75, No. 17).
Certificate of Compliance filed 8–1–75 (Register 75, No. 31).
2. Amendment of section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

Subgroup 11. Regulations Relating to the Leroy F. Greene State School Building Lease–Purchase Law of 1976

(Chapter 22, Part 10, Division 1, Education Code)

Article 1. Definitions

§ 1865.1. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the act:

- (a) The Act. Chapter 22, Part 10, of the Education Code.
- (b) Board. The State Allocation Board.
- (c) Executive Officer. The executive officer of the State Allocation Board.
- (d) Application. A request pursuant to the act to lease a project. Such request shall be on forms prescribed by the board, together with such other information as may be required by the executive officer.
- (e) District or Applicant School District. Any school district applying for a project or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.
- (f) District Representative. One or more individual members of the district's staff appointed by it as "district representative" to file an application with the board on behalf of the district and to act as liaison between the board and the district.
- (g) Agent of the Board. The applicant school district appointed by the board as its agent to perform specifically authorized acts necessary to construct and equip the project.
- (h) Facility. All or a portion of any real property, site improvement, utilities, buildings, or furniture and equipment contained in a project.
- (i) Lease Agreement with Option to Purchase. An agreement between an applicant school district and the State to lease with an option to purchase a project, as defined in the act, from the State.
- (j) Lease–Purchase Project. A project for which the district has or intends to enter into one or more lease agreements with option to purchase on a given site.
- (k) Reconstruction. Reconstruction for the purpose of Section 1721 shall be considered the substantial architectural alteration or modification of a building in order to bring it to modern educational standards.
- (l) Construction. Construction for purposes of Education Code Section 17702.1 shall include the correction of structural deficiencies in a school building previously constructed pursuant to Article 3 of Chapter 2 of Part 23 of Division 3 of Title 2 of the Education Code when it is determined by the Board that such deficiencies constitute a serious health and safety hazard.

NOTE: Authority cited: Section 17705, Education Code. Reference: Section 17702.1, Education Code.

HISTORY

1. New Subgroup 11 (Sections 1865.1–1865.95, not consecutive) filed 2–3–78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment of subsections (e) and (g) filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
Certificate of Compliance filed 6–26–80 (Register 80, No. 26).
4. New subsection (l) filed 5–4–81; effective thirtieth day thereafter (Register 81, No. 19).

Article 2. General Provisions

§ 1865.2. Purpose.

The purpose of these regulations is to prescribe the procedures necessary for the implementation and administration of the Leroy F. Greene State School Building Lease–Purchase Law of 1976 (hereinafter referred to as "the act").

§ 1865.3. What May Be Provided.

The act provides for the construction, reconstruction, or replacement of school facilities by the State Allocation Board under an agreement between a school district and the State.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Amendment filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.4. Qualifications.

Any school district may qualify to file an application for a lease–purchase project and enter into a lease agreement with option to purchase with the board, providing such applicant school district has sufficient building area entitlement as determined pursuant to the provisions of Article 4 of these regulations to justify the application being filed for new building construction or reconstruction.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer and new section filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.5. Executive Officer.

The executive officer shall perform all acts necessary to carry out the provisions of the act except such functions as are reserved to the board and to other agencies by law or by these regulations.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Amendment filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.6. Limitation of State Responsibility.

In approving an application for a lease–purchase project and making funds available therefor, neither the State nor any department or agency thereof shall assume any responsibility not otherwise imposed on it by statute or these regulations.

§ 1865.7. References to Education Code Prior to Recodification of 1976.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.8. Insurance.

The insurance required by Section 17738 of the act shall be in an amount that will guarantee full replacement or repair of the facilities for which claims are made.

§ 1865.9. Priority Points.

(a) Priority points shall be computed and assigned to applications whenever the board determines that there will be insufficient funds to

meet the estimated needs for all districts in any given fiscal year. Whenever the assignment of priority points is required, applications that are in order for approval shall be considered by the board in sequence according to the number of priority points credited to each application. The board shall from time to time establish the minimum number of priority points necessary to qualify an application for approval consideration by the board. Such minimum shall be based upon the funds available and the estimated needs for the fiscal year.

(b) Priority points shall be computed on a districtwide basis, except for those districts having four or more high school attendance areas (excluding continuation high schools). In such case, points shall be considered on the basis of the attendance area of the project and all attendance areas adjacent thereto.

(c) For the purposes of computing priority points pursuant to the provisions of Section 17716 of the act, all existing building areas except central administration and maintenance facilities, shall be considered.

(d) Priority points for new construction shall be allowed as follows:

(1) Five priority points shall be allowed for each percent of the maximum allowable building area which may be included in an application as new building area (not replacement area).

(2) One priority point shall be allowed for each percent of the maximum allowable building area which may be included in an application as new building area replacing existing inadequate building area.

(3) One priority point shall be allowed for each 5% of increase between the current average daily attendance and the average daily attendance 5 years previously. The current average daily attendance will be based on the enrollment as determined by Section 1865.30(b).

(4) One priority point shall be allowed for each month that the application of the district has been in good order and awaiting approval.

(5) Two priority points shall be allowed for each 30 units of ADA housed.

(6) Priority points shall be allowed for the degree of utilization of the facilities in the district or attendance area by dividing the pupil capacity of all the facilities in the district or attendance area, computed by State aid standards, into the actual average daily attendance of the district or attendance area and multiplying such quotient by 10.

(e) Priority points for reconstruction shall be allowed as follows:

(1) Priority points shall be allowed equal to the quotient resulting from the equation $(30 + y^2) / (30 - y)$, where y equals the age, in excess of thirty years, of the building to be reconstructed, but not to exceed 253 points.

(2) Twenty five (25) points shall be allowed for each year in which the age of the building exceeds 57 years.

(3) One priority point shall be allowed for each percent of the pupils of the District or high school attendance area housed in buildings which are older than 30 years.

(4) Priority points shall be allowed for the degree of utilization of the building to be reconstructed by dividing the pupil capacity of the school computed by State aid standards, into the actual number of pupils in attendance in the school and multiplying such quotient by 100.

(5) One priority point shall be allowed for each month that the application of the district has been in good order and awaiting approval.

(6) Priority points computed pursuant to (1) and (2) above shall be reduced by 50% for any building that has been structurally reconstructed within the past 40 years.

(f) If any computation of priority points results in a fraction of a point that is less than one-half, such fraction shall be disregarded and the number of priority points shall be taken as the next lowest whole number. If such computation results in a fraction of a point which is one-half or more, such fraction shall be disregarded and the number of priority points shall be taken as the next highest whole number.

(g) Approvals and lease agreements made in priority order pursuant to this section shall be limited to that portion of a project pertaining to the acquisition of a site and the preparation of construction plans and specifications. Such approvals shall be limited to not more than 25% of the funds made available for the program.

NOTE: Authority cited: Sections 17705 and 17716, Education Code. Reference: Sections 17705, 17716 and 17721, Education Code.

HISTORY

1. New subsection (d)(6) filed 3-24-86; effective thirtieth day thereafter (Register 86, No. 13). For prior history, see Register 84, No. 41.

§ 1865.10. Priority Points for Construction.

(a) Priority points may be computed and applied in the consideration of approvals for construction funds. Such priority points shall be maintained as a separate series from priority points computed pursuant to Section 1865.9 of these regulations, and shall be identified as "priority points for construction." Any such computation of priority points for construction shall be determined as prescribed by said Section 1865.9, except as follows:

(1) The term "maximum allowable building area" in Section 1865.9(d)(1) shall mean the most recent computation of such area rather than that which applied at the time the application was first approved.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY

1. New section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

§ 1865.11. Priority Points for Remote Attendance Center.

(a) Upon a finding by the board that an extreme hardship exists as a result of an attendance center of a school district being located in a remote area, in excess of 30 miles from any other attendance center of the district, the board may base the computation of priority points for the remote attendance center in the same manner as if it was a separate school district.

(b) In addition to the provisions of subsection (a), a finding by the board that an extreme hardship exists for an attendance center of a school district due to unique circumstances of topography and emerging population trends, the board may base the computation of priority points for the attendance center in the same manner as if it was a separate school district.

NOTE: Authority cited: Sections 17705 and 17763, Education Code. Reference: Section 17763, Education Code.

HISTORY

1. New section filed 6-26-80; effective thirtieth day thereafter (Register 80, No. 26).

2. New subsection (b) filed 7-28-82; effective thirtieth day thereafter (Register 82, No. 31).

§ 1865.12. Intent.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115-10115.10, Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).

2. Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1865.12.5. Definitions.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115, 10115.1 and 10115.2, Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).

2. Editorial correction of printing error in subsection (e) (Register 91, No. 46).

3. Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1865.13. Minority and Women Business Enterprise Goals.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115 and 10115.2, Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).
2. Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1865.14. Requirements of Awarding Department Agent.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115-10115.2, Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).
2. Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1865.15. Requirements of Awarding Department.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115, 10115.1, 10115.2, and 10115.3(a), Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).
2. Repealer of section and editorial correction of NOTE filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1865.16. Requirements of Bidder.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115-10115.2, 10115.10, Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).
2. Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1865.17. Good Faith Effort.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115.2 and 10115.2, Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).
2. Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1865.18. Contract Award.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115, 10115.1 and 10115.2, Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).
2. Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1865.19. Contract Audits.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Section 10115.3(a), Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).
2. Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1865.20. Penalties for Fraudulent Bidders.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115-10115.10, Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 20).
2. Repealer filed 3-13-96 as an emergency; operative 3-13-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-13-96 order transmitted to OAL 6-14-96 and filed 7-23-96 (Register 96, No. 30).

§ 1865.22. Filing and Review of Applications.

A complete application shall be filed with the executive officer of the board.

NOTE: Authority cited: Sections 17705 and 17717, Education Code. Reference: Section 17717, Education Code.

HISTORY

1. Amendment filed 12-21-84; effective thirtieth day thereafter (Register 84, No. 51).

§ 1865.23. Changes in Application After Original Approval.

An applicant may, after approval of an application but prior to entering into a lease-purchase agreement, request approval of changes within the application.

Article 4. Eligible Facilities

§ 1865.30. Estimated Average Daily Attendance (ADA).

(a) The estimated ADA of a school district or attendance area as required by Section 17740 of the act for determining the allowable building area shall be computed by this section. No estimate will be used unless approved by the executive officer of the board.

(b) For the purpose of estimating ADA, the following definitions shall apply:

(1) "Enrollment" means the graded enrollment of minors of the district as reported to the Department of Education on Form R-30 (or any succes-

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sor form). Comparable enrollment data for the end of the first or sixth school month may be acceptable if verified by the appropriate county superintendent of schools.

Enrollment shall include only those students who actually reside in the school district and any students who reside in the district but attend school in other than the district of residence. Enrollment shall exclude high school pupils who attend continuation classes.

(2) "Projected enrollment" means graded enrollment as determined by the cohort survival method for a period of two years for the elementary grades and for a period of three years for the high school grades.

(3) "Pupil units attending continuation classes" is computed as follows: First determine the average number of pupil hours of attendance in high school continuation classes per school day in the highest three months of the latest 12 months, then divide the average by six. In making this computation, pupil hours during the regular school day in excess of 15 per week shall be included. Pupil hours for evening or Saturday classes shall be excluded. Multiply the final figure obtained in the preceding calculation by a factor which is computed by dividing the "projected enrollment" by the "current enrollment." The result is the "pupil units attending continuation classes."

In the event the district is applying for a continuation high school facility and has students who have not yet been screened and assigned to continuation classes because of lack of suitable space, the district may submit an identified list of such pupils. The average number of pupil hours of high school attendance in continuation classes per school day as computed above may be augmented by the pupil hours obtained by multiplying the number of names on the list by three, or in the event the district can prove that continuation high school pupils attend classes for an average of more than three hours per day, such larger multiplier may be used. When an identified list of prospective continuation high school pupils is used, the number of pupils on such list shall be excluded from the graded enrollment.

(4) "Exceptional children" means those pupils assigned to special education classes as of the latest enrollment, plus a verified count of such pupils who are not attending classes of the district but will become a part of the attendance of the district when approved facilities for such pupils have been completed.

(5) "Estimated average daily attendance" means the projected enrollment multiplied by .97 plus the exceptional children assigned to special education classes, plus the pupil units attending high school continuation classes.

(6) "Housecount" means an enumeration of new housing units that are under construction, i.e. units that have at least reached the stage of foundations in place, and have not yet been completed and occupied, classified by type of housing unit as the board may prescribe. Such housing units shall not include hotel or motel accommodations or other living quarters generally used as transient or short-term accommodations, but may include spaces under construction for mobile homes which the board determines to be essentially for long-term occupancy. The definition of housecount prescribed herein may be modified from time to time as may be necessary to classify new housing units in the most appropriate manner for the purpose of measuring the pupil yield of such units.

(c) The projected enrollment shall be determined by the cohort survival method in accordance with the following and by the use of such forms and instructions as the board may prescribe.

(1) List either the latest enrollment for the end of the first school month or the subsequent sixth school month and the enrollment for the same period for the three preceding years. All applications approved by the board after April 30 of any given year shall be based on the enrollment as of the end of the sixth school month of the most recent year. Such enrollment shall be listed by level for each grade included in the application. High school applications shall also list the four highest grades of component elementary enrollment.

(2) Determine the numerical change in enrollment between each given grade in one year and the next higher grade in the succeeding year for each

period and grade listed in (1) above. With respect to kindergarten enrollment (or first grade enrollment if no kindergarten is maintained), determine the numerical change in kindergarten (or first grade) enrollment between each period listed in (1) above, or alternatively, annual changes in enrollment based on a local census or survey of preschool children conducted according to such procedures as the board may prescribe.

(3) Compute the average annual change in enrollment for each grade maintained at the grade level of the application. The average shall be a weighted average computed by multiplying the most recent annual change in enrollment by three, the next most recent change by two, and the earliest change by one, and dividing the sum of the weighted changes by six.

(4) Progress the latest reported enrollment through the applicable two or three year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (3) above.

(d) From the projected enrollment, compute the estimated average daily attendance as defined in Subsection (b)(5) above.

(e) In the event that there is good reason to believe the number of pupils being added from construction of new housing units exceeds the number implicit in the cohort survival computation and when the land area of the district is less than 75% developed, the board may, at its discretion, modify the estimated average daily attendance as follows:

(1) Determine the graded enrollment one year from the latest reported enrollment by a one-year grade progression, adjusted for dropouts at the high school level.

(2) Determine the enrollment derived from new homes implicit in the cohort survival computation as follows: (i) Subtract the enrollment computed in (1) above from the one-year projection of enrollment as determined by the cohort survival method; (ii) To the remainder, add two percent of the latest enrollment for the end of the first or sixth school month, whichever is applicable. If the foregoing computations result in a negative number, the number shall be deemed to be zero.

(3) Determine the pupil yield per housing unit of housecount, as established by a survey of occupied housing units in the district, for the current year and the two preceding years. The survey shall take into consideration the different pupil yields of multiple and single family housing units or other significant yield characteristics. The current year yield factor for each type of housing unit shall be modified by the average annual difference of the factor for each type for the two preceding years.

(4) In the event that prior year data referred to in (3) is unavailable, the current yield factor shall be modified as the board shall prescribe.

(5) Establish the pupil yield of the housecount by multiplying the number of housing units in the housecount by the applicable yield per housing unit as determined above. Subtract the enrollment from new homes determined in (2) above from the yield of the housecount; the result of this computation is the amount by which the graded enrollment computed under the cohort survival method shall be changed.

(6) The housecount and surveys described in (3) and (4) shall be conducted by the district in accordance with methods, procedures, and standards which are approved by the Office of Local Assistance with respect to each specific case.

(f) Other provisions of this section notwithstanding, high school enrollment of a district or attendance area for the end of the first school month may be used for estimating ADA.

§ 1865.31. Estimated Average Daily Attendance—High School Attendance Area.

(a) As permitted by Section 17741, a district may file an application based upon a high school attendance area rather than a districtwide basis. A high school district or a unified school district filing on a high school level would base its application on enrollment estimated to attend such high school and upon facilities already existing in such high school attendance area. An elementary school district or unified district filing on an elementary level would base its application on the enrollment and exist-

ing facilities of the elementary schools serving the high school attendance area under consideration.

(b) The estimated average daily attendance of a high school attendance area as permitted by Section 17741 of the act for determining the allowable building area, when the district is applying only on a high school attendance area basis as opposed to a districtwide basis, shall be computed in the same manner as that set forth in regulation 1865.30, except that the enrollment used in such computation shall be that of the high school attendance area rather than the entire district and shall be certified by the district.

(c) In those instances where the high school attendance area results in a split in individual attendance areas of the contributing elementary or junior high schools, an assignment of enrolled pupils in such split attendance areas shall be made by the district in a manner satisfactory to the executive officer.

§ 1865.32. Application for Site and/or Plans.

In order to expedite a total school facility, a school district may first apply for a project which includes only the advance purchase of the land and preparation of plans and specifications. The acquisition of the site and the plans preparation shall be based on justification documents for the total school facility.

§ 1865.32.5. Utilization of Existing Facilities.

(a) If the board determines that it will not be economical or practical to utilize all existing facilities of the district, project approval then will be contingent upon the agreement by the district to dispose of any salable interest in any building or site that the board determines cannot be utilized and contribute the net proceeds of the sales to the State School Building Lease-Purchase Fund as rents pursuant to Section 17732 of the act.

(b) Approval of a project applied for pursuant to Section 17741 of the act will be contingent upon the conditions specified in subdivisions (a) and (b) of this section.

Authority cited: Section 17705, Education Code. Reference: Sections 17732 and 17732, Education Code.

HISTORY

1. New section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.
2. Amendment of subsection (b) filed 5-4-81; effective thirtieth day thereafter (Register 81, No. 19).
3. Amendment filed 12-21-84; effective thirtieth day thereafter (Register 84, No. 51).

§ 1865.33. Computation of Allowable School Building Area.

(a) No project shall be approved, the building area of which, when added to the area of adequate school construction existing in the applicant school district or the applicable high school attendance area if the application is filed on such basis, will provide a total area of school building construction in excess of that computed pursuant to Education Code Sections 17740 through 17749.

(b) All of the existing building area owned or operated by the district regardless of conditions or purpose for which used, shall be reported to the board by the district as prescribed in this regulation. Where an allowable building area is computed on the basis of an attendance area as provided by Section 17741 of the act, the existing building area shall be considered the building area within such attendance area.

(c) Existing adequate building area shall include all existing building area not otherwise excluded by the act or these regulations, building area for which applications have been approved under any state or federal building program, any building area being acquired by any lease-purchase agreement, proposed building area which has been otherwise financed or any building area which has been used to justify any site and/or lease-purchased project under this act. Existing building area shall be included as follows:

(1) The area of any building to which Article 3 of Chapter 2, Part 23 of the Education Code would not apply.

(2) The area of any relocatable structure for temporary use building under lease pursuant to Education Code Sections 39243 or 39246.

(3) The area of any district administration or district maintenance facilities except those constructed pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

(d) Existing and proposed building area shall be computed in accordance with the following:

(1) All measurements shall be made from exterior rough wall lines.
(2) Totally enclosed space shall be counted as full area. Among the various types of space to be included shall be areas such as:

- (A) Basement rooms and basement boiler rooms.
 - (B) Heater rooms, including those above the normal floor level.
 - (C) Each floor of multi-story buildings.
 - (D) The area of completely enclosed stairs for each floor level served.
- (3) Certain partially enclosed areas shall be counted as full area and shall include:

(A) Open, covered areas which provide shelter between buildings that are less than 20 feet apart.

(B) Mezzanines open on one or more sides which may easily and readily be used or converted to use as instructional space or passageways.

(C) Each floor of library stacks.

(4) Covered unenclosed space shall be counted as one-half of the actual area. Included in such space are:

(A) Open, covered passages, arcades, shelters, porches, and planting areas.

(B) Open, covered areas which provide shelter between buildings that are 20 feet apart or more.

(C) Overhangs and sun control devices which are so designed and located that they function as, and in lieu of, covered walks or other shelter areas.

(D) Mezzanines for storage purposes.

(5) Areas which shall not be counted include:

(A) Eaves and sun control devices except as specified above.

(B) Unsheltered platforms and steps.

(C) When isolated from building structures, the area of incinerators, pumphouses, transformer vaults, and service yards.

(D) Elevator shafts where constructed in order to comply with Chapter 7 of Division 5 of the Government Code (commencing with Section 4450), relating to facilities for handicapped persons.

(E) That portion of the area below the first floor of a multistory building used exclusively for employee parking, provided the board finds that other means of parking are not economically feasible.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17740-17749, Education Code.

HISTORY

1. New subsection (c)(3) filed 6-26-80; effective thirtieth day thereafter (Register 80, No. 26).
2. Amendments of subsections (b) and (c) filed 5-4-81; effective thirtieth day thereafter (Register 81, No. 19).

§ 1865.34. Allowable School Building Area for Facilities for Exceptional Children.

(a) In conformity with the requirements of Section 17747 of the Education Code, the board establishes allowable building areas for the education of physically handicapped, educationally handicapped, and mentally retarded minors, to be computed as follows:

(1) Divide the number of eligible pupils by the maximum class size established by law for special day classes for the type of pupils to be enrolled and increase the quotient to the next highest integer where a fractional amount is produced.

(2) Multiply the number computed in (1) by the maximum building area allowance shown below when the facility is planned for the following types of exceptional children:

Types of Pupils	Maximum Class Size		Area Allowance—Sq. Ft.		
	Ages 3-8	Ages 9-20	K-8	7-9	9-12
Austistic	6	6	1080	1080	1080
Deaf, Aphasic, Multihandicapped *, or Combination of Deaf & Severely Hard of Hearing	6	8	1235	1335	1360
Blind, Severely Hard of Hearing, or Combination of Blind & Partially Seeing	8	10	1290	1410	1440
Partially Seeing	10	12	1290	1410	1440
Educationally Handicapped	12	12	1080	1080	1080
Trainable Mentally Retarded	12	12	1860	1860	1860
Educable Mentally Retarded	18	18	1373	1635	1680
Orthopedically Handicapped	(See 3) 12	(See 3) 16	2000 (See 4)	2000 (See 4)	2000 (See 4)
Development Centers for Handicapped Pupils	10	10	2000 (See 4)	2000 (See 5)	2000 (See 5)
Deaf-Blind Multihandicapped	3	5	1500 (See 4)	1500 (See 4)	1500 (See 4)

* Other than Deaf-Blind Multihandicapped

(3) When the chronological age span of educable mentally retarded minors is greater than four years, the maximum class size shall be 15 pupils.

(4) When facilities to be constructed will include occupational therapy, physical therapy, and related auxiliary spaces for orthopedically handicapped minors, additional building area allowances for such spaces of up to 5,200 square feet shall be made if the facility is designed for one to three classes and up to 7,000 square feet for four to eight classes.

(5) When facilities are to be constructed for deaf-blind multihandicapped, a one-time additional building area allowance of 500 square feet per school will be made for the initial construction of facilities.

(6) When facilities are to be constructed for blind or partially seeing minors served in an integrated instructional program which is housed in two or more schools, the building area allowance may be allocated among the schools when approved by the Department of Education. No area of instruction shall be allowed which is less than 200 square feet.

(7) When facilities are to be provided for minors having speech defects or disorders, additional building area per school is permitted. This additional area allowance is limited to:

(a) 200 square feet of new building area per school in schools constructed after July 1, 1968, where such schools are designed to permit utilization for remedial and other special services.

(b) 200 square feet of new building area per school in schools constructed between July 1, 1933 and July 1, 1968, where such additional area allowance is used for the construction of a new speech facility.

(c) Conversion of existing facilities or a combination of new construction and conversion of such existing facilities to provide housing for such minors having speech defects or disorders, provided the cost does not exceed the computed cost for 200 square feet of new classroom construction based upon cost standards adopted by the board.

(d) The acquisition of mobile speech therapy facilities, provided the cost does not exceed the combined computed cost for 200 square feet of new classroom construction, based upon cost standards adopted by the board, at all such schools which will be served by the mobile facility.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY

- Amendment filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80. Certificate of Compliance filed 6-26-80 (Register 80, No. 26). Amendment filed 6-1-81 as an emergency; effective upon filing (Register 81, No. 23).
- Order of Repeal of 6-1-81 emergency order filed 6-5-81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 23).

§ 1865.35. Allowable Building Area for Small Elementary School Districts.

(a) For the purpose of computing the building area allowance for small elementary school districts in accordance with Section 17743 of the Education Code, the following shall apply:

(1) In an applicant district maintaining any combination of grades kindergarten through 6 with an estimated average daily attendance of less than 300 in such grades:

Estimated ADA in Kindergarten and Grades 1-6	Maximum Total Building Area (Sq. Ft.)
6-25	1,600
26-50	3,800
51-75	5,700
76-100	7,200
101-133	8,415
134-166	10,200
167-199	12,000
200-232	13,360
233-285	15,675
286-299	16,500

(2) In an applicant district maintaining any combination of grades kindergarten through 8 with an estimated average daily attendance of less than 300 in grades kindergarten through 6, there shall be allowed, in addition to the maximum total building area shown above, a maximum area of 75 sq. ft. for each attendance unit in grades 7 and 8.

§ 1865.36. Allowable Building Area for Continuation High Schools.

(a) The estimated average daily attendance for continuation high schools shall be based on those pupil units attending continuation classes (as defined in Section 1865.30(b)(3) of these regulations) which are assigned to the continuation high school.

(b) Building area shall be allowed for the continuation high school in accordance with the following schedule:

Pupil Units of Continuation High School	Square Feet of Building Area
5 to 20	2,300
21 to 40	2,300 + 125 for each pupil unit over 20
41 to 60	4,800 + 120 for each pupil unit over 40
61 to 90	7,200 + 115 for each pupil unit over 60
91 to 120	10,650 + 105 for each pupil unit over 90
121 to 150	13,800 + 90 for each pupil unit over 120
Over 150	16,500 + 60 for each pupil unit over 150

(c) For purposes of this section, a continuation high school must be physically and operationally distinguishable from other schools. If the continuation high school shares space with another type of school, it can

be considered to be a continuation high school within the meaning of this section only if the district can show conclusively that the continuation facilities in fact a separate institution with its own administration, teaching staff and course of study, located in a clearly identifiable building area.

NOTE: Authority cited: Sections 17705 and 17742, Education Code. Reference: Sections 17740-17751, Education Code.

HISTORY

1. Amendment of subsection (b) filed 3-5-90; operative 4-4-90 (Register 90, No. 10). (p. 71.72.50.6.1)

§ 1865.37. Minimum Essential Instructional Facilities.

In the event the existing area of the district as determined pursuant to Section 17742 of the act results in a district being unable to apply for the minimum amount of essential instructional facilities required, the existing area may be reduced, with the approval of the board, by an amount sufficient to permit such essential instructional facilities to be constructed under the act. Such reduction shall be construed as being for the purpose of alleviating any substantial hardship which might otherwise occur.

§ 1865.38. Building Cost Standards.

(a) Pursuant to Section 17717 of the act, the board shall establish allowable school building cost standards which shall be effective until next revised.

(b) No application or bid shall be approved and no funds shall be provided for any construction which exceeds the allowable costs established as provided herein. In the event, however, that it is shown from any studies by the board that actual building costs in an area or portion of an area differ substantially from the allowable costs established for the area, the board may at any time revise the allowable building cost standards for the area or create additional areas and establish appropriate allowable cost standards for such additional areas.

§ 1865.39. Unconventional Sources of Energy.

Where a school district requests an increased cost allowance for the design and construction of facilities which will conserve unreplenishable energy resources pursuant to Section 17718 of the act, a life cycle cost comparison must be submitted to the board. Such cost comparison shall be prepared by a competent authority and provide for the amortization of the increased cost allowance over a period not to exceed the lesser of 30 years or the term of the lease.

§ 1865.40. Reconstruction or Replacement.

(a) No project shall be approved for reconstruction, the cost of which will exceed cost standards established by the board for replacement of the amount of area equivalent to the actual reconstruction area.

(b) Replacement. No building shall be replaced until the board has made a finding that it would not be economical or good practice to reconstruct the school facilities to meet present-day educational and structural standards.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17705, 17716 and 17721, Education Code.

HISTORY

1. Amendment of subsection (a)(1) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.
2. Certificate of Compliance including amendment filed 6-26-80 (Register 80, No. 26).
3. Amendment filed 10-10-84; effective thirtieth day thereafter (Register 84, No. 41).

§ 1865.41. Site Development.

Site development for new building area may be included as a part of the project and classified as follows:

(1) Utility Services may include but are not limited to facilities required to bring water, sewer, electricity, telephone, and fuel supply ser-

vices to such suitable point on the site as may be necessary for the functioning of a project.

(2) Off-site Development may include but is not limited to such street improvements as are in line with the approved standards of the board and as are determined by the executive officer to be necessary. However, whenever a school building to be constructed pursuant to an apportionment under the act is situated in a city, city and county, or county which requires the construction of any street or road connected with the school premises on which the building is situated, the board shall review the requirement and recommend to the entity in question a plan of construction adequate to meet the needs of the school district and safety of the public. Thereafter, if any different plan of improvement or improvement to higher standards than so recommended is required by such entity, the additional cost shall be borne by the entity as provided in Section 2117 of the Streets and Highways Code.

(3) Service Site Development may include but is not limited to site clearance, rough grading, and drainage which may be required to make a site usable in accordance with standards established by the board.

(4) General Site Development may include but is not limited to any other development of a site, including such items as grading (except rough grading), walks, curbs, roadways, parking areas, fencing, flagpoles, incinerators, hand-surfaced and turfed play areas, landscaping, and playground equipment.

In the event the proposed construction consists of an addition to an existing school plant (whether financed by State Funds or by other means) the countable existing construction area and the existing site development shall be evaluated by the Director of General Services in determining any allowance for general site development.

(b) Site development for reconstruction is limited to replacement of walks or paving which are destroyed as a result of the reconstruction work, and may be required for handicapped requirements. Off-site work and utilities will not be considered unless justification has been submitted that the reconstructed facility cannot be adequately functional without such improvements.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17705, 17716 and 17720, Education Code.

HISTORY

1. Repealer of subsection (a)(3) and new subsections (a)(3), (a)(4), and (a)(4)(A) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.
2. Amendment filed 10-10-84; effective thirtieth day thereafter (Register 84, No. 41).

§ 1865.42. Furniture and Equipment.

(a) Furniture and equipment may be included as part of the project.

(b) Cost standards for furniture and equipment shall be established on a quarterly basis by the board based upon the kinds, quality, quantities, and costs of furniture and equipment most commonly acquired by school districts for comparable facilities.

(c) Before requesting funds for furniture and equipment for a project, the district shall give full consideration to all usable furniture and equipment existing in the district. The district may apply for funds to provide such furniture and equipment as needed to complete the project within the standards established by the board. The furniture and equipment allowance for replacement or reconstruction projects cannot exceed 50% of the allowance for comparable new facilities unless specifically approved by the board.

(d) An allowance will be calculated for each construction project in accordance with 1865.42(b) and (c) above. The amount so calculated will be authorized as the cash allowance for the project to be expended by the district in furnishing and equipping the project.

(e) Furniture and equipment shall be purchased by the district by competitive bidding where required to do so by the Education Code or other provisions of law. However, even where the district is not otherwise required to purchase the same through competitive bidding, the board may

require the district to do so where it believes that it is likely that such bidding would result in a lower cost than other methods.

§ 1865.43. Repairs, Renewals, and Replacements.

(a) The district shall make all repairs, renewals and replacements necessary to keep the project in good repair, working order and condition at all times. All costs for this purpose will be borne by the district.

(b) In the event the project requires repairs, renewals or replacements as a result of damages from any cause, casualty, or otherwise, the district shall make the same. In such event the board shall contribute any insurance funds available to it for this purpose.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer and new section filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

Article 5. Project Approvals and Lease–Purchase Agreements

§ 1865.50. Approval of Applications.

The board may approve in whole or in part any application submitted pursuant to the Act. Upon receipt of the application, the executive officer shall review it for proper form and compliance with statutes and regulations of the board. After such review and any necessary corrections, the executive officer shall present the application to the board with recommendations, in whole or in such part as will satisfy the board's policy of approving funds for feasibility studies, site acquisition and/or preparing plans and specifications, and project construction in separate increments, whereupon the board shall consider the application provided it (the application) has sufficient priority to warrant such consideration. If the application meets with the board's approval, it shall grant its approval and shall make an apportionment for the financing of the project from any sources available for such purposes. The apportionment shall be conditioned upon the district subsequently entering into a lease–purchase agreement with the state. After such approval and apportionment of funds, the executive officer of the board shall authorize the district, as the agent of the board, to perform all acts necessary to effectively complete the particular phase of the approved project. Such authorization shall be specifically set forth in writing to the district and shall be conditioned upon the district having entered into or subsequently entering into a lease–purchase agreement with the board either in the form of (1) a lease–purchase for feasibility studies, (2) the lease–purchase of a site and/or plans, or (3) the lease–purchase of an entire project. Failure on the part of the district to enter into such agreement shall invalidate such authorization, and any obligations incurred as a result thereof shall become the sole responsibility of the district. Upon receipt of successive phases of the project, the executive officer shall have the authority to amend the project budget within the apportionment so made or to reduce the total apportionment to conform to the project as bid. The executive officer is authorized to enter into a lease–purchase agreement or agreements with the district on behalf of the board.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Amendment filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance including amendment filed 6–26–80 (Register 80, No. 26).

1865.51. Apportionment.

(a) In addition to complying with any other requirements of these regulations or the act, the board, at the time of making an apportionment, shall:

- (1) Approve a total estimated cost and a budget for the project.

(2) Prescribe the purposes for which an apportionment may be expended.

(3) Prescribe the manner, terms, and conditions for releasing the apportionment to the district.

(b) Notwithstanding anything to the contrary in these regulations, the board shall have power to modify any apportionment or resolution of apportionment where it determines good cause exists therefor.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer of subsections (a)(4)–(5) filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.52. Rental Payment.

The rental payments required by Section 17732 of the act will become due and payable on September 15 following the date the lease–purchase agreement is executed and on each successive September 15th thereafter during the life of this agreement. The payment may be in the form of a contribution toward the cost of an ongoing project or as a direct remittance. An Annual Certification of Funds Available for Rents shall be submitted by each district prior to August 15 each year. The payment required for a district desiring to exercise an option to purchase shall be the total cost of the project less any rental payments made or to be made from sources identified in Section 17732(c) and (d) of the act.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer and new section filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

Article 6. Project Budget

§ 1865.60. Contents of Project Budget.

(a) The project budget prescribed by the board shall be set up in such a manner as to contain all costs attributable to the project, categorized as follows: Sites; Plans; Construction; Tests; Inspection; Furniture and Equipment; and Contingencies. Within these major categories the following limitations shall apply:

(1) Sites:

(A) The board shall not authorize the expenditure of any funds for real property in excess of the fair market value of such property.

(B) Relocation assistance costs to landowners or persons displaced pursuant to Sections 7260 et seq. of Chapter 16, Division 7, Title I of the Government Code, referred to as the "Relocation Assistance Law," in conjunction with an acquisition of a site for which an application for a lease–purchase project is made, shall be administered by the district affected in accordance with the requirements of said sections.

(2) Plans:

(A) Fees for architectural and engineering services, including architectural supervision, shall not exceed the standards established by the board.

(B) The board shall require that each architectural contract contain a clause to the effect that the architect shall be responsible for making, without additional cost to the district, any changes or redesigning made necessary as a result of the bids exceeding the cost standards established by the board.

(C) Any other plan fees or changes required by law.

(3) Construction: Costs shown for construction shall not exceed the cost standards established by the board.

(4) Tests: The amount for tests shall be limited to the actual costs of tests which are required by Title 21 of the California Administrative Code or other applicable provisions of law, or which are in accordance with good or accepted practice.

(5) Inspection: The amount for inspection shall be limited to such amounts as is required to insure that the project is completed in accordance with plans and specifications and any other legal requirements.

(6) Furniture and Equipment: The amount for furniture and equipment shall be limited to that determined pursuant to Section 1865.42 hereof.

(7) Contingencies:

(A) An amount may be included for contingencies which shall not exceed such maximums as the board may prescribe for any class of application or value of facilities in a project budget.

(B) Contingency funds may be used only after specific approval by the executive officer for items of construction or other approved project costs where the cost increase or the item required is necessary for the completion of a facility which has been approved by the board.

NOTE: Authority cited: Section 17705, Education Code. Reference: Section 17729, Education Code.

HISTORY

- 1. New subsection (a)(2)(C) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).
3. Amendment of subsection (a)(2)(A) filed 5-4-81; effective thirtieth day thereafter (Register 81, No. 19).

§ 1865.61. Revision of a Project Budget.

(a) The executive officer may revise any item within a project budget, upward or downward, provided that no such revision results in an increase in the total amount of the project budget approved by the board.

(b) The executive officer may reduce any apportionment as may be necessary to reflect any revision made pursuant to (a) above.

Article 7. Disposition of Property

§ 1865.70. Disposition of School Buildings or Land.

Whenever a district disposes by sale or lease of any land or buildings no longer needed for school purposes, the net proceeds therefrom shall be remitted to the state, as rental payments pursuant to Education Code Section 17732. Such payment(s) shall be applied to the outstanding balance of any approved projects in the order(s) of approval.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY

- 1. Repealer and new section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

§ 1865.70.5. Justification of Surplus School Site.

Whenever disposition of a surplus school site is required as a condition of approval of a project and an apportionment of funds pursuant to Education Code Section 17760 et seq., the existence of the surplus school site shall be deemed to be justified in accordance with the provisions of Education Code Section 17762 while the disposition process is occurring.

NOTE: Authority cited: Sections 17705 and 17763, Education Code. Reference: Section 17762, Education Code.

HISTORY

- 1. New section filed 7-28-82; effective thirtieth day thereafter (Register 82, No. 31).

§ 1865.71. Disposition of Excess Improvements Acquired with Site Purchase.

(a) Excess improvements acquired with a site purchase shall be offered for sale prior to the advertising of a project for construction bids, in accordance with the method and manner prescribed for the sale of personal property under Section 39520 et seq. of the Education Code. The net proceeds received from any such disposition shall be deposited in the County School Lease-Purchase Fund as a credit against the cost of the project.

(b) When facilities acquired with a site purchase have been offered for sale pursuant to Section 39520 et seq. of the Education Code and no acceptable bids are received prior to the time the construction project is ready to be advertised for construction bids, the district shall adopt a resolution making a finding that the property is of insufficient value to defray the costs of arranging a subsequent sale as provided by Section 39521(b) of the Education Code and proceed to demolish such property using funds approved in the project for this purpose.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY

- 1. Amendment of subsection (a) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

Article 8. Lease-Purchase of Sites and Plans

§ 1865.75. Advance Purchase of Sites and Preparation of Plans.

(a) Except as otherwise provided by the act or these regulations, the provisions of these regulations shall apply to applications for sites and/or plans and specifications made pursuant to Section 17720 of the act.

(b) Nothing contained in the regulations shall be construed to prohibit the executive officer from entering into a lease agreement with option to purchase for a site and/or plans pursuant to Regulation 1865.32 without construction, even though such items may constitute only a part of the project as approved by the board. A lease-purchase agreement or agreements may be subsequently entered into by the executive officer for the balance of the project.

Article 9. Environmental Impact Requirements

§ 1865.80. CEQA Requirements.

These requirements are set forth in the following sections of Title 14, of the California Administrative Code.

SECTION NUMBERS

Table with 2 columns: SECTION NUMBERS and corresponding values. Values include 15001-15007, 15020-15021, 15041-15045, 15050, 15052, 15060-15065, 15070-15074, 15080-15096, 15100-15112, 15120-15132, 15140-15153, 15162-15170, 15201-15205, 15207-15227, 15231, 15233, 15261-15262, 15269, 15274, 15300, 15300.2, 15300.4, 15302, 15314, 15350-15368, 15370-15376, 15378-15385.

NOTE: Authority cited: Sections 21001, 21082, 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21083 and 21087, Public Resources Code.

HISTORY

- 1. Repealer of former Article 9 (Sections 1865.80-1865.95) and new Article 9 (Sections 1865.80) filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46). For history of former Article, see Register 78, No. 5.

§ 1865.81. Definitions.

HISTORY

- 1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.82. CEQA Officer.

HISTORY

- 1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.83. Applicability of These Rules.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.84. Applicability of CEQA and Guidelines.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.85. Required Filing by a District.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.86. Categorical Exemptions.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.87. Notice of Exemption—Rejection by Executive Officer.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.88. Non-Exempt Projects—Initial Study.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.89. Negative Declaration—Requirements and Attachments.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.90. Negative Declaration—Rejection by Executive Officer If Not in Conformity with Law.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.91. EIR—General Requirements.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.92. EIR Attachments.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.93. EIR for More Than One Project.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.94. EIR—Rejection by Executive Officer for Non-Conformity with Law.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.95. EIR Evaluation by the Board.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

Subgroup 12. State School Deferred Maintenance**Article 1. Definitions****§ 1866. Definitions.**

(a) In connection with the administration of the provisions of Sections 39618 to 39621, inclusive, of Article 1, Chapter 4, Part 23, Division 3, Title 2, Education Code and for the purpose of these regulations, the terms set forth below shall have the following meanings:

(1) The Act, Sections 39618 through 39621, above.

(2) Application. A request to the State Allocation Board for approval of a five year plan of maintenance needs of a school district and for an apportionment of funds from the State School Deferred Maintenance Fund, as provided by the Act and these regulations.

(3) Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This amount is based on the formula specified in Section 39619(b) of the Education Code.

(4) Board. The State Allocation Board.

(5) District or Applicant School District. Any School district applying for an apportionment, as provided by the Act and these regulations, or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.

(6) Executive Officer. The Executive Officer of the State Allocation Board.

(7) Five Year Plan of Maintenance Needs. The district's plan in priority order reflecting the district's total deferred maintenance needs, to accomplish the major repair or replacement workload annually over a five year period using the format to be supplied by the Executive Officer of the Board.

(8) Repair. Involves the work necessary to restore deteriorated or damaged plumbing, heating, air conditioning, electrical, roofing and floor systems. The exterior and interior painting of school buildings, asphalt paving the inspection, sampling and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials or such other items as may be approved by the State Allocation Board, to such condition that the school buildings may be effectively utilized for their designated purposes.

(9) Replacement. The work necessary to replace those school building systems itemized in subparagraph 8, above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

(10) Critical Project. A project at one school in the five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a risk of injury or illness to the pupils attending the facility. The Board shall have the authority to approve more than one critical project in a district's five-year plan, for completion in the same year, if the Board, after reviewing the additional critical project(s), has made a determination that approval of such additional critical project(s) is justified in order to abate a risk of injury or illness to the pupils attending the facility. A critical project for a district with only one school may also include additional major repair or replacement work deemed essential for the basic utilization and functioning of the school.

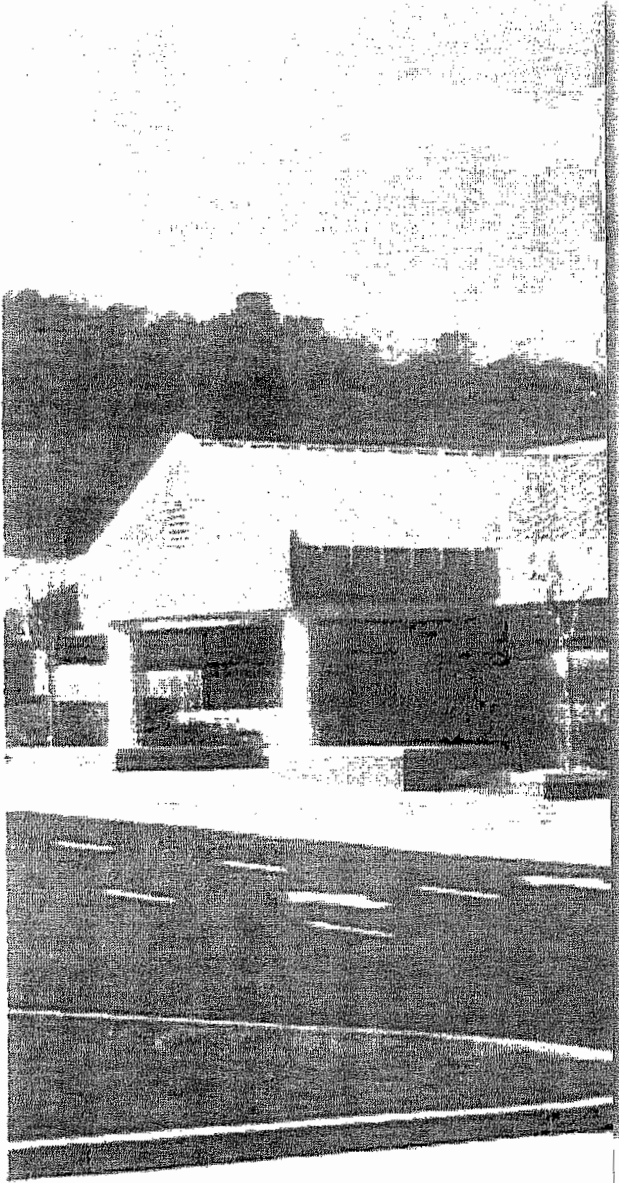
NOTE: Authority cited: Sections 17705 and 17714, Education Code. Reference: Sections 39618-39621, Education Code.

HISTORY

1. New Subgroup 12 (Articles 1-6, Sections 1866-1866.10) filed 4-18-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8-17-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

EXHIBIT 5
IMPLEMENTING GUIDELINES FOR
LEROY F. GREENE



School Facility Program

Substantial Progress and Expenditure Audit Guide

May 2003

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Section 1 Reporting Requirements and SFP Audit Overview

1.1 OVERVIEW

These progress and expenditure reporting guidelines were developed by the Office of Public School Construction (OPSC) to assist school districts in meeting program reporting requirements for the School Facilities Program (SFP). Under the Leroy F. Greene School Facilities Act of 1998, the State Allocation Board (SAB) is given the authority to audit expenditure reports and district records in order to assure funds received under this act are expended in accordance with program requirements (as specified in Education Code 17076.10). The OPSC, as the SAB's administrative arm, is charged with conducting SFP progress and expenditure audits. The OPSC's oversight responsibilities focus on verifying a project funded through the SFP progresses in a timely manner, applicable state laws were followed, and expenditures made by school districts comply with the Education Code Sections 17072.35 and 17074.25 and Regulation Sections 1859.77.2 (New Construction) and 1859.79.2 (Modernization).

School districts are advised they will be required to submit two types of reports after receiving SFP funds: a Substantial Progress Checklist (SPC) and Expenditure Reports (Regulation Section 1859.104). It should be noted that certain projects may require evidence of progress at more than one point in the project's life cycle. This occurs when a project receives separate design and/or separate site funding prior to receiving full project funding. Each phase of funding generates a separate requirement to submit evidence of progress within 18 months from the date the related funds were released (Environmental Hardship funding requires evidence within 12 months of the State apportionment). An *Expenditure Report* (Form SAB 50-06) and Detailed Listing of Project Expenditures are due one year from the date any funds were released to the district, or upon completion of the project, whichever occurs first. Subsequent expenditure reports are due annually until the project is complete, at which time the district shall submit a final expenditure report.

SFP Regulation Sections 1859.105, 1859.105.1 and 1859.106 specify that OPSC audit staff review substantial progress documentation and expenditure reports submitted by participating districts. All projects will be monitored by the audit staff for timely submittal of substantial progress and expenditure reports. When the SPC or Expenditure Report is submitted, a project will be audited to verify compliance with requirements set forth in Regulation Sections 1859.105 and 1859.106. Furthermore, all Environmental Hardship projects will be reviewed to assure the district has made progress in acquiring the site in accordance with Regulation Section 1859.105.1 (see Section 2.2 – Progress Review for more information).

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Section 2 Substantial Progress Audit

2.1 SUBSTANTIAL PROGRESS AUDIT REPORTING REQUIREMENTS

As stated in the preceding Overview, the specific type of substantial progress evidence required for a project and the timeline for submitting that evidence is determined by the phase of funding the project received. Certain projects may require evidence of progress at more than one point in their life cycle. This occurs when projects have received separate design or site monies prior to receiving full project (adjusted grant) funding. The specific requirements for each funding phase are summarized in the following table:

► Substantial Progress Timelines and Required Evidence

Funding Phase	Due Date for Submitting Evidence of Progress	Specific Type(s) of Evidence Required
Separate Design (Financial Hardship project only)	18 months from date of Fund Release	<p>One of the following:</p> <ul style="list-style-type: none"> • Submittal of a complete adjusted Grant funding Application package (including Form SAB 50-04) to the Office of Public School Construction (OPSC). • Submittal of a district certification that complete plans and specifications have been submitted to the Division of the State Architect (DSA). • Submittal of a complete Separate Site funding application package (including Form SAB 50-04) to the OPSC (Regulation Section 1859.75.1). <p>Or:</p> <ul style="list-style-type: none"> • Submittal of a narrative of evidence, satisfactory to the State Allocation Board (SAB) detailing why complete plans have not been submitted to the DSA.
Separate Site (Financial Hardship project only)	18 months from date of Fund Release ¹	<p>Submittal of a progress checklist (or narrative) certifying that all of the following have been achieved:</p> <ul style="list-style-type: none"> • Obtained the final site appraisal. • Completed all California Environmental Quality Act (CEQA) requirements. • Obtained final California Department of Education (CDE) site approval. • Obtained final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site. <p>Or:</p> <ul style="list-style-type: none"> • Submittal of a narrative of evidence, satisfactory to the SAB, detailing the circumstances (beyond district control) that precluded progress from being achieved. (For separate site funding applications submitted after September 30, 2003)
Separate Site (Environmental Hardship project only)	12 months from the apportionment date or anniversary of conversion from Separate Site Financial Hardship, and on each subsequent anniversary if necessary	<p>Submittal of one of the following:</p> <ul style="list-style-type: none"> • A progress checklist (or narrative) satisfying the same criteria set forth for Separate Site (Financial Hardship) funding. • A request for an extension (which is supported in written letters of concurrence from the Department of Toxic Substances Control and the CDE). • Other reasonable evidence of effort the district has made to acquire the site (Regulation Section 1859.75.1)
Adjusted Grant	18 months from the date of the Fund Release ²	<p>Submittal of a progress checklist (or narrative) certifying one of the following:</p> <ul style="list-style-type: none"> • 75 percent of site development work necessary prior to construction is complete. • 90 percent of the work in the plans and specifications is under contract. • 50 percent of the work in the plans and specifications is complete (Regulation Section 1859.105(a). <p>Or:</p> <ul style="list-style-type: none"> • Submittal of a narrative of evidence, satisfactory to the SAB, detailing the circumstances (beyond district control) that precluded progress from being achieved.

¹ If toxic substance issues are delaying site preparation progress, the district may convert the site apportionment to an environmental hardship apportionment. Environmental hardship projects may request annual extensions with appropriate substantiation.

² The progress reporting requirement for adjusted grant funding can be suspended if one of the following occur before the reporting deadline:

The district submits a Notice of Completion for the project. If more than one construction contractor is involved in the project, a Notice of Completion is required for each construction contract.

The district submits an *Expenditure Report* (Form SAB 50-06), which shows that the project is at least 90 percent complete.

If a district receives Separate Design, Separate Site, and Adjusted Grant apportionments, it will be required to submit evidence of progress for each of these types of funding. For each type, the school district will receive up to two substantial progress reminder letters. For all SFP apportionments, except Separate Site apportionments for Environmental Hardships, school districts will receive the letters at 12 and 15-month intervals after the related funds have been released. For Environmental Hardship projects, the OPSC will send the letters at 8 and 10-month intervals after funds have been apportioned. Each reminder letter will have an attached Substantial Progress Checklist (SPC).

Submitting a complete and acceptable SPC will fulfill the requirement to submit a narrative of evidence (progress report), as required in Regulation Section 1859.104.

Districts may submit a narrative in the form of a letter, but are encouraged to use the SPC to help insure completeness and accuracy. In cases where a funding application serves as evidence of progress, no narrative is required, but a SPC may still be submitted as a mechanism to alert the OPSC audit staff that the funding application has been submitted.

2.2 PROGRESS REVIEW

Within 60 days of receiving a timely SPC (or narrative), the OPSC is required to review the evidence submitted. The district will be notified if OPSC staff intends to recommend to the SAB that the evidence does not demonstrate substantial progress. If the OPSC does not respond to the district within the 60-day timeline, substantial progress will be considered to be approved. The OPSC may elect to perform an in-depth progress review on certain projects. In such cases, additional documentation will be requested to substantiate certifications made on an SPC (or narrative). The documentation that may be required is summarized in the following table:

► Additional Substantial Progress Evidence for In-Depth Reviews

Type of Funding Received	Additional Documentation That May Be Requested
Separate Design (Financial Hardship)	<ul style="list-style-type: none"> • DSA notice of receipt of plans or printout of project tracking screen from the DSA website (in cases where the district has certified DSA submittal on the SPC).
Separate Site (Financial Hardship)	<ul style="list-style-type: none"> • Final site appraisal letters. • Documentation of CEQA compliance (State clearinghouse approval letter, Negative Declaration, Categorical Exemption, etc.). • Final escrow documents. • Copy of final CDE site approval letter.
Separate Site (Environmental Hardship)	<ul style="list-style-type: none"> • Same evidence requested for Separate Site Financial Hardship. • Copies of letters from CDE and DTSC confirming that the district is making reasonable progress towards acquiring a site.
Adjusted Grant	<ul style="list-style-type: none"> • Copies of construction contracts. • Copies of progress billings, certificate/application for payment with attached Continuation sheet. • Cost estimate.

2.3 SUBSTANTIAL PROGRESS AUDIT RESPONSE

If it has been determined through the Substantial Progress Audit that no substantial progress has been made, or the district has neglected to submit a progress report, the audit staff will take the following actions (per Regulation Section 1859.105):

- ▶ A letter will be sent to the district within 60 days of receipt of the district's SPC (or narrative), or within 60 days of the substantial progress deadline if no SPC has been received, informing the district that the SAB's substantial progress requirement has not been met.
- ▶ The letter will request final expenditure reports (Form SAB 50-06 and Detailed Listing of Project Expenditures) and supporting contracts, agreements, warrants, and invoices from the district. The request will stipulate that this documentation will be due within 60 days.

If the district has not failed substantial progress, but still wishes to close the project (i.e. rescind or reduce to costs incurred), it may request this in writing. The OPSC will respond with a letter requesting that the district submit the final expenditure reports and supporting invoices within 60 days.

When a finding of no substantial progress is made, and the district reports project expenditures within the specified 60 days, an expenditure audit will be performed and the project will be closed to costs incurred. If the district does not submit a final expenditure report within 60 days, but previously submitted a Form SAB 50-06 and Detailed Listing of Project Expenditures, the project will be closed to costs incurred based on the expenditure report(s) on file. If the district does not submit a final expenditure report within 60 days and no previous expenditure reports were filed, the project will be rescinded and all funds previously released to the district, plus any interest accrued on the State's funds, must be returned to the State (Regulation Section 1859.104(c)). The district must submit a warrant for any amount due within 60 days of the project being reduced to costs incurred, or the amount due will be collected through a school fund apportionment offset. Once the closeout and collection process is complete, the appropriate number of pupils will be added back to the district's baseline eligibility.

Rescinded projects will have the entire pupil count that was previously deducted and assigned to the project, returned to the district's baseline eligibility. When projects are reduced to costs incurred, the per pupil grants not utilized in the amount reported on the expenditure reports will be returned to the district's baseline eligibility. To determine the number of students to be returned to the district's baseline eligibility, the project's total grant amount (district and State share), excluding site acquisition costs, will be divided by the number of students applied towards the project to obtain a dollar amount applied to each student. The amount reported by the district on the expenditure reports, excluding costs funded from a site acquisition apportionment, will be divided by the dollar amount applied to each student to produce the number of students assigned to the project. The difference between the pupils originally assigned to the project less the number of students assigned to the eligible expenditures when the project is reduced to costs incurred is the number of pupils added back to the district's baseline eligibility. Please see example below:

Project Totals:

Total Grant Amount (district and State share):.....\$208,000.00
 Number of Pupils Assigned:40
 Total Reported on Expenditure Reports:\$65,000.00

Calculations:

Total Grant Amount *divided by* Number of Pupils Assigned *equals* Grant Amount per Pupil:

$$\frac{\$208,000.00}{40 \text{ Pupils}} = \$5,200.00 \text{ per Pupil}$$

$$\frac{\$65,000.00}{\$5,200.00 \text{ per Pupil}} = 12.50 \text{ Pupils; however, pupils applied to a project must be rounded to the appropriate whole number (13 in this example).}$$

$$40 - 13 = 27 \text{ Pupils added back to district's baseline eligibility}$$

Section 3 Expenditure Audit

3.1 EXPENDITURE AUDIT REPORTING REQUIREMENTS – GENERAL

School districts are required to submit an *Expenditure Report* (Form SAB 50-06 and a Detailed Listing of Project Expenditures) one year after receiving the initial fund release for the project. Subsequent expenditure reports are due annually until the project is complete (Regulation Section 1859.104(a)).

Ten months after issuing a project's initial fund release, audit staff will notify the district in writing that an expenditure report is due and must be submitted within one year of the project's initial fund release date. If the district has not submitted an expenditure report within the one-year time period, the audit staff will notify the district it must submit a Form SAB 50-06 and Detailed Listing of Project Expenditures within 60 days. If the district does not submit the Form SAB 50-06 and Detailed Listing of Project Expenditures, the audit staff will prepare a board item to advise the SAB the district has not complied with Regulation Section 1859.104.

If the district has complied with the expenditure reporting requirements, the audit staff will track fund release dates and district expenditure report dates to determine when the project is ready for the Final Expenditure Audit. The project is placed on the expenditure audit workload list when it is complete. A project is ready for audit review when one of the following occurs:

- ▶ The final Form SAB 50-06 indicating 100% of the project is complete and the Detailed Listing of Project Expenditures are submitted by the district; or
- ▶ Three years for an elementary school (grades K–6) project, or four years for a middle school (grades 7–8) or high school (grades 9–12) project, have elapsed since the date of the final fund release pursuant to Regulation Section 1859.104(a)(1)(B).

The OPSC has two years from the 100 percent complete report submittal date, or three or four years (as applicable) after the final fund release date to commence the final expenditure audit. Once the district is notified an expenditure audit is started, the audit staff has six months to complete the audit, unless additional information requested from the district has not been received. If the audit staff does not begin the final expenditure audit within two years of receiving the final expenditure report, or if the final expenditure audit is not completed within six months from the date the district was notified, no expenditure audit will be performed and all expenditures reported shall be deemed appropriate (see Regulation Section 1859.106).

3.1.1 Expenditure Audit Reporting Requirements – Specific Guidelines

When a school district submits the required Form SAB 50-06 and a Detailed Listing of Project Expenditures, it is important for the district to have all information as correct and accurate as possible. Specifically, the Form SAB 50-06 should reflect the sum of the State's share of the grant, the district's share of the grant, any interest earned, less project expenditures. Project savings will be recognized if project expenditures are less than the State's share of the grant, plus district's share of the grant, plus interest earned, less total project expenditures (see Section 3.12 – Project Savings for more details on audit of project savings). If there are multiple Forms SAB 50-06 reported for a project, the most current Form SAB 50-06 must include all expenditures reported previously, plus expenditures incurred in the current reporting period.

The Detailed Listing of Project Expenditures should reflect all expenditures by warrant numbers, warrant dates, warrant payees, warrant amounts, and specific descriptions of the expenditures, as required on the Form SAB 50-06. The description of expenditures must be as detailed as possible in order for the audit staff to verify all project expenditures are applicable to the project and the expenditures have been applied to their proper cost categories. This will assist the audit staff to expedite the audit of the project.

3.2 PRELIMINARY EXPENDITURE AUDIT

All Expenditure Reports will be subject to an initial expenditure audit prior to 100 percent completion which consists of a review of the Form SAB 50-06 and Detailed Listing of Project Expenditures to assure:

- ▶ The form is filled out correctly (i.e. form signed by the district representative; correct application number).
- ▶ The "percent completed" box is filled in.
- ▶ There is a date construction actually began.
- ▶ The Notice of Completion of project is provided (if applicable).
- ▶ Each project cost reported includes the warrant date, vendor name, warrant number, warrant amount and a brief description for each expenditure.

If the *Expenditure Report* (Form SAB 50-06 and Detailed Listing of Project expenditures) are filled out correctly and reported expenditures appear to be eligible for State funding, the project will be tracked until 100 percent completion. If the expenditures reported do not agree with the supporting documentation or if the expenditures are considered ineligible, the audit staff may conduct a more thorough in-depth review of the project. The audit staff will notify the district if either the Form SAB 50-06 or Detailed Listing of Project Expenditures is unacceptable or incomplete.

3.3 EXPENDITURE AUDIT

An expenditure audit will be performed on all complete projects. The audit consists of verifying the amount reported on the Form SAB 50-06 and that it agrees with the expenditures reported on the Detailed Listing of Project Expenditures. A verification will be made of the amounts reported for the district's share, State's share, interest earned, etc. If the project attained any savings, interest reported for the project will be verified, through a certification made by the county office, to properly calculate the savings amount.

The Detailed Listing of Project Expenditures will be verified to assure costs are categorized correctly based on the description/purpose. The expenditures reported for each project category are compared to historic averages to identify possible problem areas. If the expenditures fall outside the expected parameters, additional documentation will be requested from the district to verify that the expenditures were not reported in error. The district will have thirty days to submit the requested documentation. If no documentation is submitted, or the documentation submitted does not explain the anomaly, the project may convert to an in-depth expenditure audit. If the submitted documentation is reviewed and the expenditures are found to be appropriate, there will be no audit adjustment (see Sections 3.10, 3.10.1, and 3.10.2 for more detail on eligible and ineligible SFP expenditures).

3.4 IN-DEPTH FINAL EXPENDITURE AUDIT

Some projects will be selected for an In-Depth Final Expenditure Audit, which consists of a more detailed examination of the expenditures reported on the Form SAB 50-06 and Detailed Listing of Project Expenditures, as well as verification of the certifications made by the district on the Forms SAB 50-04, 50-05, 50-07, 50-08, and 50-09. Districts that are unable to substantiate program certifications may be subject to material inaccuracy penalties prescribed in Regulation Section 1859.104.1. The project audit will be accomplished by requiring districts to submit documentation as appropriate, such as, but not limited to, specific warrants, contracts and/or agreements related to construction, inspection, construction tests, and architectural services, or other supporting documentation substantiating certifications made on the Forms SAB 50-04 and 50-05. The audit staff has the discretion to perform on-site Expenditure Audits and Post-Occupancy Audits in order to verify district's claims. See sections 3.10, 3.10.1 and 3.10.2 for more detail on eligible and ineligible SFP expenditures.

Modernization projects will be reviewed to assure modernization funds are not being used to increase the new building area except in the case of replacement area of like kind, or if required by the federal Americans with Disabilities Act (ADA), or by the DSA handicapped access requirements. Modernization projects will also be reviewed to assure modernization funds are not being used for site costs, with the exception of replacement, repair or additions to existing site development. Also, the audit review will establish that the removal of hazardous or solid waste costs, established by the DTSC, did not exceed 10 percent of the combined adjusted grant and the district matching share

for the project. If the modernization funding grant was used to modernize leased facilities, the audit review will verify that funds were used only for work on facilities owned by another school district or county office of education. 50-year-old modernization projects will be audited using the standards for regular modernization projects, with the exception that utility costs may be deemed allowable. Utility costs for water, sewage, gas, electric, and communication systems may be allowed as prescribed in Regulation Section 1859.78.7.

New Construction projects will be reviewed to ensure the number of classrooms in the project was not decreased. New Construction projects will also be reviewed to determine whether the district increased the number of classrooms by more than 150 percent of the original pupils assigned to the project. If the district spent beyond the total grant amount, the pupils above the 150 percent threshold will be reduced from the district's new construction eligibility baseline.

Post-occupancy reviews will be performed in conjunction with the Division of the State Architect and California Department of Education to verify the district performed the work as requested in the Application for Funding (Form SAB 50-04). For New Construction projects, the number of classrooms built will be compared to the number of classrooms requested on the Form SAB 50-04. If the project is a Use of Grants project, verification of the type of project constructed will be made, including identifying the use of any savings achieved on the project. For modernization projects, the architect's cost estimate will be reviewed and compared to the actual work done in the modernization of particular facilities.

In addition, the audit staff will verify the following specific certifications made by the district on the Forms SAB 50-04 and 50-05:

- ▶ The district's applicable matching share was deposited in the County School Facility Fund.
- ▶ The district deposited at least 3 percent of its unrestricted General Fund (of which an amount equal to ½ percent of this amount can be the district's contribution to its deferred maintenance fund) into the Routine Restricted Maintenance Account (Education Code Section 17070.75(b)).
- ▶ The district competitively bid the construction contracts.
- ▶ The district met all relevant Disabled Veteran Business Enterprise (DVBE) requirements.
- ▶ The district used the Qualifications Appraisal standards, as outlined in Government Contract, Code Section 4526, when contracting with the architect, engineers, site surveyors, etc.
- ▶ The State's prevailing wage requirements were met.
- ▶ The district complied with the State's Public Contract Code requirements governing Force Account labor.

3.5 IN-DEPTH FINAL EXPENDITURE AUDIT FOR SITE PURCHASES

New construction projects may be eligible for site acquisition funds under the SFP. For projects receiving funds for a site purchase, audit review will include the verification and examination of site expenditures and a determination if the site grant was appropriate and met provisions set forth in Regulation Sections 1859.74, 1859.74.1, and if applicable, 1859.74.2 and 1859.75.1. Projects initially approved under the LPP for planning and/or site and later converted to SFP projects will be audited using the SFP guidelines.

Districts will be eligible for approved hazardous material removal work and associated DTSC oversight fees up to 50 percent of the appraised as a clean site value of the property (see regulation section 1859.74.2, 1859.74.3, 1859.74.4, and 1859.75.1).

For all sites requiring DTSC review, the audit staff will obtain invoices from the district in order to verify the costs reported for the Response Action (RA). The Phase One Environmental Site Assessment and Preliminary Environmental Assessment costs are distinct from the RA costs, and are not considered part of the project's 50 percent "cap" established by the SAB for site cleanup. The expenditure audit may result in an increase/decrease of the additional grant amount for hazardous material removal, remediation costs, and DTSC oversight fees pursuant to Regulation Section 1859.106.

In order to verify compliance with the requirements of the Toxics Regulations and to assure all costs reported for this grant were indeed for hazardous waste removal, the audit staff will obtain invoices from the district for all costs reported for any Additional Grants for Hazardous Waste Removal. Additionally, for both Hazardous Waste Removal and Environmental Hardship Grants, the audit staff will verify that all fees and cleanup costs are related to the site for which the expenditures are being reviewed.

Relocation assistance expenditures will also be audited based on criteria set forth in Title 25, California Code of Regulations Section 6000, et seq. Additional documentation such as contracts, invoices, appraisal reports, court documents, legal contracts, legal billings, etc., will be requested from the district and a thorough review of these expenditures will be performed. The relocation expenditures are approvable if they are reasonable and necessary for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of improvements at the replacement residence or business location of the displaced tenants and/or property owners as stated in Regulation Section 1859.74(a)(1) (see Sections 3.10, 3.10.1, and 3.10.2 for more detail).

For projects which did not proceed to the adjusted grant phase within 18 months of the fund release date for Separate Site (12 months from the apportionment date for Environmental Hardship, unless time extensions were approved by the SAB), an item will be presented at the next available SAB meeting to advise the SAB the district did not request an adjusted grant for the project.

3.6 JOINT-USE PROJECT AUDIT

The type of joint-use project will differentiate the appropriate audit criteria used. For a Type 1 and 2 Joint-Use projects, the audit staff will verify that contracts were executed after April 29, 2002 and that the project was approved by the DSA and CDE. Type 1 projects may only be approved as facilities used to improve academic achievement, provide teacher education, and childcare facilities. Type 2 projects may only be approved for a multipurpose room, gymnasium, childcare facility, or library. The audit staff will also verify that Utility costs, Service Site Costs, and Offsite costs, if applicable, are part of the new construction project and not the Joint-Use project (see Regulation Sections 1859.122 and 1859.122.1).

For a Type 3 Joint-Use project, the audit staff will verify that the contract was executed after April 29, 2002, the project was approved by the DSA and CDE, and that the preliminary plans were complete and approved by the CDE when the project application was submitted. A Type 3 Joint-Use project may only be approved to improve pupil academic achievement, provide teacher education, multipurpose room, gymnasium; library, or childcare facility. The audit staff will authorize site support and utility costs for these types of stand-alone projects. However, off-site costs will be disallowed for this type of project.

The agreements between the district and the Joint-Use partner(s) will be verified to ensure that the agreement has at least the following Provisions:

- ▶ Shared responsibility between the Joint-Use partners and school district involved (does not include the SAB).
- ▶ Shared responsibility for funding of the operational costs of the project after the project is complete.
- ▶ Specifying the responsibilities regarding the operation and staffing of the project.
- ▶ Identify specific criteria to ensure the safety of the pupils during regularly scheduled school hours.
- ▶ Specifying the Joint-Use facility will be made available for at least 20 hours per week.

If the project is a type 1 or 2 joint-use project, the district has the same timeframe as that of a regular SFP project to meet the substantial progress requirements (see Section 2.1). If a type 3 joint-use project, the district has one year to submit DSA and CDE approved plans and DSA approved specifications to the OPSC, otherwise the project will be rescinded. If this one year requirement is met, the type 3 project will be subject to the 18 month substantial progress requirement.

The audit also verifies that any expenditures above the State and joint-use partner's matching share was funded by the joint-use partner(s) applicant school district. Districts must ensure that if the district combines the Joint-Use project with a regular SFP expenditure project, all costs are pro-rated between the various projects.

A verification will be made to ensure that any funds used by the Joint-use partner to match the State's funds would not have otherwise been available to the district (see Regulation Section 1859.127).

3.7 CRITICALLY OVERCROWDED SCHOOLS

If the district receives an advanced site and design apportionment, and if the district does not convert to a SFP project within the 4 years given to the district to submit a Form SAB 50-04, or 5 years if the district is granted a 12 month time extension to submit a Form SAB 50-04, the project will be rescinded or closed to costs incurred. If the district does not convert to a SFP project, expenditure reports must be submitted to close the project to costs incurred. If no expenditure reports are submitted, the Critically Overcrowded School (COS) project will be rescinded and all State funds, plus interest accrued, will be reimbursed to the State. When expenditure reports are submitted, the COS project will be reduced to costs incurred.

When a COS project converts to a SFP project, it will be subject to all SFP progress and auditing standards. A substantial progress report will be required at 18 months from the date the SFP funds were released. Annual expenditure reports will be required beginning one year from the date of the first fund release until the project is complete. The project is also considered complete when 3 years elapse from the date of the final fund release for an elementary project, or 4 years for a middle or high school project, at which time final expenditure reports must be submitted. Once complete, the project will be audited using the SFP expenditure audit criteria.

3.8 CHARTER SCHOOLS

Similar to a COS project, when a Charter School project converts to a SFP project, it will be subject to all SFP progress and auditing standards. A substantial progress report will be required at 18 months from the date the SFP fund release was made. Annual expenditure reports will be required beginning one year from the date of the first fund release until the project is complete. The project is also considered complete when 3 years elapse from the date of the final fund release for an elementary project, or 4 years for a middle or high school project, at which time final expenditure reports must be submitted. Once complete, the project will be audited using the SFP expenditure audit criteria (see requirements in Article 14 of the regulations):

3.9 LABOR COMPLIANCE

For SFP projects subject to AB 1506, the district must submit at the time of the OPSC audit the following:

- ▶ Copy of the Department of Industrial Relations approved Labor Compliance Program (LCP) to which the project(s) conformed.
- ▶ If applicable, a copy of the third party provider contract.

The district must also be prepared to submit upon OPSC request, the following:

- ▶ All bid invitation and contracts that must contain language alluding to Labor Code Section 170 through 1780 compliance and verification.
- ▶ Evidence that a pre-job conference was conducted with the contractor and subcontractor and that the district enforced the requirements as set in Labor Code Section 1770 through 1780.
- ▶ Evidence of weekly submittals of certified copies of payroll for all contractors and subcontractors.

Labor Code Section 1771.7 provides that a district may elect to contract with an outside entity, or use its own employees to implement and administer the LCP. If the district intends to use its employees, it must meet the requirements as detailed in the Public Contract Code and account for, in the SFP audit, the following:

- ▶ The name of the district employee performing the LCP duties.
- ▶ The salary and benefits of the employee including transportation costs.
- ▶ A specific breakdown of hours spent by project subject to the LCP requirements.

3.10 ALLOWABLE EXPENDITURES UNDER THE SFP – GENERAL

The statutory language governing the SFP apportionments is very broad in scope for both new construction and modernization projects. Statutory language for new construction, such as “a grant for new construction may be used for any and all costs to adequately house new pupils . . .”, and for SFP modernization, such as “a modernization apportionment may be used for an improvement to extend the useful life of or to enhance the physical environment of the school . . .”, indicate there is a lack of defined cost allowances when determining eligibility of some project expenditures. This section, Section 3.10.1, and Section 3.10.2 will offer guidelines for determination of eligible expenditures. As a general rule, any project cost will be allowed, with limitations in some cases, which can reasonably be attributed to the project in accordance with applicable regulations and law.

Education Code Section 17072.35 provides direction relative to what new construction grants may be used for:

“A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.”

Other pertinent regulations contained in Article 8 (of the SFP regulations) provide further information relative to appropriate uses of SFP new construction funding which should be referred to during the course of a final expenditure audit.

Education Code Section 17074.25 provides guidelines relative to eligible SFP modernization expenditures and states:

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

Education Code Section 17074.10(d) also specifies the Legislature did not intend modernization funding be used on administrative and overhead costs.

Other regulations contained in Article 8, New Construction and Modernization Grant Determinations), provides further information relative to appropriate uses of SFP modernization funding that will be referred to during the course of a final expenditure audit.

3.10.1 Allowable Expenditures under the SFP – Specific Guidelines

Districts are advised the SFP does not have set fee schedules or allowances for the categorized project expenditures. The SFP, with few exceptions, has no limitations on the fees associated with architects or construction managers, etc. However, the districts are responsible for completing the project as certified on the Application for Funding (SAB 50-04). Furthermore, there are no set allowances for project components other than those noted below.

The following general guidelines shall be utilized in reviewing an SFP new construction or modernization project (assumes it is a non-financial hardship project). With some exceptions, as noted, allowable project expenditures are as follow:

SFP Allowable Expenditures

- 1) **Site Costs (not applicable to modernization):**
 - A) Purchase Price of Property – An allowable expenditure provided the site was not previously funded under the Lease-Purchase Program, and the expenditure reported is the lesser of the appraised value (submitted within six month of a complete SFP funding application) or actual purchase price. The costs for toxics cleanup and removal, as well as DTSC oversight fees associated with the cleanup are allowable expenditures. Excess DTSC costs and costs for Hazardous Waste Removal beyond the 50 percent of the appraised value cap are not allowable costs and must be funded by the district; no additional apportionments will be made to fund these costs.
 - B) Appraisal Fees
 - C) Escrow Fees
 - D) Survey Costs
 - E) DTSC Phase One Environmental Assessment Fees, Response Action costs, and Preliminary Endangerment Assessment Fees
 - F) Relocation Assistance – Allowable expenditures as long as expenditures conform to Title 25, California Code of Regulations, Section 6000, et. seq. Any reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as eligible relocation expenditures. Specifically, these costs include: rental assistance; last resort housing costs; down-payment assistance; any costs the district is required to pay through a court finding such as goodwill, cost of land, etc.; moving expenses; “in-lieu” of business expenses; business moving costs; furniture and equipment costs if the business is unable to relocate; and reasonable relocation consultant fees.
 - G) Development of Phase One Environmental Assessment and Preliminary Endangerment Assessments
 - H) Legal Fees Associated with Securing a Site
- 2) **Planning Costs**
 - A) Architect’s Fee for Plans
 - B) DSA Plan Check Fee
 - C) CDE Plan Check Fee
 - D) Energy Analysis Fee
 - E) Preliminary Site Tests
 - F) Consultant Fees – Allowable expenditure, as long as expenditures are related to the project.
 - G) Advertising for Construction Bids
 - H) School District “third party provider” or own forces labor compliance program costs.
- 3) **Construction Costs**
 - A) Utility Services (see Regulation Section 1859.76(c) for more information). 50-year-old Modernization projects are also eligible to receive funding for utility costs (see Regulation Section 1859.78.7).
 - B) Off-Site Development (see Regulation Section 1859.76(b) for more information).
 - C) Service Site Development (see Regulation Section 1859.76(a) for more information).
 - D) General Site Development
 - E) Building Construction
 - F) Modernization Costs – Allowable expenditures including the following, but subject to the limitations in Section 3.10.2 – Ineligible SFP Expenditures, items C through F:
 - 1) Any new building area included in a modernization project which replaces “like kind” area.
 - 2) New site development expenditures for replacement, repair or additions to existing site development work.
 - 3) Removal of hazardous waste the DTSC has declared safe which does not exceed ten percent of the total modernization project cost.
 - G) Construction Management Fees
 - H) Demolition Costs – Allowable expenditure if the cost is attributable to replacement of “like kind” building area for modernization projects (see Regulation Section 1859.79.2(a)), no cost limitations for new construction projects.
 - I) Force Account Labor – Allowable if it complies with the Public Contract Code and is specific to the project (note: may also be a planning cost).
 - J) Interim Housing – Allowable expenditures with no cost limitations for modernization projects. Also eligible for new construction projects that are additions to an existing site where classrooms temporarily are inaccessible or unsafe to house students.
 - K) Unconventional Energy
 - L) Construction Tests
 - M) Inspections
 - N) Furniture and Equipment
 - O) Construction Supervision/Security
 - P) Legal Costs – Allowable if directly attributable to project.
 - Q) Energy Conservation Costs.
 - R) Joint-Use project expenditures, see the following table:

► **Joint Use Project Expenditures**

Type of Joint-Use Project	Eligible For Site Acquisition?	Eligible for Site Development?
Type 1	No, as part of the Joint-Use project. Yes, as part of the New Construction project.	Must be part of the New Construction project.*
Type 2	No, as part of the Joint-Use project. Yes, as part of the New Construction project.	Must be part of the New Construction project.*
Type 3	No	Yes, for Service Site and Utilities. No off-site costs allowed.

* Site development will be allowed in project if work shown to be germane only to Joint-Use project.

3.10.2 Ineligible SFP Expenditures

The following costs shall be disallowed during an SFP final expenditure audit:

► **Ineligible SFP Expenditures**

- A) Administrative and overhead, unless related to eligible Labor Compliance Program costs (see Section 3.9)
- B) District force account labor which does not comply with the Public Contract Code.
- C) Modernization expenditures for:
 - 1) New building area which does not replace building area of "like kind."
 - 2) New site development modernization not for replacement, repair or additions to existing site development work.
 - 3) Removal of hazardous waste from a modernization project the DTSC has declared unsafe which exceeds ten percent of the total modernization apportionment.
 - 4) Costs incurred on leased facilities not owned by another district or county superintendent.
- D) Acquisition and development of real estate.
- E) Demolition costs not attributable to replacement of "like kind" building area.
- F) Any expenditures which are not reasonably attributed to the project.
- G) Relocation costs not conforming to Title 25, California Code of Regulations, Section 6000, et seq. (see Regulation Section 1859.74(a)(1)).
- H) Expenditures associated with a "use of grant" (see Regulation Section 1859.77.2) SAB approval that were not constructed as specified in the original approval.
- I) Campus supervision going beyond construction site security (such as campus security and administrative overhead).
- J) Financial Hardship project expenditures exceeding the district's grant eligibility for the project plus interest earned on State funds.
- K) New construction expenditures associated with interim housing.
- L) Relocation costs not considered reasonable such as: goodwill not court ordered; the difference between the salvage value and new value of furniture and equipment costs, if the business vendor retains the furniture and equipment.
- M) Legal costs not directly attributable to the project.
- N) Expenditures associated with facility hardship SAB approvals which were not constructed as originally approved (see Regulation Section 1859.82).
- O) Type 1 and 2 Joint-Use site development costs (also refer to Joint-Use chart in Section 3.10.1).
- P) Site Acquisition costs related to Joint-Use (also refer to Joint-Use chart in Section 3.10.1).

3.11 EXPENDITURE AUDIT RESPONSE

Once the expenditure and/or in-depth expenditure audit(s) have been completed, the audit staff will notify the school district of its findings and as appropriate, prepare an SAB item or issue an administrative journal recommending the project be closed. Notification to the district will be in the form of an Expenditure Review letter with the Review of Project Financing and Expenditures attached. In addition to reporting any audit findings, the OPSC will inform the district if the audit staff will prepare a SAB item for the next available board or an administrative journal to close the project. The SAB item may request an increase or decrease of the project's SFP grant for various site costs and/or a reduction in the SFP grant for other project costs considered ineligible (per Regulation Section 1859.106).

The district will have 30 calendar days to respond to the audit staff's findings. If additional documentation is submitted within the 30 days, the audit staff will revise the audit findings, if necessary, and repeat the process of sending the audit findings to the district. If the district does not respond within 30 days or accepts the audit findings, an item will be presented at the next available SAB, or an administrative journal will be prepared to close the project.

3.12 PROJECT SAVINGS

For an applicant district that declares savings on a SFP project, and the savings amount has been verified through the OPSC expenditure audit, Regulation Section 1859.103 states that "A district may expend the savings not needed for a project on other high priority capital facility needs of the district . . .". The regulation further prescribes that the ". . . State's portion of any savings from a new construction project or a Joint-Use Project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project". In considering both of these regulation references, the district is free to apply the savings achieved on a construction project towards the district's high priority capital facility needs of like kind projects (State share of savings), including reducing the district's contribution on a future project of like-kind.

The district is limited as to how savings are used for financial hardship projects according to Regulation Section 1859.103. The savings achieved on a project, including interest accrued, must be used to reduce the financial hardship contribution on that project, or on future financial hardship projects. The district will have three years from the date savings was determined through the SFP Expenditure audit to apply savings to reduce the financial hardship contribution on a future project. If the district does not apply the savings within three years, the district must reimburse the savings, including interest, to the SAB. The expenditure amount reported above the district and State share, including interest, will be used to reduce the project's financial hardship contribution.

Savings will be pro-rated appropriately based on the funding of the project. For example, if a project is funded 50 percent by the State and 50 percent by the district, for every dollar remaining in savings, 50 percent is considered the State's share of savings, and 50 percent is considered the district's share of savings.

If the district had savings but did not report the use of savings at the time of project closeout, the district will be required to submit annual savings expenditure reports, using the Detailed Listing of Project Expenditures – Savings (located on the OPSC website) until all savings are spent. For financial hardship projects that have unexpended savings, the district will be required to submit annual savings expenditure reports for three years. At the end of the three-year period, if the savings are not fully expended, the district must reimburse to the State any unapplied savings, including interest accrued.

OPSC audit staff will review the savings expenditure reports for accuracy and to verify the costs are considered eligible per section 3.10, 3.10.1, 3.10.2, and as prescribed in Regulation Section 1859.103 and 1859.106. The savings expenditure reports will be verified to ensure that the construction projects receiving the savings funding are appropriate, and that warrant numbers, warrant dates, warrant amount, and the description/purpose are appropriate.



School Facility Program **Guidebook**

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Preface

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- ▶ Where to Begin

INTRODUCTION

This guidebook was developed by the Office of Public School Construction (OPSC) to assist school districts in applying for and obtaining "grant" funds for the new construction and modernization of schools under the provisions of the Leroy F. Greene School Facilities Act of 1998 (Senate Bill 50). It is intended to be an overview of the program for use by school districts, parents, architects, the Legislature, and other interested parties on how a district or county superintendent of schools becomes eligible and applies for State funding. This guidebook provides direction on accessing the processes leading to project approvals, insight to the various features of the School Facility Program (SFP), and includes suggestions on how to make the funding system as efficient as possible. However, it is not meant to be a step-by-step discussion of every conceivable application process or project type. For complete project specific information be sure to review the SFP Regulations located on the OPSC Web site at www.opsc.dgs.ca.gov and, most importantly, contact your OPSC project manager. The OPSC project managers are assigned by county, and a complete listing of project manager assignments, including telephone numbers and E-mail addresses, are also included on our Web site.

THINGS TO KNOW

Included in this edition are the changes to the SFP as a result of Assembly Bill (AB) 14 (Goldberg), AB 1506 (Wesson), AB 401 (Cardenas), the AB 16 (Hertzberg) change that was not included in the December 2002 edition (urban adjustment factor) and the clarification of types of parking structures that are eligible for additional grants for site development costs.

AB 14 included a pilot program to fund charter school facilities construction (Chapter 6), changed how students enrolled in charter schools are reported for eligibility in the SFP, increased the cap on site acquisition and response action costs, and allows the California Schools for the Deaf and Blind to apply for SFP modernization funding. AB 1506 requires that the State Allocation Board (SAB) receive a written finding from the local school board that a labor compliance program (LCP) has been initiated and enforced prior to the release of funds for SFP a project. AB 401 allows a district, under certain circumstances, to receive funding representing one half the appraised value of a district-owned site when that site will be used for school construction. The last change to the SFP as a result of AB 16 impacts a project's eligibility for increased costs that may be uniquely associated with "urban construction".

Some program changes are in the regulation process and not yet effective. These changes include modifying the three year SFP new construction eligibility lock-in for small school districts to allow for the capture of increases to the district's enrollment while preserving their protection against a loss of eligibility due to enrollment decreases (AB 16); and, the substantial progress measures for separate site apportionments has been expanded to include other evidence satisfactory to the SAB.

As this edition of the School Facility Program Guidebook is being written, the OPSC and the SAB Implementation Committee are proposing amendments to the regulations regarding requests for pupil grants that exceed the capacity of the project and to use grant eligibility at a grade level other than the proposed project (Use of Grants). At the January 22, 2003, SAB meeting emergency regulations were approved that modify the existing regulations.

Existing regulations with the listed modifications will apply for applications with plans submitted to the Division of the State Architect on or before January 22, 2003. Applications are restricted to pupil grant requests that do not exceed 135 percent of the project capacity and do not include a multi-track year round enrollment (MTYRE) housing plan. For more information contact the district's OPSC project manager.

WHERE TO BEGIN

Chapter 1, School Facility Program Overview and Chapter 2, The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies will provide general information. After reviewing these chapters, the reader may want to review Chapter 4, Application for Eligibility, because establishing eligibility is the first step in filing an application for either new construction or modernization funding. The remaining chapters can be reviewed as the topics arise.

Chapter 1

School Facility Program Overview

In this chapter. . .

- ▶ Introduction
- ▶ Funding for the School Facility Program
- ▶ Implementation of the School Facility Program

INTRODUCTION

The School Facility Program (SFP) began in late 1998 and is a significant change over previous State facilities programs. The State funding is provided in the form of per pupil grants, with supplemental grants for site development, site acquisition, and other project specific costs when warranted. This process makes the calculation of the State participation quicker and less complicated. In most cases, the application can be reviewed, the appropriate grants calculated, and SAB approval received in 60–90 days regardless of project size.

In addition to a less complicated application process, the SFP provides greater independence and flexibility to the school district to determine the scope of the new construction or modernization project. There is considerably less project oversight by State agencies than in previous State programs. In return, the program requires the school district to accept more responsibility for the outcome of the project, while allowing the district to receive the rewards of a well managed project. All State grants are considered to be the full and final apportionment by the SAB. Cost overruns, legal disputes, and other unanticipated costs are the responsibility of the district. On the other hand, all savings resulting from the district's efficient management of the project accrue to the district alone. Interest earned on the funds, both State and local, also belongs to the district. Savings and interest may be used by the district for any other capital outlay project in the district. See Chapter 13, Additional SFP Requirements and Features for more information on project savings.

The SFP provides a funding source in the form of grants for school districts to acquire school sites, construct new school facilities, or modernize existing school facilities. The two major funding types available are "new construction" and "modernization".¹ The new construction grant provides funding on a 50/50 State and local match basis. The modernization grant provides funding on a 60/40 basis. Districts that are unable to provide some or all of the local match requirement and are able to meet the financial hardship provisions may be eligible for additional State funding (see Chapter 10, Financial Hardship).

IMPLEMENTATION AND EVOLUTION OF THE SCHOOL FACILITY PROGRAM

Senate Bill 50 (Greene) was chaptered into law on August 27, 1998, establishing the SFP. The legislation required that regulations be approved and in place for accepting and processing applications as soon as Proposition 1A was approved by the voters the following November. The School Facility Program continues to evolve through legislative changes. Assembly Bill (AB) 16 and AB 14 provided for significant changes requiring regulations be approved and in place for accepting and processing applications as soon as Proposition 47 was approved by the voters in November 2002. These changes included funding for Charter school facilities, Critically Overcrowded Schools, Joint Use Projects. Some of the changes that impacted new construction funding include the suspension of Priority Points, an additional grant for energy efficiency, and several changes that impact the determination of eligibility. Some of the changes that impacted modernization funding include the change of the funding ratio between the State and the school district from 80 percent State and 20 percent District to 60 percent State and 40 school district, and additional grants for energy efficiency and the modernization of buildings 50 years old or older.

¹ Education Code Sections 17072.10 and 17074.10 establishes the new construction grant and modernization grant respectively.

Information on each category of funding can be found in the following chapters:

► SFP Component	Chapter	Page
New Construction	5	19
Modernization	9	49
Financial Hardship	10	57

Helpful Hint:

A listing of school districts who have received funding is available on the OPSC Web site at www.opsc.dqs.ca.gov.

FUNDING FOR THE SCHOOL FACILITY PROGRAM

Funding for projects approved in the SFP comes exclusively from statewide general obligation bonds approved by the voters of California. The first funding for the program was from Proposition 1A, approved in November 1998. That bond for \$ 9.2 billion contained \$6.7 billion for K–12 public school facilities. The second funding for the program is from Proposition 47, approved in November 2002. It is a \$13.2 billion bond, the largest school bond in the history of the State. It contains \$11.4 billion for K–12 public school facilities.

A future bond is currently proposed for March 2004.

Chapter 2

The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies

In this chapter. . .

- ▶ State Allocation Board
- ▶ Office of Public School Construction
- ▶ Other Agencies Involved

STATE ALLOCATION BOARD

Created in 1947 by the State Legislature, the State Allocation Board (SAB) is responsible for determining the allocation of State resources including proceeds from General Obligation Bond Issues and other designated State funds used for the new construction and modernization of public school facilities. The SAB is also charged with the responsibility for the administration of the State Relocatable Classroom Program, the Deferred Maintenance Program, and many other facilities related programs. Handbooks on these programs may be found on the OPSC Web site at www.opsc.dgs.ca.gov. Printed copies may be obtained by contacting the OPSC directly.

The SAB meets monthly typically at the State Capitol. At each meeting the SAB reviews and approves applications for eligibility and funding, acts on appeals, and adopts policies and regulations as they pertain to the programs that the SAB administers.

Members

The SAB is comprised of ten members:

- ▶ The Director of the Department of Finance or designee (Traditional SAB Chair)
- ▶ The Director of the Department of General Services or designee
- ▶ The Superintendent of Public Instruction or designee
- ▶ One person appointed by the Governor
- ▶ Three State Senators; appointed by the Senate Rules Committee (two from the majority party and one from the minority party)
- ▶ Three State Assembly Members; appointed by the Speaker of the Assembly (two from the majority party and one from the minority party)

The current SAB members are:

- ▶ Steve Peace, Director, Department of Finance
- ▶ Clothilde Hewlett, Interim Director, Department of General Services
- ▶ Jack O'Connell, Superintendent of Public Instruction
- ▶ David Sickler, Governor Appointee
- ▶ Dede Alpert, Senator
- ▶ Bob Margett, Senator
- ▶ Tom Torlakson, Senator
- ▶ John Dutra, Assembly Member
- ▶ Marco Firebaugh, Assembly Member
- ▶ Tony Strickland, Assembly Member

The current SAB officers are:

- ▶ Luisa M. Park, Executive Officer
- ▶ Bruce B. Hancock, Assistant Executive Officer
- ▶ Karen McGagin, Deputy Executive Officer

SAB Implementation Committee

The SAB Implementation Committee is an informal advisory body established by the SAB to assist the SAB and the OPSC with policy and legislation implementation. The committee membership is comprised of organizations representing the school facilities community which meets approximately once a month depending upon the workload. The SAB Assistant Executive Officer is the chair of the committee. Committee membership as well as the time and location of future meetings can be found on the OPSC Web site at www.opsc.dgs.ca.gov.

OPSC Mission:

"As Staff to the State Allocation Board, the Office of Public School Construction facilitates the processing and approval of applications and the awarding of funding available to qualifying school districts. These actions result in school districts having safe and adequate school facilities for their children in an expedient and cost-effective manner."

Helpful Hint:

The Directory of California provides information regarding project and county assignments, including telephone numbers, and other contact information.

OFFICE OF PUBLIC SCHOOL CONSTRUCTION

The OPSC serves the 1,000 plus K–12 public school districts in California. As staff to the SAB, the OPSC is responsible for allocating State funding for eligible new construction and modernization projects to provide safe and adequate facilities for California public school children. The OPSC is also responsible for the management of these funds and the expenditures made with them. It is also incumbent on the OPSC to prepare regulations, policies, and procedures for approval by the SAB that carry out the mandates of the law.

OPSC Responsibilities

The OPSC is charged with the responsibility of verifying that all applicant school districts meet specific criteria based on the type of eligibility or funding which is being requested and to work with school districts to assist them throughout the application process. The OPSC ensures that funds are allocated properly and in accordance with the law and decisions made by the SAB. Since November of 1988, the OPSC has processed over \$26.2 billion dollars in State apportionments to the SAB. The programs, funding, and approvals over that period are shown in Appendix 5, Summary of Bond and Deferred Maintenance Allocations.

The OPSC prepares agendas for the SAB meetings. These agendas keep the SAB members, districts, staff, and other interested parties apprised of all actions taken by the SAB. The agenda serves as the underlying source document used by the State Controller's Office for the appropriate release of funds. The agenda further provides a historical record of all SAB decisions, and is used by school districts, facilities planners, architects, consultants, and others wishing to track the progress of specific projects, the availability of funds, and SAB regulations.

Management of the Office of Public School Construction

The OPSC is directed by an Executive Officer who is appointed by the Governor. The appointee also serves as the Executive Officer to the SAB. A Deputy Executive Officer is selected by the Executive Officer subject to the approval of the Director of General Services. The Deputy oversees the daily operation of the office. An Assistant Executive Officer is appointed by the SAB. Although not technically a member of the OPSC management, the Assistant Executive Officer works directly with the OPSC management team and acts as liaison between the SAB and the OPSC.

OTHER AGENCIES INVOLVED

School districts planning to construct or modernize existing schools require the assistance of several local, State, and federal agencies. It is essential that those dealing with the school construction process have an understanding of the role each agency plays. The three primary State agencies that will be referred to in this guidebook, in addition to the SAB and the OPSC, are the Division of the State Architect (DSA), the California Department of Education (CDE) School Facilities Planning Division (SFPD), and the Department of Toxic Substances Control (DTSC). District representatives may also come into contact with many other agencies. A listing of some of the agencies that might be involved in a school project and their role is provided in Appendix 2, Potential State Agency Involvement.

The agency information provided in this chapter is meant as a tool for school district representatives to become familiar with the primary State agencies involved in the school construction process. The OPSC encourages district representatives to contact each agency to obtain more information about their procedures and processes. To contact the agencies listed below, please see Appendix 1, State Agency Contact Information.

Department of General Services, Division of the State Architect

The primary role of the DSA in the school construction process is to review plans and specifications to ensure that they comply with California's building codes with an emphasis on structural and seismic safety. The review commences when the school district's architect submits working drawings to the DSA. The DSA reviews the working drawings to assure that the proposed structures meet codes and requirements for structure (seismic), fire and life safety, and universal design compliance.

California Department of Education, School Facilities Planning Division

The role of the SFPD is to review and approve school district sites and construction plans. The SFPD review begins when a school district plans to acquire a new school construction site. Prior to approving a site for school purposes, the SFPD reviews many factors, including, but not limited to, environmental hazards, proximity to airports, freeways, and power transmission lines. The review of construction plans by the SFPD focuses mainly on the educational adequacy of the proposed facility and whether the needs of students and faculty will be met. See Chapter 3, Project Development Activities.

Department of Toxic Substances Control

The role of the DTSC in the school construction process begins with the SFPD's site approval process. The DTSC will assist the district with an assessment of any possible contamination, and, if necessary, with the development and implementation of a mitigation plan.

Department of Industrial Relations

The Department of Industrial Relations (DIR) was established to improve working conditions for California's wage earners, and to advance opportunities for profitable employment in California. The role of DIR in the school construction process is to enforce labor laws relating to contractors and employers.

The Labor Code¹ now requires, prior to receiving a SFP fund release, a district to make a certification that a labor compliance program (LCP), that has been approved by the DIR, for the project apportioned under the SFP has been initiated and enforced if both of the following conditions exist:

- ▶ The district has a project which received an apportionment from the funding provided in Proposition 47² or from the potential 2004 State bonds³; and,
- ▶ The construction phase of the project commences on or after April 1, 2003, as signified by the date of the Notice to Proceed.

¹ Refer to the Labor Code Section 1771.7

² Kindergarten–University Public Education Facilities Bond Act of 2002

³ Kindergarten–University Public Education Facilities Bond Act of 2004

The DIR provides a guidebook to assist districts in developing a LCP and has model LCP's available for view on its Web site at www.dir.ca.gov. The DIR also provides public works contract information regarding:

- ▶ LCP's and the Labor Code
- ▶ Classification and Scope of Work
- ▶ Prevailing Wage Determination and Special Determination for a Specific Project
- ▶ Verification of the Status of an Individual Apprentice or an Apprenticeship Program

Questions regarding these matters and LCP approval may be directed to DIR at 415.703.4810.

Chapter 3

Project Development Activities

In this chapter. . .

- ▶ Introduction
- ▶ Establishing Eligibility
- ▶ Selecting Professional Services
- ▶ Project Responsibilities
- ▶ Cost Reduction
- ▶ Joint Use Projects
- ▶ Reusable Plans
- ▶ Project Financing
- ▶ Site Selection

INTRODUCTION

The School Facility Program (SFP) provides funding to projects that are essentially through the design phase and are ready to begin construction. With the exception of certain advanced planning and site applications for financial or environmental hardship situations, applications for funding require plans approved by the Division of the State Architect (DSA) and by the California Department of Education (CDE). Applications for new construction funding may also require CDE approval of the project site. In most cases, a great deal of time, money, and effort has already been expended before the project ever reaches the Office of Public School Construction (OPSC). Most of the tasks involved in this chapter are not a part of the SFP and are not under the jurisdiction of the State Allocation Board (SAB). However, it is important that the district representative is aware of the options and requirements that may affect the district's project.

ESTABLISHING ELIGIBILITY

One of the first steps a district should consider in the school construction process is establishing eligibility for SFP funding on either a district-wide or high school attendance area basis. This will provide the district with the information needed to determine the possibility and scope of State funding assistance, the types of facilities needed, and the appropriate project site size. See Chapter 4, Application for Eligibility for more information about establishing eligibility.

SELECTING PROFESSIONAL SERVICES

The SFP grants include funding for many professional services related to the development of the school project. Some of the most obvious and commonly used services are provided by architects, civil and structural engineers, and construction managers. Under law, these professional services are different than the services provided by general contractors, painters, site grading subcontractors, and similar construction related work. Unlike construction contracts, professional service contracts are obtained through a qualifications based selection process rather than a competitive bid process.

Because the design professional or other service provider will be engaged long before the application for project funding is submitted to the OPSC, it is critical district representatives are aware that professional services used on projects funded through the SFP must be obtained by a competitive selection process. Failure to do so can jeopardize the project funding.

The Competitive Selection Process

The SFP requires that applicant districts certify that contracts for the services of any architect, structural engineer, or other design professional that were entered into, on or after November 4, 1998 for work on the project were obtained through a competitive process. The term competitive does not mean that the selection has been bid, but rather that a formal qualifications based selection process has occurred that lead to the professional services contract¹.

¹ Chapter 11, commencing with Section 4525 of Division 5 of Title 1 of the Government Code.

Neither the SAB nor the OPSC is qualified to interpret the Government Code requirements pertaining to the selection of professional services. The district is advised to seek legal counsel assistance to ensure that the process used fully complies with this requirement as well as other legal requirements² such as Disabled Veterans Business Enterprise requirements, and the Public Contract Codes.

Eventually, the district will be required to certify that professional design services on the project were selected using a competitive process. This certification is made on the Application for Funding (Form SAB 50-04).

Compliance

The competitive selection requirement applies to a new construction or modernization project if:

- ▶ it is funded under the SFP, and
- ▶ professional services of an architect, structural engineer, or other design professional were used to complete the work in the project, and
- ▶ contracts for those services were signed on or after November 4, 1998.

Compliance with this requirement is very important. The law specifically mandates that the SAB shall not apportion funds to a district unless the competitive process for professional services has been used. If, during an audit at the project completion, it is determined that the competitive process was not used, the entire project grant could be found to have been made illegally.

Districts who are unfamiliar with the process of hiring an architect should be aware that the American Institute of Architects (AIA) California Council has sample contracts available to assist districts. For more information, please contact the AIA at 916.448.9082.

PROJECT RESPONSIBILITIES

During the planning, design, and construction of a school facilities project, many individuals and firms come together to contribute to the project in specific ways. Unless responsibility is assigned by law, the decision about who should perform a given task generally rests with the district as owner. Frequently, however, the district may not be aware of the difference between the types of responsibilities, or even of the need to assign responsibilities and tasks related to the project. This lack of clarity may lead to a situation where a task is assigned to more than one individual or firm, creating a duplication of effort which can be wasteful and counterproductive.

As a result of this situation, a small working group was formed by the Joint Committee on School Facilities to address the issue. The Services Matrix is the result of the group's discussions (see Appendix 4, Services Matrix). District representatives may wish to consult the matrix to determine the responsibilities assigned to a project and to avoid duplication of effort.

COST REDUCTION

The SAB has developed cost reduction guidelines to assist school districts in reducing project construction costs. In April 2000, the SAB made available the Cost Reduction Guidelines. The guidelines are a compilation of hundreds of ideas introduced and discussed at a series of statewide meetings. The input into these guidelines comes from various sources, such as school district representatives, State agencies, architects, building industry representatives, construction managers, and consultants. The guidelines provide districts with ideas and new methods to contain and reduce costs and to maximize the return on expenditures. Along with cost reduction guidelines, other incentives within the program, such as the retention of savings, exist to promote efficiency in design and construction of school facility projects. (See Chapter 13, Additional SFP Requirements and Features for more information on project savings.)

² CEOA and Planning per Public Resources Code Section 21151.2.

Helpful Hint:

The SAB publication on cost reduction is available on the OPSC Web site.

JOINT USE PROJECTS

The language in the law which creates the SFP requires that the applicant school district consider the joint use of core facilities. The SAB's Cost Reduction Guidelines contains a number of suggestions as to how a district might investigate such joint use possibilities. Grants received under the new construction program may be used to fund school facilities related joint use projects. Typical joint use projects include multipurpose rooms, libraries, gymnasium, or any other type of facility that can be used by both the district and the community.

Proposition 47 provides funding for Joint Use projects, specific criteria to access this funding was included in AB16 (Hertzberg) (see Chapter 8, Joint Use Projects for more information).

REUSABLE PLANS

The SFP requires the SAB to develop recommendations regarding the use of cost-effective, efficient, and reusable facility plans. Many districts have found that reusing some part or all of a school plan previously constructed in the district or in another district can lead to efficiencies in both the time required to prepare construction plans and the cost of constructing the facility. Such plan reuse is not always feasible, and, even when possible, may require considerable redesign work for the new site; however, in many circumstances the advantages can be significant.

To assist districts with exploring the feasibility of plan reuse for their new construction project, the SAB and the OPSC have developed an Internet-based "catalog" of plans that can be searched and browsed by anyone. The link on the OPSC Web site "Prototype School," contains floor plans, renderings, and vital statistics for a number of projects ranging from complete schools to single classrooms and support buildings. Districts are encouraged to download information on any of the projects on the OPSC Web site without charge. Districts may then contact the architects responsible for the original projects to pursue adaptation of the facilities to their individual needs. Arrangements for use of the plans are made by the district with the design professional. Of course, all plans on the OPSC Web site are copyrighted by the designers or firms that submitted them. The SAB and OPSC do not participate in anyway except as a clearinghouse for plans of school facilities.

PROJECT FINANCING

A district has several different options available to meet its 50 percent funding requirement for new construction and 40 percent funding requirement for modernization projects. Some financing mechanisms the district may consider are:

- ▶ General obligation bond funds
- ▶ Mello-Roos
- ▶ Developer fees
- ▶ Proceeds from the sale of surplus property
- ▶ Federal grants

Once a district has received a SFP apportionment and is ready for funds to be released on a project, they will need to certify on the Fund Release Authorization (Form SAB 50-05) that their contribution to the project has already been expended, is on deposit, or will be expended prior to the notice of completion for the project. (See Chapter 13, Additional SFP Requirements and Features for more information on the fund release process.)

SITE SELECTION

The SFP provides that in addition to the basic grant for a new construction project, the district may also receive up to 50 percent of the cost of site acquisition (see Chapter 5, *New Construction Funding* or Chapter 10, *Financial Hardship*). In most cases, the district must have completed the process of identifying the site and must have approval of the site by the CDE prior to applying for site acquisition funding. Some separate site applications for financial or environmental hardships do not need this approval at the time of application. See further discussion under those topics in Chapter 5, *New Construction Funding*. The identification and approval process falls under the jurisdiction and responsibility of agencies other than the SAB and the OPSC, and is therefore outside the scope of this guidebook. However, because the processes required can be a major factor in a timely application submittal for project funding, district representatives should be aware of some of the basic requirements for site selection as follows:

Identifying a Site

Selecting a site for a new construction project to be funded under the SFP is primarily a local process. The SAB has guidelines and regulations relating only to the funding limits related to site acquisition³. The CDE is given the authority in law to develop standards for school site acquisition related to the educational merit and the health and safety issues of the site. The CDE uses these standards to review a site and to determine if the site is an appropriate location for a school facility. The CDE approval is a requirement before the application for funding can be submitted to the OPSC and subsequently to the SAB for funding.

Site Approval

There are many components that make up the review and approval of a proposed school site. The CDE publication, *School Site Selection and Approval Guide*, addresses these components more completely than this guidebook can. Therefore, the district representative considering an application for a site under the SFP should consult the CDE or their publications. Contact information can be found in Appendix 1, *State Agency Contact Information*.

³ SFP Regulations Sections 1859.74 through 1859.76.

Chapter 4

Application for Eligibility

In this chapter . . .

- ▶ Introduction
- ▶ New Construction Eligibility
- ▶ Modernization Eligibility

Helpful Hint:

Applications for eligibility may be filed in advance of applications for funding.

INTRODUCTION

The School Facility Program (SFP) provides State funding assistance for two major types of facilities construction projects: new construction and modernization. The process for accessing the State assistance for this funding is divided into two steps: an application for eligibility and an application for funding. Applications for eligibility are approved by the State Allocation Board (SAB) and this approval establishes that a school district or county office of education meets the criteria under law to receive assistance for new construction or modernization. Eligibility applications do not result in State funding. In order to receive the funding for an eligible project, the district representative must file a funding application with the Office of Public School Construction (OPSC) for approval by the SAB. See Chapter 5, *New Construction Funding* and Chapter 9, *Modernization Funding* for information on submitting applications for funding.

Applications for eligibility may be filed in advance of an application for funding, or the eligibility and funding requests may be filed concurrently at the preference of the district. In either case, an application for eligibility is the first step toward funding assistance through the SFP. The process must be done only once. Thereafter, the district need only update the eligibility information if additional new construction and modernization funding applications are submitted.

After the application for eligibility is reviewed by the OPSC, it is presented to the SAB for approval. The SAB's action establishes that the district has met the criteria set forth in law and regulation to receive State funding assistance for the construction of new facilities or the modernization of existing facilities. Throughout this chapter, references to the district also include a county office of education unless otherwise noted.

The discussions in this chapter are intended to describe the basic processes a district will encounter and use for establishing eligibility. Every possible situation cannot be dealt with in this overview. When preparing an application, the district representative should always contact the OPSC project manager to be sure that the district's approach is correct and will result in the most eligibility possible for State assistance. To learn more about the SFP program, visit the OPSC Web site at www.opsc.dgs.ca.gov.

NEW CONSTRUCTION ELIGIBILITY

The underlying concept behind eligibility for new construction is straightforward. A district must demonstrate that existing seating capacity is insufficient to house the pupils existing and anticipated in the district using a five-year projection of enrollment. Once the new construction eligibility is determined, a "baseline" is created that remains in place as the basis of all future applications. The baseline is adjusted for changes in enrollment and for facilities added, and may be adjusted for other factors such as errors and omissions or amendments to the Regulations. For a complete list of adjustments, refer to SFP Regulation Section 1859.51. Except for these updates, the establishment of the eligibility baseline is a one-time process.

Establishing Eligibility on a District-Wide or High School Attendance Area

Districts generally establish eligibility for new construction funding on a district-wide basis. For most districts this is the most beneficial method, and the vast majority of applications are filed in this manner. However, under certain circumstances, the district may have more eligibility if the applications are made on a High School Attendance Area

HSAA) basis using one or several attendance areas. This circumstance occurs when the building capacity in one HSAA prevents another from receiving maximum eligibility. For example, one attendance area may have surplus classroom capacity while another does not have the needed seats to meet the current and projected student enrollment. If the district were to file on a district-wide basis, there might be little or no overall eligibility, even though the students in one attendance area are “unhoused” by the definitions established in the SFP. In this case, by filing on a HSAA, the eligibility would increase to allow construction of adequate facilities for the unhoused students.

The district may file using one high school attendance area, or at the district’s option, it may combine two or more adjacent HSAAs, commonly called a “Super Attendance Area.” In either case, the attendance areas must serve an existing, operating high school, and the district must demonstrate that at least one HSAA has negative eligibility at any grade level. Continuation or proposed high schools may not be used for this purpose. Once a district receives funding using a high school attendance area as the basis of its eligibility, it must continue to file future new construction applications on that basis for five years.

Eligibility Process

The SAB has adopted three forms to assist districts in collecting the information needed to establish eligibility. The following outlines the three-step process a district uses to establish new construction eligibility:

► Process for Establishing New Construction Eligibility

Step	Documentation	Purpose
1	Enrollment Certification/Projection (Form SAB 50-01)	Used to collect information about the district’s current and historical enrollment and to project that data five years into the future.
2	Existing School Building Capacity (Form SAB 50-02)	Used to record all the teaching stations in the district that are adequate to house students.
3	Eligibility Determination (Form SAB 50-03)	Used to compare the information from the first two forms and to determine if the district is eligible for new construction or modernization grants.

The forms referred to in the table can be downloaded from the OPSC Web site at www.opsc.dgs.ca.gov in a format that allows them to be printed as blank forms or completed on the computer and printed for submission to the OPSC. A replica of the forms can be viewed in Appendix 3, SFP Required Forms. An Excel spreadsheet titled SAB 50-01, 02, 30 Excel Combined Worksheets is also available on the OPSC Web site that will perform all the required calculations.

Step One – Enrollment Projections

It may take several years to take a new construction project from the initial determination of need to final completion of construction and occupancy. Because of this, the SFP provides a projection of enrollment five years into the future to determine eligibility for funding. The Enrollment Certification/Projection (Form SAB 50-01) is used to make this projection. This form assists the district with determining future needs, planning, arranging State and local funding, and constructing the project before the children to be served arrive. The method of projecting enrollment into the future involves using current and historical California Basic Educational Data System (CBEDS) enrollment data for the district. The data collected is then projected into the future for five years using a method known as a Cohort Survival Projection. A district can obtain CBEDS data from the California Department of Education (CDE).

A district may file on a HSAA basis utilizing one or more HSAA. If the district chooses to file an application on this basis the current and three previous years enrollment data in the HSAA or HSAAs (see section on High School Attendance Areas in this chapter) will be needed to be included on the Form SAB 50-01.

Once the district enters the required current and historical enrollment figures, the projection is done automatically on the Excel version of this form. In addition to the five-year projection used in the SFP, the form will also produce a one-year projection for the State Relocatable Classroom Program.

Supplemental Enrollment Figures. A district may supplement the current and historical enrollment figures by the pupils that will occupy dwelling units included in approved subdivision maps or valid tentative subdivision maps for developments to be located in the district or HSAA. The enrollment projection form factors these additional students into the enrollment projection. If the district requests this supplement, the district representative will need the following:

- ▶ Approval dates of the maps by the city or county planning commission.
- ▶ The number of units to be built in the subdivision.
- ▶ A yield factor from the various types of housing in the subdivision. As an alternative, the district may accept a state-wide average yield factor for calculation purposes. This factor is specified in the instructions on the Form SAB 50-01.

A supplement to the enrollment projection for proposed housing units is not available for county superintendent applications.

Small districts with current enrollment of less than 300 should be aware that they have an option for reporting their enrollment differently if it has decreased by more than 50 percent from the previous year enrollment. (For more information on using this option please refer to the Form SAB 50-01, Part A.)

Step Two – Existing School Building Capacity

The second part in determining the district's eligibility for new construction assistance is to document the capacity of the school district at the time the first application for eligibility is filed under the SFP. This capacity calculation is done only once. Districts may file capacity information on a district-wide basis or using a HSAA.

The Calculation of Capacity. The Existing School Building Capacity (Form SAB 50-02) is used to capture the information needed for the calculations, and the accompanying instructions give a detailed guide of how to complete the form. The Form SAB 50-02 is essentially a record of all the district's facilities. The SFP Regulations provide instructions on what spaces are to be included or excluded in the calculation of the district capacity¹. It is important to understand that any project funded with local sources must be counted as existing capacity if the contract for construction of the project is signed before the original application for eligibility determination is made. There is an exception provided for projects if the contracts were signed between August 27, 1998 and November 18, 1998, and if the project did not have eligibility under the Lease-Purchase Program (LPP).

The process of calculating the districts' existing school building capacity is as follows:

1. The district completes a gross inventory of all spaces constructed or reconstructed to serve as an area to provide pupil instruction. The grade level of each classroom is also identified.
2. The gross inventory is adjusted by excluding certain spaces that are not considered available teaching stations under law or regulation. The classrooms remaining in the inventory are multiplied by a loading factor of 25 for elementary and 27 for middle and high school classrooms to determine the pupil capacity.
3. A final calculation is done to increase the capacity by a specified amount if the district does not have a substantial number of students enrolled in year round education. High school districts are not subject to this adjustment. The district may request a waiver from this adjustment from the CDE, School Facilities Planning Division.
4. A last adjustment occurs for those districts that receive Multi-Track Year Round Education Operational Grants from the CDE. This increases the district capacity and reduces the final eligibility for the district in a number equivalent to the operational grants the district has most recently received from the CDE.

¹ SFP Regulations, Section 1859.30, "Gross Classroom Inventory".

Helpful Hint:

All of the OPSC worksheets are available on the OPSC Web site at www.opsc.dgs.ca.gov.

On-Site Reviews. The district must submit records of the teaching stations existing in the district or HSAA as part of the inventory process. These records generally consist of the following:

- ▶ Diagrams of the facilities at each site in the district. These diagrams need not be highly detailed, but must include all permanent and relocatable classrooms at the site. Many districts use simple “fire-drill” maps for this purpose. The diagrams must be submitted with the application.
- ▶ Documentation supporting any exclusion claimed from the gross inventory. For instance, if the district claims that a portable is excluded because it has been leased for less than five years, a copy of the lease must be in the district’s possession as supporting documentation.

The district may wish to use an OPSC Site Analysis Worksheet to assist with recording all the classrooms in the gross inventory as well as recording the reasons for exclusions, if any. This document is not mandatory but may make the inventory process easier. It also streamlines the OPSC review of the eligibility application.

Step Three – Determining Eligibility

The last part in the new construction eligibility determination process is done on the Eligibility Determination (Form SAB 50-03). The existing school building capacity calculated in part two is subtracted from the enrollment projection in the first part. The number of pupils left, if any, are considered “unhoused” for the purposes of the SFP. They represent the district’s eligibility for new construction grant entitlement.

Eligibility Application Approval. Once the district has completed steps one through three, they are ready to submit the eligibility application package. The OPSC will conduct a preliminary review of the package to ensure that it is complete prior to adding the application to the workload list. A more detailed review will be completed prior to presentation to the SAB that may include an on-site visit to review the information included in the site diagrams. When the review is complete and the OPSC has validated the eligibility calculations, an item is presented to the SAB for consideration of approval.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available.

Districts should review the SFP Application Submittal Requirements worksheet, located on the OPSC Web site, to ensure all required information is included with their application.

MODERNIZATION ELIGIBILITY

Establishing eligibility for modernization in the SFP is more simplified than new construction. Applications are submitted on a site by site basis, rather than district-wide or HSAA, as is the case for new construction. To be eligible, a permanent building must be at least 25 years old and a relocatable building must be at least 20 years old. In either case, the facility must not have been previously modernized with State funding. The district must also show that there are pupils assigned to the site who will use the facilities to be modernized. If the facility is currently unused, such as a closed school, it may also be eligible for modernization funding if the district intends to reopen it and assign students immediately.

Application Process

The SAB has adopted a single form to calculate modernization eligibility, the Form SAB 50-03. This is the same form used for new construction applications. It may be downloaded from the OPSC Web site in a format that allows it to be printed as a blank form or completed on a computer and printed for submission to the OPSC. A replica of the form can be viewed in Appendix 3, SFP Required Forms.

In order to complete the Form SAB 50-03, the district representative will need a completed site diagram for the applicable school which contains the following information:

- ▶ The number of permanent classrooms.
- ▶ The number of portable classrooms.
- ▶ The ages of all permanent and portable classrooms.

The instructions on the Form SAB 50-03 will guide the district through the process of calculating the eligibility at that site for modernization. If all the buildings are over 25/20 years old for permanent/relocatable buildings respectively and eligible for modernization, the grant eligibility is simply the number of children that are or can be housed at a site, whichever is less. However, for cases where there is a mixture of classrooms that are under and over the modernization age limits, two optional calculation methods are provided. One option is to count those facilities that are over the age requirement and the children that can be housed in them. The second option is to develop a ratio based on either the square footage or the number of classrooms by comparing the square footage of overage to underage buildings or the number of overage to underage classrooms on the site. The ratio is then applied to the number of children enrolled at the site. If the district selects the option using a ratio of square footage, it will be necessary to provide the square footage information on the site diagrams as well.

Eligibility Application Approval

Once the district has completed part three of the Form SAB 50-03, they are ready to submit the modernization eligibility application package. The OPSC will conduct a preliminary review of the package to ensure that it is complete before adding it to the workload list. A more detailed review will then be completed that may include an on-site visit to review the information included on the site diagrams. When the review is complete and the OPSC has validated the eligibility calculations, an item is presented to the SAB for consideration of approval.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available. When the application is resubmitted it will be added to the workload list with the new receipt date.

Districts should review the SFP Application Submittal Requirements worksheet, located on the OPSC Web site, to ensure all required information is included with their application.

Helpful Hint:

Did you know that the OPSC provides the current workload list on its Web site?

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Chapter 5

New Construction Funding

In this chapter. . .

- ▶ Introduction
- ▶ Available New Construction Funding
- ▶ Funding Process
- ▶ Preparing an Application
- ▶ New Construction Grant Amounts
- ▶ New Construction Grant
- ▶ Supplemental Grants
- ▶ District Project Contribution
- ▶ SAB Approval Process
- ▶ Fund Release

INTRODUCTION

After a district has established eligibility for a project as described in Chapter 4, the district may request funding for the design and construction of the facility. In most circumstances, the funding is approved after the district has acquired or identified a site for the project and after the plans for construction are approved by the Division of the State Architect (DSA) and the California Department of Education (CDE).

The funding for new construction projects is provided in the form of grants. The grants are made up of a new construction grant (pupil grant) and a number of supplemental grants. A brief description follows:

New Construction Grant — intended to fund design, construction, testing, inspection, furniture and equipment, and other costs closely related to the actual construction of the school buildings. This amount is specified in law based on the grade level of the pupils served.

Supplemental Grants — special grants are intended to recognize unique types of projects, geographic locations and special project needs. These grants are based on formulas set forth in the School Facility Program (SFP) Regulations. There are many possible supplemental grants. All of them are discussed later in this chapter. Two of the most common are:

- ▶ **Site Acquisition Grant** – Funding for site purchase, relocation, escrow, and certain other site acquisition related costs.
- ▶ **Site Development Grant** – The cost related to preparing a site for construction, including grading and drainage. This grant also includes funding for certain off-site development items such as sidewalks, curbs and gutters, streets, and related improvements.

Each new construction project is reviewed and appropriate grants are applied by the Office of Public School Construction (OPSC). All new construction grants are matched equally by the district with local funding sources. In some cases, districts unable to contribute some or all of the local match may be eligible for financial hardship. A district that intends to request financial hardship assistance, must obtain financial hardship status prior to submitting an application for funding. See Chapter 10, Financial Hardship for more information on this subject. Once the grants are determined for a project, a request is sent to the State Allocation Board (SAB) for a funding apportionment. After the apportionment is approved, the district may enter into a contract for the construction of the facility, if it has not already done so, and receive a release of the funds.

In some cases, when a district has been approved for financial hardship assistance, the district may request a separate site or design apportionment. In this situation, the request may be made before plans are completed and approved by the DSA. Site and design funding is discussed later in this chapter. In addition, see Chapter 10, Financial Hardship for more information.

This chapter explains the funding application process, typical requirements, and how to determine the new construction grant amount. It is important to understand that the discussion in this chapter focuses on the most common situations. There are many variations that may apply to specific projects that can not be covered in this brief overview. As always, the district representative should meet with the OPSC project manager and discuss the district's plan in detail.

AVAILABLE NEW CONSTRUCTION FUNDING

There are several types of funding requests that can be made under the new construction program. The district may request site and design apportionment separately when they meet Financial Hardship requirement or as a combined application when appropriate.

New Construction Adjusted Grant

A new construction adjusted grant is intended to provide the State's full share for all necessary project costs including the New Construction Grant (pupil grants), site acquisition, site utilities, off-site, and service site development. The new construction adjusted grant also includes applicable supplemental grants and adjustments as described later in this chapter. This grant is approved only after the site has been approved and the plans are also complete and fully approved.

Separate Design

Districts that qualify for financial hardship status may receive a separate apportionment for design costs. Design funding is intended to allow a district to hire an architect and prepare project plans for DSA approval. When the plans are complete and approved, the district may request the remaining new construction funding. The new construction adjusted grant will be reduced by the design apportionment previously made for the project.

Separate Site

Districts that qualify for financial hardship status may receive a separate apportionment for site acquisition. The site funding is intended to allow a district to acquire a site for the project. When the district is ready to request the remaining new construction funding, the new construction adjusted grant will be reduced by the site apportionment previously made for the project.

Separate Site – Environmental Hardship

If the Department of Toxic Substances Control (DTSC) certifies by letter that the time necessary to complete the remediation or removal of hazardous waste on the site to be acquired will exceed 180 days, the district may qualify as an environmental hardship. This means that the district is eligible for a separate apportionment for site acquisition, even though the district does not qualify as a financial hardship. More information is available in the SAB regulations and through the OPSC project manager.

FUNDING PROCESS

After the district submits an eligibility application (see Chapter 4, Application for Eligibility) the process of applying for funding is as follows:

- ▶ the district submits a funding application package;
- ▶ the OPSC reviews the package;
- ▶ the SAB approves the apportionment;
- ▶ the district requests a fund release and makes expenditures;
- ▶ the district submits reports on expenditures;
- ▶ the OPSC audits.

The application for new construction funding is made on a single form, the Application for Funding (Form SAB 50-04). The form serves as a vehicle to collect the information necessary to calculate the amount of grants applicable to the project, and also is a certification from the district regarding compliance with requirements of the law and the SFP regulations. The district may submit the Form SAB 50-04 after the district has received approval by the CDE and the DSA of the proposed new construction project and the project site when applicable. In most cases, the

district has determined its eligibility for new construction grants on the Eligibility Determination (Form SAB 50-03) before applying for funding. However, if the district has not established eligibility for the project previously, it may submit the eligibility package with the funding package.

The funding application is reviewed by the OPSC for completeness and placed on a statewide workload list in date received order. District representatives can view the workload list on the OPSC Web site at www.opsc.dgs.ca.gov. The applications for funding are then processed in date order for presentation to the SAB for consideration of an apportionment.

In some cases, the OPSC may find that an application lacks required information. The district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed, and the district may resubmit the application at any time once the needed information is available.

When the SAB has no funds to apportion, the SAB will continue to accept and process applications based on the date the application is ready for apportionment. The applications will be placed on an unfunded list. An application for funding that is placed on an unfunded list is eligible for apportionment pending the availability of future funding. If the application is approved for a separate site apportionment for Environmental Hardship, the project will receive a date on the unfunded list based on the date the environmental hardship site apportionment was made for the project.

PREPARING AN APPLICATION

A complete application package is an essential element of the process of receiving funding for the district's projects. The information provided is the basis for determining the grant amounts that the district will receive. The following discussion outlines the major elements of a complete application for a new construction adjusted grant. Note that the same information is not necessary for all application types.

New Construction and Modernization funding applications require the Form SAB 50-04 and must be based on a previous eligibility approval or must have the eligibility application as a part of the package (see Chapter 4, Application for Eligibility). Also, please note that districts requiring financial hardship assistance must receive that status before filing a funding application (see Chapter 10, Financial Hardship for further information). The table below delineates the supporting documents necessary for each type of new construction funding request.

► New Construction Funding Required Documents

Document	Type of Funding			
	Design Only	Site Only	Site and Design	Construction
Appraisal of property to be acquired when appropriate*		⊙	⊙	⊙
Final escrow closing statement or court order (estimated escrow if financial hardship)		⊙	⊙	⊙
California Department of Education approval of site*		⊙	⊙	⊙
Final Division of the State Architect plan approval				⊙
California Department of Education approval of plans				⊙
Cost estimate for site development†				⊙
Plan‡ and cost estimate for off-site development, when funding is requested				⊙

* If this document has been submitted previously, it need not be resubmitted.

† SFP Regulation Section 1859.76, "Additional Grant for Site Development Costs".

‡ Plan must be approved by the local entity, see *Architectural Submittal Guidelines* for further information.

Helpful Hint:

When a district seeks SFP funding, the law stipulates that a district must hold title or an acceptable lease to all property acquired, constructed, or improved.

Application for Funding (Form SAB 50-04)

The Form SAB 50-04 serves as a vehicle for districts to request funding for design, site and/or construction for all new construction projects. The form provides the OPSC with specific project information to determine the new construction adjusted grant including, but not limited to the type of application; the grade level of the project; the number of pupils the project will house; whether or not a site is being acquired; and if any additional or supplemental grants are being requested. To complete the Form SAB 50-04 and to make the required certifications, the district representative will need at least the following supporting information:

Appraisal, Escrow Closing Statement, CDE Site Approval

An appraisal, escrow closing statement or court order, and CDE site approval letter are required if the application includes site purchase. If not, only the CDE approval letter may be required. The documents are described in detail under the heading "Site Acquisition" in the section titled "Supplemental Grants".

DSA-Approved Plans and Specifications

All new construction plans and specifications must be approved by the DSA.

Cost Estimate for Site Development

A detailed cost estimate is required if the district is requesting additional grants for site development in its new construction funding application. For more information, please refer to the heading "Site Development" in the section titled "Supplemental Grants", discussed later in this chapter.

District Certifications

As previously mentioned, the Form SAB 50-04 is also an official certification to a number of SFP requirements. The form and the instructions to the form provide specific detail about the certifications; however, some of the issues to which the district representative will have to certify are as follows:

- ▶ The district has established a "Restricted Maintenance Account" (see Chapter 13, Additional SFP Requirements and Features for more information).
- ▶ Contracts for the services of an architect, structural engineer, or other design professional which were signed after November 4, 1998 were obtained pursuant to a qualifications based competitive process (see Chapter 3, Project Development Activities).
- ▶ The district will fund their share of the project.
- ▶ If this request is for a large new construction or a large modernization project, the district has consulted with the career technical advisory committee established pursuant to Education Code Section 8070 and it has considered the need for vocational and career technical facilities to adequately meet its program needs in accordance with Education Code Sections 51224, 51225.3(b) and 52336.1.
- ▶ If the district is requesting an Additional Grant for Energy Efficiency pursuant to SFP Regulation Sections 1859.71.3 or 1859.78.5, the increased costs for the energy efficiency components in the project exceeds the amount of funding otherwise available to the district.
- ▶ The district has or will initiate and enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code Section 1771.7, if the project is funded from Proposition 47 and the Notice to Proceed for the construction phase of the project will be issued on or after April 1, 2003.

Finally, to reduce the need to submit extensive supporting documentation, the OPSC will ask that the architect of record or other design professional certify to the following:

- ▶ The date that the DSA approved the plans and specifications.
- ▶ That the cost estimate as submitted to the DSA for the work in the plans and specifications is at least 60 percent of the total grant provided by the total State and district matching share.

CDE Approval of Final Plans

The plans submitted to the OPSC must have the approval of the CDE. The final plan approval letter from CDE must accompany the funding application.

NEW CONSTRUCTION GRANT AMOUNTS

The SFP was designed as a per-pupil grant program where each pupil, depending on the grade level, would receive a specific dollar amount. The new construction adjusted grant, at minimum, will consist of the new construction grant, which is prescribed in law relative to the grade level of the pupils. The grant can be increased by certain supplemental grants for which the district may be eligible. The following are the types of grants:

- ▶ New Construction Grant (pupil grants)
- ▶ Supplemental Grants

NEW CONSTRUCTION GRANT

The new construction grant is intended to provide the State's share for necessary project costs including, but not limited to, funding for design, costs related to the approval of the plans and specifications by all required agencies, the construction of the buildings, general site development, educational technology, unconventional energy, change orders, tests, inspections, and furniture and equipment. The new construction grant does not provide for site acquisition, site utilities, off-site, and service site development as these costs vary due to location, size, topography, etc. The OPSC will review and determine these costs on a case-by-case basis, as discussed later in this chapter.

The new construction grant is based on the number of pupils in the project. There are a number of ways that the district can determine how many pupils will be assigned to a project, and therefore what the new construction grant will be. The most obvious way is by first determining the grade level of the project and then the number of classrooms to be included. Under the SFP, K–6 classrooms are loaded with 25 pupils, 7–12 classrooms are loaded with 27 pupils, severe classrooms are loaded with 9 pupils, and non-severe classrooms are loaded with 13 pupils. Assuming that the district has enough eligibility, it might decide to construct a ten classroom addition along with bathrooms and other support facilities at an existing elementary school. The ten classrooms will house 250 children using the loading standards specified in the program. If the district has already established eligibility for at least that number of elementary students using the Form SAB 50-03, the district could request 250 grants for the project.

There may be a situation where the district may wish to ask for less grants than the classroom capacity of the project. For instance, the project described in the previous paragraph may be of relocatable construction and may be estimated to cost less than the amount of grants that would be generated by 250 students. The district may elect either of the following strategies:

- ▶ The district may reduce the grant request to fewer grants, yet still enough to completely fund the State share of the project. The advantage is that the district will retain the unused grants for a future project, perhaps at another site.
- ▶ The district may ask for all 250 grants, and use the grant amount not only to construct classrooms at the site, but also to construct other facility needs of the district at the site, such as administration, multi-purpose rooms, gymnasium, etc.
- ▶ The district may ask for all 250 grants, and use the savings from the project for other capital facilities projects in the district, provided the project is not receiving financial hardship assistance. The advantage to the district is that the project is built as planned, while other facilities needs are also met within the State funding for the original project. In this case, the district must ensure that the amount spent on the work in the plans and specifications for the original project equals at least 60 percent of the total State and local share of the project grants. With this condition met, the district may use the savings on other district projects.

There are many variations on these approaches to determining grant amounts for a particular project. It is important that the district consult with the OPSC project manager to be sure that a specific approach is possible and within the guidelines of the law and regulations.

New Construction Grant Calculation

The new construction grant is determined by multiplying the pupils assigned to the project by the pupil grant established in law. The new construction grant is adjusted by the SAB annually (each January) based on the change in the Marshall Swift Class B Construction Cost Index. The current amounts are as follows:

► New Construction Basic Grant Amount

Classification	Basic Grant Amount	Comments
Elementary Pupil	\$ 5,840	
Middle School Pupil	\$ 6,177	(Include grade six pupils if part of a 6–8 grade school.)
High School Pupil	\$ 8,086	
Special Day Class – Non-Severe	\$12,449	
Special Day Class – Severe	\$18,614	

The Special Day Class grant allowances are established at a level higher than basic new construction grant allowances as a means to cover building cost items such as enhanced or added electrical and plumbing fixtures, more accessible doors and grab bars, extra sinks, casework, restrooms, changing areas, living skills space and other facilities for students with exceptional needs.

SUPPLEMENTAL GRANTS

Supplemental grants are intended to recognize unique types of projects, geographic locations and special project needs. These grants are based on formulas set forth in the School Facility Program (SFP) Regulations. There are many possible supplemental grants as follows:

- ▶ Fire Code Requirements
- ▶ Energy Efficiency
- ▶ Special Education – Therapy
- ▶ Multilevel Construction
- ▶ Project Assistance
- ▶ Replacement with Multi-Story Construction
- ▶ Site Acquisition
- ▶ Site Development
- ▶ Geographic Location
- ▶ Small Size Projects
- ▶ New School Projects
- ▶ Urban Locations, Impacted Sites, Security Requirements

The following is a brief explanation of the supplemental grants:

Fire Code Requirements

The New Construction grant will be increased for each pupil in a project that includes an automatic fire detection and alarm system. The current increase is as follows:

▶ New Construction Grant Increase	
Classification	Grant Increase
Elementary Pupil	\$30
Middle School Pupil	\$39
High School Pupil	\$29
Special Day Class—Non-Severe	\$60
Special Day Class--Severe	\$90

The New Construction grant will be increased for each pupil in a project that includes an automatic sprinkler system. The current increase is as follows:

▶ New Construction Grant Increase	
Classification	Grant Increase
Elementary Pupil	\$ 94
Middle School Pupil	\$112
High School Pupil	\$127
Special Day Class— Non-Severe	\$206
Special Day Class--Severe	\$307

The amounts shown above are the 50 percent State share and are adjusted annually in the same manner as the New Construction Grant.

Energy Efficiency

A supplemental grant is available to districts with projects that have increased costs associated with plan design and other project components for school facility energy efficiency. The facilities in the proposed new construction project must exceed the nonresidential building energy efficiency standards as specified in Title 24, Part 6 of the California Code of Regulations by 15 percent.

Special Education – Therapy

The New Construction grant will be increased for the area of therapy rooms, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for severely disabled individuals with exceptional needs. The current unit cost per square foot of therapy area is as follows:

- ▶ \$195 per square foot for toilet facilities
- ▶ \$107 per square foot for other facilities

The amounts shown above are the 50 percent State share and are adjusted annually in the same manner as the new construction grant.

Multilevel Construction

The SFP recognizes that districts face additional costs to construct multilevel school facilities on small sites. A supplemental grant is available for projects in densely populated areas, where site acquisition costs are high and land is scarce, to provide funds to alleviate and mitigate the impact of these small sites. If the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity, the new construction grant can be increased by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building.

Project Assistance

The SAB may provide additional project grants for project assistance to small school districts with enrollment of 2,500 pupils or less. The current additional grant of \$3,997 may be used for costs associated with the preparation and submission of the SFP eligibility and funding applications, including costs related to support documentation such as site diagrams. The grant amount will be adjusted each year using the Class B index.

Replacement with Multistory Construction

As part of a SFP new construction project, a school district may demolish a single story facility and replace it with a multistory facility on the same site. In addition to the new construction grant allowance, the SAB will provide a supplemental grant to fund 50 percent of the replacement cost of the single story facility(s) to be replaced provided that the school is on a multitrack year-round education schedule, the site size is less than 75 percent of the recommended CDE site size, the pupil capacity at the site will be increased, the cost of the demolition and replacement is less than the cost of providing a new facility at a new site to house the increased pupil capacity, and the project has CDE approval.

Site Acquisition

The site acquisition grant can be used to acquire and develop new school sites or, under some circumstances, to reimburse or credit the district for a portion of the site acquisition costs originally borne by the district or in specific circumstances the current appraised value. Eligible costs for site acquisition are:

- ▶ Fifty percent of the lesser of the actual cost or the appraised value of the site.
- ▶ Fifty percent of the relocation cost.
- ▶ Two percent of the value of the site determined above, with a minimum of \$25,000.
- ▶ Fifty percent of certain costs related to the DTSC review and oversight.
- ▶ Hazardous waste removal (within one and one half times the appraised value).

Note that if the district intends to use a site that was acquired in a priority one project under the Lease-Purchase Program (LPP), the OPSC will use the appraised value of the site as established under the LPP for the appraised value of the site under the SFP. The SFP apportionment will be offset by the LPP apportionment. A project that received site acquisition funds under the LPP as a priority two project is not eligible for site acquisition funds under the SFP.

Independent Appraisal Requirement. The district is required to submit one site appraisal with the Form SAB 50-04. A California licensed and duly-qualified appraiser must issue a current appraisal report for the proposed site using the Uniform Standards of Professional Appraisal Practice. The appraisal must be impartial and prepared for the district or its legal counsel.

The site must be appraised as if it were a clean site, safe from all contaminants in accordance with SFP Regulation Section 1859.74.1, CDE guidelines, and Title 5, California Code of Regulations. The appraisal report must evaluate both the gross and net usable acreage and any severance damages.

Site improvements associated with grading the site to a mass graded or construction-ready condition without foundation or paving and proposed utilities stubbed to the site may be included in the appraisal. Other site improvements must be finished before close of escrow or 100 percent covered by a performance bond.

The appraisal date of valuation, or an update, may not predate by more than six months of the district's funding application to the OPSC. An SFP project which had the site funded as a LPP project shall use the value funded under the LPP.

DTSC Costs. Site acquisition costs may include up to 50 percent of the cost for the review, approval and oversight of the Phase One Environmental Site Assessment (POESA) and the Preliminary Endangerment Assessment (PEA). Note that these costs are prior to the actual clean-up costs, if any. Those costs may be included under some circumstances. See the paragraph entitled "Hazardous Waste Removal" below.

Hazardous Waste Removal. Site acquisition costs may be increased by up to one-half of the costs associated with the removal or remediation of hazardous waste on the site to be acquired. These costs may include the actual implementation of the response action required in the PEA, the cost of the preparation of the Response Action, and the cost for the DTSC review and oversight of the preparation and implementation of the Response Action. The increase in site acquisition may not exceed the difference between one and one half times the appraised value of the site as if no contamination existed and the actual cost of the contaminated site.

Relocation Expenses. Reasonable and necessary costs to relocate residential occupants and businesses from the proposed new school site, including purchasing fixtures and equipment, personal property, new machinery and equipment, and the installation of any improvements at the replacement residences or business locations are permitted as site acquisition costs.

Incidental Site and Hazardous Waste Removal for Leased Sites. If the application for funding includes a vacant leased site that was never used for school purposes, the site acquisition costs may be increased by up to one-half of the costs associated with the removal or remediation of hazardous waste on the site to be leased. These costs may include approved relocation expenses, the actual implementation of the Response Action required in the PEA, the cost of the preparation of the Response Action, and the cost for the DTSC review and oversight of the preparation and implementation of the Response Action. The increase in site acquisition may not exceed one and one half times the appraised value of the site determined by an appraisal made or updated no more than six months prior to the date the application was submitted to the OPSC.

Acquiring Title. Title to all property acquired, constructed, or improved with funds made available under the SFP must be held by the school district to which the SAB grants the funds. The title to the site need not be actually held by the district before funding; however, one of the following must be demonstrated:

- ▶ Purchase will be made from one or more private parties, companies, developers, or other entities, as evidenced by an escrow showing the pending transfer of ownership to the district.
- ▶ Court orders, especially orders of condemnation through the county court where the proposed new site lies, which include a Final Judgment, Stipulated Judgment and Order of Immediate Possession to allow occupancy, or Prejudgment Possession.
- ▶ An escrow for the transfer of property in lieu of other legally required payments or fees due to the district. (Example: Districts sometimes obtain proposed new school site parcels from developers, with all or part of the "purchase" price comprised of the district forbearing from collecting school mitigation fees from the developers.)

Funding on Leased Land. The district may utilize leased sites with governmental agencies for certain specified periods of time. To receive new construction grants for facilities that are or will be located on real property leased by the district, the property must be leased from the federal government for a period of 25 years or another governmental agency for a period of 40 years. If the lease is with a governmental agency other than the federal government, a 30-year lease may be considered if there are no other educationally adequate sites available under a 40-year lease, the cost per year for a 30-year lease is not greater than a 40-year lease, or the district can provide satisfactory evidence to the SAB that a shorter term lease is necessary.

Site Development

In addition to the new construction grant, the SFP provides a supplemental grant for the purpose of developing the site where the project is to be located. Fifty percent of the site development costs are available for both new sites and for existing sites where additional facilities are being constructed. These development costs fall under three categories:

- ▶ Service site development improvements are performed within school property lines and may include eligible site clearance, rough grading, soil compaction, drainage, erosion control and multilevel, single level subterranean or under building parking structures. This portion of the site preparation is accomplished prior to the general site development and construction of buildings.
- ▶ Off-site improvements are located along the perimeter of two sides of the site including street grading and paving, storm drainage lines, curbs, gutters, sidewalks, and street lighting. These improvements are commonly dedicated for public use. If a district is requesting off-site improvements, the local entities having jurisdiction of areas where the off-site development is proposed must approve the related plans and specifications. These approved plans and specifications must be submitted to the OPSC at the time the application for funding is submitted.
- ▶ Utility service developments include improvements of water, sewer, gas, electric, and telephone from the closest existing utility connection.

It is important to understand that site development costs have restrictions on their use. The district representative should consult the SFP regulations and the OPSC project manager if he or she is unsure if a particular item is an allowable cost before including the work in the project.

If a district is requesting a supplemental grant associated with site development on the Form SAB 50-04, verification must be submitted to support the request. To assist in gathering the supporting detail, the OPSC has developed a Site Development Worksheet for Additional Grants that is located on the OPSC Web site. The district may use this worksheet or similar method to submit this information to the OPSC.

Geographic Location

A supplemental grant is available to districts with projects that are located in areas of California that are remote, difficult to access, or lack a pool of contractors. A district may qualify and request an augmentation to the new construction grant due to their geographic location¹.

Small Size Projects

A supplemental grant is available to districts with projects that house no more than 200 pupils. The grant is intended to provide additional funds for core facilities and to make up for the lack of economies of scale when districts build small projects. The new construction grant can be increased by 12 percent for a project that will house less than 101 pupils, or by four percent if the project will house over 100, but no more than 200 pupils.

New School Projects

Districts that will construct an entirely new school on a site without existing facilities may qualify for a supplemental grant. This grant is intended to provide funds to construct core facilities such as multipurpose rooms, gymnasiums, libraries, kitchens, etc., for projects that have a minimal amount of classrooms, but not enough to generate a sufficient new construction grant to build these essential facilities. Please refer to the OPSC Web site for the current grant amounts.

¹ SFP Regulation Section 1859.83, "Excessive Cost Hardship Grant".

Urban Locations, Security Requirements and Impacted Sites

Districts with projects in urban locations on impacted sites may request a supplemental grant if all of the following conditions are met:

- ▶ The useable site acreage for the project is 60 percent or less of the site size recommended by the CDE for the net school building capacity for the project plus any existing enrollment at the site, if any.
- ▶ At least 60 percent of the classrooms in the project construction plans are in multistory facilities.
- ▶ For new construction of a new school site, the value of the site being acquired is at least \$750,000 per useable acre. This condition does not apply to new construction additions to existing school sites.

Urban locations on impacted sites are generally in areas of high property values or high population density, creating an environment difficult for districts to acquire ample real property, which causes increased project costs uniquely associated with urban construction. Districts with projects on these impacted sites are also faced with extra security requirements. The supplemental grant provides funds for security fences, watchpersons, increased premiums for insurance for contractors, and storage or daily delivery of construction materials to prevent theft and vandalism. If a district requests grants due to these circumstances, the OPSC will verify the district's eligibility pursuant to the CDE Final Plan Approval letter and by OPSC's review of the project construction plans and site appraisal.

If the above criteria are met, the urban supplemental grant is calculated on a sliding scale as follows:

▶ New Construction Urban Grant Adjustment

If...

the useable acres are 60 percent of the CDE recommended site size, as described above...

Then...

the urban grant adjustment is 15 percent of the New Construction Grant and of the funding for additional grants for replaced facilities*, small size projects† and new school projects‡, and

a 1.166 percent increase to the urban grant adjustment for each percentage decrease in the CDE recommended site size below 60 percent.

For new construction of a new school site, the adjustment shall not exceed 50 percent of the cost avoided with the purchase of site smaller than the CDE recommended site size for the number of the pupil grants requested in the application. § This limit does not apply to new construction additions to existing school sites.

* SFP Regulation Section 1859.73.2, "New Construction Additional Grant for Replaced Facilities"

† SFP Regulation Section 1859.83(b), "Excessive Cost for Projects that House No More than 200 Pupils (Small Size Project)"

‡ SFP Regulation Section 1859.83(c), "Excessive Cost to Construct a New School Project"

§ SFP Regulation Section 1859.83(d)(2)(A), "Excessive Cost Due to Urban Location, Security Requirements and Impacted Site"

DISTRICT PROJECT CONTRIBUTION

Every new construction application is a joint funding effort between the local school district and the State through the SFP. The State grant is discussed in the section entitled "New Construction Grant Amounts", earlier in this chapter. The total State grant represents 50 percent of the total project cost, with the district contributing the remaining 50 percent of the total project cost. The district contribution may come from virtually any source. The sole exception is that when savings from another SFP project is used as a match, the savings must be from a new construction project only. This restriction exists due to legal requirements pertaining to the bond funds, which the State uses as a program-funding source.

The district need not have the entire 50 percent local contribution on deposit at the time that the project apportionment is made. However, when the project fund release is requested, the district must certify that the district's matching share has been deposited in the County School Facility Fund; has been expended by the district for the project; or will be expended by the district prior to the Notice of Completion for the project. Thus the district has considerable flexibility in how the local share is arranged and contributed. The district representative should be aware, however, that regardless of when the share is contributed to the project, at closeout the district must be able to show that 50 percent of the expenditures on the project were from local sources. If the district is unable to demonstrate the 50 percent expenditure requirement has been met, the apportionment will be reduced.

Unable to Meet the Contribution

Districts that are unable to contribute the 50 percent local share of a project can pursue financial assistance through the financial hardship provisions of the SFP. Districts must submit financial data to the OPSC for pre-approval of financial hardship status (see Chapter 10, Financial Hardship) before submitting a funding application. In addition, this pre-approval enables districts to request a separate apportionment for site acquisition and/or design costs, if necessary, any time after the application for eligibility determination has been filed and before its financial hardship status expires.

Effects of Reorganization

Districts who are affected by a reorganization election on or after November 4, 1998, may not file a funding application for new construction until after the notification of the reorganization election. If the district had established new construction eligibility prior to reorganization, it must adjust the baseline eligibility on the Eligibility Determination (Form SAB 50-03) prior to filing new applications. Alternatively, the district can choose to certify that the reorganization does not result in a loss of eligibility for the project requesting funding. Districts that are newly created by the result of a reorganization can submit a funding application after approval of the election by the CDE.

SAB APPROVAL PROCESS

The applications for funding are presented to the SAB for approval in the order of their OPSC receipt date. The SAB approval (action) can either be an apportionment or "unfunded" approval, depending on the availability of funds for new construction.

FUND RELEASE

After the funding application is apportioned by the SAB, the next step in the process is the actual fund release to the County School Facilities Fund for use by the district.

The SFP grant is processed for release when the district submits a Fund Release Authorization (Form SAB 50-05). The Form SAB 50-05 submitted by the district is an important document that cannot be altered or modified by the OPSC. Therefore, an improperly completed Form SAB 50-05 will be returned with a letter of explanation to the school district for correction.

When a properly executed form is received, the OPSC sends a School Facilities Fund Release notification to the district representative and county office of education. The notification indicates the type of grant released, amount, school district, application number, school name, and date processed.

It is important to understand that a Form SAB 50-05 must be submitted within 18 months of the SFP grant apportionment by the SAB, or the entire new construction or modernization grant will be rescinded without further SAB action. If this should happen, the pupils housed in the project will be added back to the district's eligibility and the district may re-file the application at any future time.

The Form SAB 50-05 can be downloaded from the OPSC Web site. A replica of the form can be found in Appendix 3, SFP Required Forms. The properly executed Form SAB 50-05 should be submitted to:

Office of Public School Construction
Accounting
1130 K Street, Suite 400
Sacramento, CA 95814

References:

Code of Regulation Section 6000, et seq.
SFP Regulation Section 1859.74, "Additional Grant for Site Acquisition" and 1859.74.1, "Site Acquisition Guidelines".
SFP Regulation Section 1859.83, "Excessive Cost Hardship Grant".

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Chapter 6

Charter School Facilities

In this chapter...

- ▶ Introduction
- ▶ Eligibility
- ▶ Application Process
- ▶ Preparing An Application
- ▶ Funding Criteria
- ▶ Preliminary Apportionment Components
- ▶ Apportionment Conversion
- ▶ Project Reductions/Increases
- ▶ Fund Release
- ▶ Closeout

INTRODUCTION

Article 12 in Assembly Bill (AB) 14, establishes a pilot program to provide charter schools with funding to construct new facilities, to be known as the "Charter School Facilities Program" (CSFP). With the successful passage of Proposition 47, this program received \$100 million in bond funding. The CSFP permits a charter school or school district filing on behalf of a charter to apply for a preliminary apportionment (reservation of funds) for new construction projects. To qualify for funding a charter must be deemed financially sound by the California School Finance Authority (CSFA).

The preliminary apportionment for a CSFP project must be converted within a four-year period to a new construction adjusted grant apportionment meeting all the School Facilities Program (SFP) New Construction program criteria required for such an apportionment, unless a single one-year extension is granted.

ELIGIBILITY

A charter school or school district on behalf of a charter school must have SFP new construction eligibility as described in Chapter 4 from the school district in which the charter is physically located. A charter school applying on its own behalf may apply once it has notified the superintendent and governing board of the district, where it is physically located, of its intent to apply in writing 30 days prior to submitting the preliminary application to OPSC. The notice to the district shall include the number of pupils the charter intends to request on the preliminary application.

An Application for Charter School Preliminary Apportionment (Form SAB 50-09) may be submitted to the OPSC through Monday, March 31, 2003 for projects to be funded from the November 5, 2002 bond or 60 calendar prior to and 120 calendar after the 2004 election authorizing the funding. If funds remain after the initial submittal period or funds become available through over reservation of preliminary apportionment or lease payments, the SAB may establish additional application periods.

APPLICATION PROCESS

The applicant will need to submit an Application for Charter School Preliminary Apportionment, Form SAB 50-09, and an Enrollment Certification/Projection, Form SAB 50-01, for the school district and all other supporting documents (i.e., supporting historical documents for allowances requested on application). A Existing School Building Capacity, Form SAB 50-02 and Eligibility Determination, Form SAB 50-03 will not need to be submitted unless the school district has not established New Construction eligibility under the SFP. If the eligibility has not been established, the eligibility will need to be calculated prior to acceptance of the preliminary application.

Once the OPSC receives the preliminary application, an initial review will ensure that the school district has eligibility and that the eligibility requested is commensurate with the project being built. In addition the allowance requested on the application will be subject to review. In conjunction, the CSFA will be determining the financial soundness of the applicant. For further information regarding the criteria for financial soundness please contact CSFA at www.treasurer.ca.gov/csfa.

For additional detail, please review the General and Specific Instructions on the Form SAB 50-09 and the Application Submittal Requirements available on the OPSC Web Site.

PREPARING AN APPLICATION

A complete application is an essential element in the process of receiving a preliminary apportionment for the charter school or district's project. The information provided is the basis for determining the apportionment amounts that the charter school or district on behalf of the charter school will receive. All applications must be based on a previous SFP new construction eligibility approval or must have the eligibility application as a part of the package (see Chapter 4, Application for Eligibility). The Application for Charter School Preliminary Apportionment (Form SAB 50-09) serves as a vehicle for charter schools or districts on behalf of charter schools to request a preliminary apportionment for a new construction project. The form provides the OPSC with the general project information to determine the future new construction adjusted grant; the grade level of the project, the number of SFP pupils the project will serve, whether or not a site is to be acquired, and if any supplemental grants are requested.

Once the OPSC receives the preliminary application, an initial review will ensure that the school district has eligibility and that the eligibility requested is commensurate with the project being built. In conjunction, the CSFA will be determining the financial soundness of the applicant. For further information regarding the criteria for financial soundness please contact CSFA at www.treasurer.ca.gov/csfa.

For additional detail, please review the General and Specific Instructions on the Form SAB 50-08 and the Application Submittal Requirements available on the OPSC Web Site.

FUNDING CRITERIA

The State Allocation Board shall provide preliminary apportionments to the financially sound applicants approved by CSFA using the following criteria:

- ▶ Representative of the various geographical regions of the State.
- ▶ Representative of urban, rural, and suburban regions of the State.
- ▶ Representative of large, medium, and small charter schools throughout the State.
- ▶ Representative of the various grade levels of the pupils served by charter school applications.

Within each category above, preference is to be given to charters in overcrowded school districts, charters in low-income areas, and not-for-profit charters. A preference points calculation system, based on the criteria set above, will be used in determining the projects that will be funded from each category. If more than one application is received that has the same criteria within a category, the SAB will fund based on which project has the highest preference points.

PRELIMINARY APPORTIONMENT COMPONENTS

The methodology for determining the CSFP preliminary apportionment State share amount will be based primarily upon the criteria established for Critically Overcrowded School Facilities (Chapter 7). The grants provided at the preliminary apportionment shall consist of the following:

- ▶ Pupil base grant amount
- ▶ Multilevel Construction Grant Amount
- ▶ Site Acquisition
- ▶ Site Development
- ▶ Project Increase
- ▶ Inflation Factor

This amount shall then be the recommended preliminary apportionment for the proposed CSFP project presented to the SAB for a reservation of funds.

The CSFP Pupil Grant will be calculated by multiplying the SFP pupils assigned to the project by the pupil grants established in law and the increase for Fire Code requirements. The CSFP pupil grants will be adjusted by the SAB annually (each January) based on the change in the Marshall Swift Class B Construction Index. The current CSFP grant amounts are as follows:

► CSFP Grant Amounts	
Classification	CSFP Pupil Grants
Elementary	\$ 5,870
Middle School	\$ 6,214
High School	\$ 8,116
Special Day Class—Non-Severe	\$12,509
Special Day Class--Severe	\$18,703

If a district requests a preliminary apportionment include a reservation for multilevel classroom construction, the CSFP pupil base grant will be increased by 12 percent to reserve the maximum allowance.

The preliminary apportionment for the estimated site acquisition shall be determined by the submittal of an appraisal or preliminary appraisal, when available. In addition, a separate allowance is available for toxic sites. The appraisal or preliminary appraisal should be made or updated no more than six months prior to the application submittal to the OPSC. In cases where a specific site has not been identified for the project, the median cost of the consummated sales transactions within the general location multiplied by the proposed net useable acreage to be acquired shall determine the property value reservation. The proposed acquisition acreage amount must be compatible with CDE standards and before determining the median cost, the information for recorded sale transactions should be expressed in a per acre amount. Additionally the property value will be increased by four percent for title, escrow and survey fees. An allowance for estimated relocation and DTSC costs may be included. The reservation will be based on either the State's default allowance of twenty-one percent of the property value or actual or historical cost information.

If the request for a preliminary apportionment includes estimated site development costs the allowance shall be determined based upon either the State default amount of \$70,000 per proposed net useable acre, actual, or historical cost. The estimate site development cost shall be the amount for anticipated service-site, off-site and/or utilities for the project.

A district may request estimated excessive hardship costs for Geographic Location, New Small School Project or Urban Location, Security Requirements and Impacted Site

The preliminary apportionment consisting of all applicable estimated allowances shall be increased by 12 percent in anticipation of cost increase in future years. The inflator factor is based upon the average per year Marshall Swift Class B Construction Cost Index.

APPORTIONMENT CONVERSION

Within a four-year period, a charter school must convert the preliminary apportionment to a final apportionment. A final apportionment request includes an Application for Funding (Form SAB 50-04) and all other documentation required for a complete new construction adjusted grant application under the SFP provisions. At the time the project is converted, the pupil request cannot exceed the number of pupils requested at the time of preliminary apportionment.

The preliminary apportionment for a CSFP project must be converted within a four-year period to a new construction adjusted grant apportionment meeting all the School Facilities Program (SFP) New Construction program criteria required for such an apportionment, unless a single one-year extension is granted.

PROJECT REDUCTIONS/INCREASES

Once an application is submitted for a final apportionment, the project costs may be adjusted per the following:

► Project Cost Adjustments

If...	Then...
Preliminary apportionment sufficient to do project...	project cost remain the same and final apportionment Board item will reflect preliminary apportionment amounts.
Preliminary apportionment was more than needed...	the overpayment shall be adjusted to reflect actual project costs on the final apportionment SAB item and the difference shall be returned to the unrestricted account to be used for other charter school facility purposes.
Preliminary apportionment was insufficient...	and unrestricted funds remain in the account, a district may receive a project increase for eligible costs. Should funds not be available at the point of project conversion the preliminary apportionment amount will be the full and final apportionment. A district may elect to monitor the funds and wait until funds become available to convert the apportionment, provided it is before the four-year deadline.

FUND RELEASE

The CSFP provisions for a preliminary apportionment do not authorize any fund releases prior to submitting an application for final apportionment. Therefore, once a preliminary apportionment is received, all charter schools or districts on behalf of charter schools will need to ensure they can cover any costs incurred prior to filing an application for final apportionment.

To learn more about the CSFP program visit the OPSC Web site at www.opsc.dgs.ca.gov.

CLOSEOUT

When a COS project converts to a final apportionment, it will be subject to all SFP progress and auditing standards. A substantial progress report will be required at 18 months from the date the final apportionment was made. Annual expenditure reports will be required beginning one year from the date of the first fund release until the project is complete. The project is considered complete when 3 years elapse from the date of the final fund release for an elementary project, or 4 years for a high school project, or when the school district declares the project complete, at which time final expenditure reports must be submitted.

To learn more about the COS program, contact your OPSC project manager or visit the OPSC Web site at www.opsc.dgs.ca.gov.

Chapter 7

Critically Overcrowded School Facilities

In this chapter. . .

- ▶ Introduction
- ▶ Project Eligibility
- ▶ Source Schools
- ▶ Preparing an Application
- ▶ Preliminary Apportionment Components
- ▶ Apportionment Conversion
- ▶ Project Increases
- ▶ SAB Approval Process
- ▶ Substantial Progress
- ▶ Fund Release
- ▶ Closeout

INTRODUCTION

The Critically Overcrowded School Facilities (COS) program was created by AB 16 (Hertzberg) in 2002 and is a significant addition to the School Facilities Program (SFP). The COS program permits school districts with critically overcrowded school sites, as determined by the California Department of Education (CDE), to apply for a preliminary apportionment (reservation of funds) for new construction projects to relieve overcrowding. The COS program's preliminary apportionment serves only as a reservation of funds for future State assistance in the form of grants. The preliminary apportionment for a COS project must be converted within a four-year period to a new construction adjusted grant apportionment meeting all the SFP New Construction program criteria required for such an apportionment, unless a single one-year extension is granted.

PROJECT ELIGIBILITY

A district with SFP new construction eligibility established as described in Chapter 4 and critically overcrowded school sites included on a list of source schools as determined by the CDE may apply for a preliminary apportionment for projects to relieve overcrowding. For information regarding the CDE Source School List contact Mr. Fred Yeager at 916.327.7148 or visit the CDE Web site at www.cde.ca.gov.

An Application for Preliminary Apportionment (Form SAB 50-08) may be submitted to the OPSC between November 5, 2002 and May 1, 2003 for projects to be funded with the proceeds of the November 5, 2002 bond or 60 days prior to and 120 days after the 2004 direct primary election or the 2004 statewide general election as appropriate for projects to be funded with those bond proceeds. A Critically Overcrowded School Facilities project must:

- ▶ Relieve overcrowding by increasing the pupil capacity of the district and may be either a stand alone new school project or an addition to an existing school site.
- ▶ Identify at least 75% of the proposed pupil occupancy of the project as coming from a source school(s).
- ▶ Be located within either the attendance area or a one-mile radius of an elementary source school ; or, for a secondary source school, within the attendance area or a three-mile radius. The CDE may grant a variance from the distance maximums if the district can demonstrate that the variance is necessary to adequately provide facilities for the identified source school pupils.

SOURCE SCHOOLS

To qualify as a source school a school site utilizing the 2001/2002 California Basic Educational Data System (CBEDS) enrollment must have pupil density greater than 115 pupil per acre for grades Kindergarten to six and 90 pupils per acre for grades seven to twelve. The CDE is responsible for determining and maintaining the list of source schools. A district may report their school site information to the CDE by submitting SFPD Form 4.16 (Certification of School Site Net Useable Acres). For a copy of the SFPD Form 4.16 and additional information regarding the CDE source school list, please visit the School Facilities section of the CDE Web site at www.cde.ca.gov.

Once included on the CDE source school list, determine a source school's pupil eligibility or Qualifying Pupils, by subtracting the school's site density at 150 percent of the CDE recommended pupils per acre from its latest CBEDS enrollment. The remainder is the number of Qualifying Pupils at the source school site, which may be used to meet the project eligibility requirements above. The source school Qualifying Pupils eligibility amounts will be tracked separately and adjusted for changes in future enrollment, site density, preliminary apportionments and rescinded apportionments.

PREPARING AN APPLICATION

A complete application is an essential element in the process of receiving a preliminary apportionment for the district's project. The information provided is the basis for determining the apportionment amounts that the district will receive. All applications must be based on a previous SFP new construction eligibility approval or must have the eligibility application as a part of the package (see Chapter 4, Application for Eligibility). Please note district's requesting financial hardship assistance must receive that status prior to filing an application (see Chapter 10, Financial Hardship). The Form SAB 50-08 serves as a vehicle for districts to request a preliminary apportionment for a new construction project. The form provides the OPSC with the general project information to determine the future new construction adjusted grant; the grade level of the project, the number of SFP and source school Qualifying Pupils the project will serve, whether or not a site is to be acquired, and if any supplemental grants are requested. To complete the Form SAB 50-08 the district representative will need some of the following information.

- ▶ Appraisal, Preliminary Appraisal, or Median Cost valuation of the property to be acquired.
- ▶ Relocation and Department of Toxic Substance Control cost documents.
- ▶ Cost Estimate for site development and approved site development and off-site plans (to substantiate actual or historical cost submittals).
- ▶ A copy of the certified CDE Source School List pages or CDE Source School certification letter.
- ▶ Copy of the latest information for the Source School(s) submitted approximately October 15th of each year to the California Department of Education to complete the California Basic Education Data System (CBEDS).

For additional detail, please review the General and Specific instructions on the Form SAB 50-08 and the Application Submittal Requirements available on the OPSC Web site.

PRELIMINARY APPORTIONMENT COMPONENTS

A COS preliminary apportionment is intended to provide the estimated future State's share for all necessary project costs including site acquisition, site development and supplemental allowances. A district may request a preliminary apportionment for the following:

- ▶ COS Pupil Grants (New Construction Grant (per pupil) plus the increase for Fire Code requirements)
- ▶ Multilevel Classroom Construction
- ▶ Site Acquisition
- ▶ Site Development
- ▶ Project Increases
- ▶ Financial Hardship
- ▶ Inflation Factor

The COS Pupil Grant is calculated by multiplying the SFP pupils assigned to the project by the per-pupil grants established in law and the increase for Fire Code requirements. The COS Pupil Grants are adjusted by the SAB annually (each January) based on the change in the Marshall Swift Class B Construction Index. The current COS grant amounts are as follows:

► **Current Grant Amounts**

Classification	COS Pupil Grant
Elementary	\$ 5,870
Middle School	\$ 6,214
High School	\$ 8,116
Special Day Class – Non-Severe	\$12,509
Special Day Class – Severe	\$18,703

If a district requests a preliminary apportionment that includes multilevel classroom construction, the New Construction Grant will be increased by 12 percent to reserve the maximum allowance.

The preliminary apportionment for the estimated site acquisition shall be determined by the submittal of an appraisal or preliminary appraisal, when available. The appraisal or preliminary appraisal should be made or updated no more than six months prior to the application submittal to the OPSC. In cases where a specific site has not been identified for the project; the median cost of the consummated sales transactions within the general location area multiplied by the proposed net useable acreage to be acquired shall determine the property value reservation. The proposed acquisition acreage amount must be compatible with CDE standards; and, before determining the median cost, the information for recorded sale transactions should be expressed in a per acre amount. In addition the property value will be increase by four percent for title, escrow and survey fees by one-half for hazardous material/waste removal and remediation cost. An allowance for estimated relocation and DTSC costs may be requested, this will be based on either the State's default allowance of twenty-one percent of the property value, actual, or historical cost information.

If the request for a preliminary apportionment includes estimated site development costs, the allowance shall be determined based upon either the State's default amount of \$70,000 per proposed net useable acre, actual, or historical cost. The estimated site development cost shall be the amount for anticipated service-site, off-site and/or utilities for the project.

A district may request estimated excessive hardship costs for Geographic Location, New Small School Project or Urban Location, Security Requirements and Impacted Site.

If the district has a valid financial hardship status for the COS project, the estimated State share amount shall be doubled to provide a reservation for the estimated district's matching share assistance. When the financial hardship review has determined that the district has contribution amounts, the preliminary apportionment amount will be reduced by that amount. However, before the preliminary apportionment is converted to a final apportionment, the district must re-qualify financial hardship status to determine its eligibility and contribution amount.

The preliminary apportionment consisting of all applicable estimated allowances shall be increased by 12 percent in anticipation of cost increase in future years. The inflator factor is based upon the average per year increase to the Marshall Swift Class B Construction Cost Index.

APPORTIONMENT CONVERSION

Converting a preliminary apportionment to a final apportionment request includes an Application for Funding (Form SAB 50-04) and all other documentation required for a complete new construction adjusted grant application under the SFP provisions (See Chapter 5, New Construction Funding). In addition, the pupils requested on the Form SAB 50-04 must be no less than 75 percent of and cannot exceed the number of pupils requested on the Form SAB 50-08. When a district converts the preliminary apportionment to a final apportionment the project must still be supported by SFP new construction eligibility; however, the Source School(s) Qualifying Pupil eligibility will not be re-evaluated. A school district requesting financial hardship status must qualify for that status and have all Capital Project Fund monies analyzed to determine if the school district is able to contribute toward its project.

PROJECT INCREASES

When an application for final apportionment is made, that preliminary apportionment may be adjusted for increases only if there are sufficient reserve funds available in the COS facilities account to fund the increases. If reserve funds are not available, the increase amount will be placed on a "Final Apportionment unfunded list" until such time that funds may become available within the COS facilities account to apportion the increases. However, if funds do not become available and the maximum timeframe of five years has expired, the original preliminary apportionment becomes a full and final apportionment.

SAB APPROVAL PROCESS

If funds are insufficient to fully fund all of the preliminary applications received during an application filing period, the SAB shall first apportion to those projects that would house pupils from source schools with the highest density levels relative to the CDE standard.

SUBSTANTIAL PROGRESS

Prior to converting a preliminary apportionment to a final apportionment the district must report annually to the SAB on the progress of the COS project. The local governing school board must hold a public hearing annually discussing the progress toward completing the project. Included in the first annual report to the SAB, the district shall certify that the CDE has determined there is at least one approvable and adequate site for the COS project within the identified general location area. If the school district cannot certify to the approvable site, then the preliminary apportionment will be rescinded.

At the end of the fourth year, if a school district is unable to submit its application for final apportionment, it may apply for a single one-year extension provided that the COS project has a CDE contingent or final site approval and the final construction plans have been submitted to DSA for review and approval; or other evidence satisfactory to the SAB that substantial progress has been made towards completing the requirements for filing an application for final apportionment.

FUND RELEASE

The COS provisions for a preliminary apportionment do not authorize any fund releases prior to submitting an application for final apportionment. Therefore, once a preliminary apportionment is received, all districts, including financial hardship districts, will need to ensure they can cover any costs incurred prior to filing an application for final apportionment.

CLOSEOUT

When a COS project converts to a final apportionment, it will be subject to all SFP progress and auditing standards. A substantial progress report will be required at 18 months from the date the final apportionment was made. Annual expenditure reports will be required beginning one year from the date of the first fund release until the project is complete. The project is considered complete when 3 years elapse from the date of the final fund release for an elementary project, or 4 years for a high school project, or when the school district declares the project complete, at which time final expenditure reports must be submitted.

To learn more about the COS program, contact your OPSC project manager or visit the OPSC Web site at www.opsc.dgs.ca.gov.

Chapter 8 Joint Use Projects

In this chapter...

- ▶ Introduction
- ▶ Project Eligibility
- ▶ Funding Process
- ▶ Preparing an Application
- ▶ Joint Use Grant Amounts
- ▶ Joint Use Partner Project Contribution
- ▶ Fund Release

INTRODUCTION

Assembly Bill (AB) 16 created a Joint Use Program under the School Facility Program (SFP). AB 16 provides \$50 million dollars for Joint Use projects from the 2002 Bond and another \$50 million dollars from the 2004 bond if approved by the voters. Under AB 16, there are three types of Joint Use projects, which are referred to as a Type I, a Type II, and a Type III Joint Use project.

A Type I Joint Use project is part of a SFP new construction project in which the applicant district and a higher education partner have agreed to construct facilities to:

- ▶ Improve pupil academic achievement
- ▶ Provide teacher education
- ▶ Provide childcare facilities

A Type II Joint Use project is part of a SFP new construction project that will increase the size, create extra cost, or does both beyond that necessary for school use, of the:

- ▶ Multipurpose room
- ▶ Gymnasium
- ▶ Library
- ▶ Childcare Facility

A Type III Joint Use project combines elements of both other types. It differs in that the project is not a part of a SFP new construction application as is required for Type I and II Joint Use projects. The Type III application may only be for a project on an existing school site that does not have the type of facility requested or the existing facility is found to be inadequate. Like a Type I application, if the Joint Use partner is an institution of higher education, the project may be for:

- ▶ Improve pupil academic achievement
- ▶ Provide teacher education

In addition, the Type III application may be for the construction of one of the following stand-alone projects:

- ▶ Multipurpose room
- ▶ Gymnasium
- ▶ Library
- ▶ Childcare Facility

The funding for Joint Use projects is provided in the form of grants. With the exception of a Type II (Extra Cost), the grants are made up of a base grant and a number of supplemental grants. For a Type II (Extra Cost) project, the grant is a straight dollar amount based upon the cost estimate. The State share for a Joint Use project is 50 percent of the eligible project costs, with the Joint Use Partner matching 50 percent of the eligible project costs.

The District must have Joint Use eligibility and square footage eligibility (except for a Type II, Extra Cost) for the type of project they are applying for, before they can request Joint Use funding. This chapter explains the eligibility requirements for each type of Joint Use project, the funding application process, and how to determine the Joint Use grant. This chapter focuses on the most common situations. Individual projects may have variations that are not covered in this chapter. The district representative is encouraged to contact the OPSC project manager to discuss specific project details.

PROJECT ELIGIBILITY

Before a District can submit an application for funding, the project must have project eligibility. Project eligibility is different for all three types of Joint Use projects.

Type I Project Eligibility

To qualify as a Type I Joint Use project, the district must meet the following criteria:

- ▶ The construction contract was executed after April 29, 2002
- ▶ The project is part of a new construction application
- ▶ The district has entered into an approvable Joint Use Agreement that meets the criteria of Education Code 17077.42
- ▶ The Joint Use Partner is an institution of Higher Education
- ▶ The Project has Square Footage Eligibility
- ▶ The facility will be located at the site of the new construction application
- ▶ The project does one of three things:
 - Improves Pupil Academic Achievement
 - Provides Teacher Education
 - Provides Childcare Facilities
- ▶ The project has DSA approval of the plans
- ▶ The project has CDE approval of the plans

Type II Project Eligibility

To qualify as a Type II Joint Use project, the district must meet the following criteria:

- ▶ The construction contract was executed after April 29, 2002
- ▶ The project is part of a new construction application
- ▶ The district has entered into an approvable Joint Use Agreement that meets the criteria of Education Code 17077.42
- ▶ The Joint Use Partner is a governmental agency, an institution of Higher Education, or a nonprofit organization
- ▶ The Project has Square Footage Eligibility (except a Type II, Extra Cost)
- ▶ The facility will be located at the site of the new construction application
- ▶ The project increases the size, creates extra cost, or does both for the:
 - Multipurpose room
 - Library
 - Gymnasium
 - Childcare facility
- ▶ The project has DSA approval of the plans
- ▶ The project has CDE approval of the plans

Type III Project Eligibility

To qualify as a Type III Joint Use project, the district must meet the following criteria:

- ▶ The construction contract was executed after April 29, 2002
- ▶ The district has entered into an approvable Joint Use Agreement that meets the criteria of Education Code 17077.42
- ▶ The Project has Square Footage Eligibility
- ▶ The facility will be located at an existing public K–12 school site
- ▶ The project is one of the following:
 - Facility that Improves Academic Achievement
 - Facility that Provides Teacher Education
 - Multipurpose room
 - Library
 - Gymnasium
 - Childcare facility
- ▶ The Joint Use Partner is a governmental agency, an institution of Higher Education, or a nonprofit organization if the facility is a multipurpose room, library, gymnasium, or childcare facility
- ▶ The Joint Use Partner is an institution of Higher Education if the facility improves academic achievement or provides teacher education
- ▶ The school does not have the type of facility or the existing facility is inadequate
- ▶ The project has preliminary plans
- ▶ The project has CDE approval of the preliminary plans

FUNDING PROCESS

Applications will be accepted for the first funding cycle from November 5, 2002 through May 31, 2003. Applications will be accepted for the second funding cycle from June 1, 2003 through May 31, 2004 subject to approval of a statewide bond slated for Spring 2004. If funds remain after this funding cycle, subsequent filing periods will be from June 1 through May 31st each subsequent year.

Type I Joint Use projects shall be funded first, Type II Joint Use projects shall be funded second, and Type III Joint Use projects shall be funded last. The district may submit more than one application for each type. The district's first application within each type of Joint Use project shall be ranked and funded with other district's first applications in date-received order. The district's second application will then be ranked and funded with other district's second applications in date-received order, and so on within each type of Joint Use project, until funds are exhausted.

The following demonstrates the necessary steps for Joint Use Funding:

- ▶ The district submits an application for funding package
- ▶ The OPSC reviews the package
- ▶ The SAB approves and apportions the project in July
- ▶ The district submits DSA approved plans within one year from the date of apportionment (Type III only)
- ▶ The district requests a fund release and makes expenditures
- ▶ The district submits reports on expenditures
- ▶ The OPSC audits

The district must apply for Joint Use funding on the Application for Joint-Use Funding, Form SAB 50-07. The Form SAB 50-07 not only provides the OPSC with the specific Joint Use information such as type of Joint Use project and square footage eligibility, but it also serves as a certification by the district that they meet specific criteria of the law and regulations.

The funding package will be reviewed by the OPSC for completeness and placed on a statewide workload list. District representatives can view the workload list on the OPSC Web site at www.opsc.dgs.ca.gov. If during the initial review, it is determined that information is missing, the district will be notified and given a timeframe to respond to the OPSC's request. In the event the OPSC does not receive the requested information within the given timeframe, the application will be returned to the district. The district may resubmit the application at anytime within the filing period, when they have all the components of a complete application.

Applications will be approved until there are no funds available. In this instance, all applications that do not receive funding will be returned to the district, and the district may resubmit the application in subsequent filing periods.

PREPARING AN APPLICATION

The following chart lists the supporting documents for each type of Joint Use project that must be submitted with the Application for Joint-Use Funding, Form SAB 50-07:

Document	Type of Funding		
	Type I	Type II	Type III
Joint Use Agreement	⊙	⊙	⊙
DSA Approved Plans	⊙	⊙	
Preliminary Plans			⊙
California Department of Education preliminary plan approval			⊙
California Department of Education plan approval	⊙	⊙	⊙
Cost estimate for site development	⊙	⊙	⊙
Cost estimate for facility being built*		⊙	

*If the project is for a Type II, Extra Cost

JOINT USE GRANT AMOUNTS

With the exception of a Type II project for Extra Cost, the Joint Use grant will consist of a base grant for toilet and non-toilet facilities, which can be increased by certain supplemental grants. As of the date of this guidebook, the base grant is \$ 195 per square for toilet area and \$107 per square foot for non-toilet area. The grant amounts will be adjusted each year using the Class B index. Each project has a maximum state contribution of \$1 million for an elementary school, \$1.5 million for a middle school, and \$2 million for a high school.

Supplemental Grants

The district can increase the Joint Use grant with certain supplemental grants. The following is a brief explanation of the supplemental grants under the Joint Use Program:

Site Development. A supplemental grant is provided for the purpose of developing the site where the project is located. If the Joint Use project is linked to a new construction project and site development costs are not covered under the new construction application because the site development is specific to the Joint Use project, the district may apply for the site development under the Joint Use project. If the Joint Use project is a stand-alone project, the district may apply for applicable site development costs that pertain to the Joint Use facility. Fifty percent of the following site development costs may be available for Joint Use projects:

- ▶ Service site development improvements are performed within school property lines and may include site clearance, rough grading, soil compaction, drainage, and eligible erosion control. This portion of the site preparation is accomplished prior to the general site development and construction of buildings.
- ▶ Utility service development includes improvements of water, sewer, gas electric, and telephone from the closest existing utility connection to the project site meter or major building lateral location.

Off-site development is not an allowable expenditure under the Joint Use Program.

Geographic Location. A supplemental grant is available to projects located in areas of California that are remote, difficult to access, or lack a pool of contractors. The augmentation to the Joint Use grant due to their geographic location can be found in Regulation Section 1859.83 (a).

Small Size Projects. A supplemental grant is available to districts with projects that house no more than 200 pupils. The grant is intended to provide additional funds for core facilities and to make up for the lack of economies of scale when districts build small projects. The Joint Use grant can be increased by 12 percent if the new construction project it is linked to houses less than 101 pupils, or four percent if the new construction project it is linked to will house over 100, but no more than 200 pupils. If the project is a Type III Joint Use project, the district is entitled to an eight percent increase to the grant.

Urban Locations, Impacted Sites, Security Requirements. Districts with projects in urban locations, on impacted sites, or in areas with security issues, may request a supplemental grant. Contact your project manager for qualifying information.

Project Assistance. For a Type III Joint Use project, the SAB may provide additional project grants for project assistance to small school districts with enrollment of 2,500 pupils or less. The additional grant of \$3,997 (as of the date of this guidebook) may be used for costs associated with the preparation and submission of the funding application. The grant will be adjusted each year using the Class B index.

Type I Joint Use Grant. A Type I Joint Use project must have square footage eligibility. The first step in determining the grant is to determine the square footage eligibility. The square footage eligibility for a Type I joint Use project is based upon the number of pupils that will receive services in the facility, multiplied by the square footage that is allocated for that type of facility in the Chart of Square Footages, located in Regulation Section 1859.124.1.

Once the square footage eligibility for a Type I is established, the grant can be determined. The base grant is calculated by adding the following:

- ▶ \$195 for Toilet Square footage in the facility
- ▶ \$107 for Non-toilet Square footage in the facility
- ▶ 50% of applicable supplemental grants

If the district is building area beyond their square footage eligibility, the OPSC will prorate the grant by determining the percentage of the whole facility that represents the joint use project, and the grant will be determined using that percentage.

Type II Joint Use Grant (Increased Size). A Type II Joint Use project that increases size must have square footage eligibility. The first step in determining the grant is to determine the square footage eligibility. The square footage eligibility for a Type II Joint Use project that increases the size of the project is calculated by first determining what size facility the district is entitled to based upon the CBEDS and the Chart of Square Footages, located in Regulation Section 1859.124.1. Then simply subtract this amount from the actual square footage being built, and the difference is the square footage eligibility.

Once the square footage eligibility for a Type II is established, the grant can be determined. The first step in determining the grant is to take the square footage eligibility and divide it by the total square footage of the facility

being built. This will determine the percentage of the whole Joint Use facility that the increased size represents. The base grant then is calculated by multiplying this amount by:

- ▶ \$195 for Toilet Square footage in the facility
- ▶ \$107 for Non-toilet Square footage in the facility

In addition to the above, the project may be eligible for 50 percent of applicable supplemental grants.

Type II Joint Use Grant (Extra Cost). There is no square footage eligibility for a Type II that contains Extra Cost of the facility. The grant for a Type II Extra Cost can be determined by taking 50 percent of the construction cost of the whole Joint Use facility and any applicable service site development costs, and subtracting the base grant amounts of \$195 for toilet area in the project and \$107 for non-toilet area in the project. The difference is the extra cost.

Type II Joint Use Grant (Increased Size and Extra Cost). In some instances, a Type II project may be for both increased size and extra cost. The grant for a Type II project that increases the size and contains extra cost shall be calculated in the following manner:

- ▶ Start with the architect's cost estimate to construct the facility.
- ▶ Subtract the cost to build the standard size facility that the district would be entitled to based upon the Chart of Square Footages. Since this project is built beyond the standard size facility, first divide the square footage determined from the Chart of Square Footage, by the total Joint Use facility. This amount will determine the percentage of the whole facility that represents the standard size facility the district would otherwise be eligible for. Once this amount is determined, multiply this amount by the toilet facility area and by \$195 and by the non-toilet facility area and by \$107. This amount then becomes the amount to build the standard size facility.
- ▶ The difference is the grant amount for increased size and extra cost.
- ▶ Add any applicable service site costs.

Type III Joint Use Grant. A Type III Joint Use project cannot have an existing facility or the existing facility must be inadequate. A facility is considered inadequate when the square footage of the existing facility is less than 60 percent of the square footage entitlement shown in the Chart of Square Footages in Regulation Section 1859.124.1. A Type III Joint Use project must have square footage eligibility. If the existing facility meets the test of being inadequate, or there is not an existing facility, then the square footage eligibility for a Type III Joint Use project is the amount determined using the Chart of Square Footages.

Once the square footage eligibility for a Type III is established, the grant can be determined. The base grant is calculated by adding the following:

- ▶ \$195 for Toilet Square footage in the facility
- ▶ \$107 for Non-toilet Square footage in the facility
- ▶ 50% of applicable supplemental grants

If the district is building area beyond their square footage eligibility, the OPSC will prorate the grant by determining the percentage of the whole facility that represents the Joint Use project, and the grant will be determined using that percentage.

JOINT USE PARTNER PROJECT CONTRIBUTION

The total State grant represents 50 percent of the total project cost, with the Joint Use partner providing the remaining 50 percent of the total project cost. By law, the district may not contribute the Joint Use partner share. The district need not have the entire 50 percent Joint Use partner contribution on deposit at the time that the project approval is made. However, when the project fund release is requested, the district must certify that the Joint Use partner's matching share has been deposited in the County School Facility Fund; has been expended by the district for the project; or will be expended by the district prior to the Notice of Completion for the project. The district representative should be aware that regardless of when the share is contributed to the project, at closeout the district must be able to show that 50 percent of the expenditures on the project were from funds provided by the Joint Use partner. If the district is unable to demonstrate the 50 percent expenditure requirement has been met, the apportionment will be reduced.

If there are project costs beyond the eligible project costs, those cost can be paid by the district, Joint Use partner, or any other local source.

FUND RELEASE

After the funding application is approved and apportioned by the SAB, the next step in the process is the fund release to the County School Facilities Fund for use by the district.

The Joint Use grant is processed for release when the district submits a Fund Release Authorization (Form SAB 50-05). The Form SAB 50-05 submitted by the district is an important document that cannot be altered or modified by the OPSC. Therefore, an improperly completed Form SAB 50-05 will be returned with a letter of explanation to the school district for correction.

When a properly executed form is received, the OPSC sends a School Facilities Fund Release notification to the district representative and county office of education. The notification indicates the type of grant released, amount, school district, application number, school name, and date processed.

It is important to understand that a Form SAB 50-05 must be submitted within 18 months of the Joint Use grant apportionment by the SAB, or the grant will be rescinded without further SAB action. The only exception to this is if the Joint Use project is a Type III. If it is a Type III Joint Use project, the district has one year from the apportionment date to submit final DSA approved plans. Once the DSA approved plans are received by the OPSC, the district will have 18 months from that date to submit the Form SAB 50-05, or the grant will be rescinded without further SAB action.

The Form SAB 50-05 can be downloaded from the OPSC Web site. The properly executed Form SAB 50-05 should be submitted to:

Office of Public School Construction
Accounting
1130 K Street, Suite 400
Sacramento, CA 95814

References:

Education Code 17077.42
SFP Regulation Section 1859.124.1, Square Footage Facility Chart
SFP Regulation Section 1859.83 (a), Excessive Cost Hardship Grant, Excessive Cost due to Geographic Location

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Chapter 9

Modernization Funding

In this chapter . . .

- ▶ Introduction
- ▶ Available Modernization Funding
- ▶ Funding Process
- ▶ Preparing an Application
- ▶ Modernization Grant Amounts
- ▶ Modernization Grant
- ▶ Supplemental Grants
- ▶ District Project Contribution
- ▶ SAB Approval Process
- ▶ Fund Release

INTRODUCTION

The School Facility Program (SFP) provides funding assistance to school districts for the modernization of school facilities. The assistance is in the form of grants approved by the State Allocation Board (SAB), and requires a 40 percent local contribution. A district is eligible for grants when students are housed in permanent buildings 25 years old or older and relocatable classrooms 20 years old or older and the buildings have not been previously modernized with State funds. The grant amount is increased and funding for specific utility upgrades is allowed if permanent buildings to be modernized are 50 years old or over. See Chapter 4, *Application for Eligibility*.

The modernization grant (pupil grant) amount is set in law and is based on the number of students housed in the over-age facilities. In addition to the basic grant amount, a district may be eligible for supplemental grants depending on the type and location of the project. In some cases, districts unable to contribute some or all of the local match may be eligible for financial hardship. See Chapter 10, *Financial Hardship* for more information on this subject. Once the grants are determined for a project, a request is sent to the SAB for a modernization adjusted grant apportionment.

The modernization grant can be used to fund a large variety of work at an eligible school site. Air conditioning, insulation, roof replacement, as well as the purchase of new furniture and equipment are just a few of the eligible expenditures of modernization grants. A district may even use the grants to demolish and replace existing facilities of like kind. However, modernization funding may not be spent for construction of a new facility, except in very limited cases generally related to universal design compliance issues, or for site development.

This chapter explains the funding application process, typical requirements, and how to determine the modernization adjusted grant amount. It is important to understand that the discussion in this chapter focuses on the most common situations. There are many variations that may apply to specific projects that can not be covered in this brief overview. As always, the district representative should meet with the Office of Public School Construction (OPSC) project manager and discuss the district plan in detail.

AVAILABLE MODERNIZATION FUNDING

There are two types of funding applications which may be made under the modernization program:

Modernization Adjusted Grant

A modernization adjusted grant is intended to provide the State's full share for all necessary project costs. In a typical project, a modernization adjusted grant includes the modernization grant (pupil grant) and any applicable supplemental grants as described in this chapter under "Supplemental Grants".

Separate Design

A separate design apportionment is available for districts that qualify for financial hardship. This apportionment represents 25 percent of the modernization grant¹. Separate design funding is intended to allow a district to hire an architect to prepare the project plans for Division of the State Architect (DSA) approval. When the plans are complete

¹ SFP Regulation Section 1859.81.1, Separate Apportionment for Site Acquisition and Design Costs

and approved, and the district is ready to request the remaining modernization adjusted grant, it will be reduced by the design apportionment previously made.

FUNDING PROCESS

After applying for and receiving approval of modernization eligibility, the process of applying for funding is as follows:

- ▶ the district submits a funding application package;
- ▶ the OPSC reviews the package;
- ▶ the SAB approves the apportionment;
- ▶ the district requests a fund release and makes expenditures;
- ▶ the district submits reports on expenditures to the OPSC;
- ▶ the OPSC audits.

The application for modernization funding is made on a single form, the Application for Funding (Form SAB 50-04). The form serves as a vehicle to collect the information necessary to calculate the amount of grants applicable to the project, and also is a certification from the district regarding compliance with requirements of law and the SFP Regulations. The district is ready to submit the application for funding after receiving approval by the California Department of Education (CDE) and the DSA of the plans for the proposed modernization project. In most cases, the district has determined its eligibility for modernization grants on the Eligibility Determination (Form SAB 50-03) before applying for funding. However, if the district has not established eligibility for the project previously, it may submit the eligibility application with the funding application (see Chapter 4, Application for Eligibility).

The funding application is reviewed by the OPSC for completeness and placed on a workload list by date order received. District representatives can view the status of projects from the workload list that can be found on the OPSC Web site at www.opsc.dgs.ca.gov. The funding applications are then processed in date order for presentation to the SAB for consideration of apportionment. Note that at this time, the OPSC will reduce the funding request by the amount of previous apportionments to the project made under the SFP or Lease-Purchase Program (LPP).

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available. When the application is resubmitted it will be added to the workload list with the new receipt date.

When the SAB has no funds to apportion the OPSC will continue to accept and process applications based on the date the application is received. The SAB will approve the application for placement on an unfunded list. An application for funding that is placed on an unfunded list is eligible for reimbursement pending the possible availability of future funding.

PREPARING AN APPLICATION

A complete application package is an essential element of the process of receiving funding for the district's project. The information provided is the basis for determining the grant amounts that the district will receive. The following discussion outlines the major elements of a complete application. This information is not necessary for a separate design funding request, unless noted.

All applications require a complete Form SAB 50-04 and must be based on a previous eligibility approved or must have the eligibility approved as part of the package (see Chapter 3, Project Development Activities). Eligibility for 50-year old buildings is not separate from the other eligibility at the site. If the district is requesting increased funding for pupils housed in 50-year old buildings, site diagrams with the ages and square footages of those buildings must be provided with the application package. Also, please note that districts requiring financial hardship assistance must receive that status before filing a funding application (see Chapter 10, Financial Hardship). To complete the Form SAB 50-04 and to make the required certifications, the district representative will need at least the following supporting information.

Final DSA Approved Plans and Specifications

A complete set of DSA approved plans and specifications is required for the modernization project. The submittal may be on CD-ROM or "Zip Drive" readable by AutoCAD® or a hard copy of the plans may be submitted. It is acceptable to submit the specifications on a diskette that is IBM compatible.

Cost Estimate

A complete construction cost estimate signed by the architect or design professional is required for the modernization project. The construction cost as submitted to the DSA must equal at least 60 percent of the total project cost (district and State share).

CDE Plan Approval Letter

The CDE must approve plans for modernization projects before they can be considered for funding under the SFP. The district should contact the School Facilities Planning Division (SFPD) of the CDE as early as possible in the planning process.

District Certifications

As previously mentioned, the Form SAB 50-04 is also an official certification to a number of SFP requirements. The form and the instructions to the form provide specific detail about the certifications; however, some of the issues to which the district representative will have to certify are as follows:

- ▶ The district has established a "Restricted Maintenance Account" (see Chapter 13, Additional SFP Requirements and Features for more information).
- ▶ The facilities to be modernized were not previously modernized under the LPP.
- ▶ Contracts for the services of an architect, structural engineer, or other design professional which were signed after November 4, 1998 were obtained pursuant to a qualifications based competitive process (see Chapter 3, Project Development Activities for more information).
- ▶ The property to be modernized using SFP funds is either owned by the district or county superintendent or it is leased from another governmental entity. If the property is leased, the lease is for at least 40 years from a non-federal governmental agency or 25 years from a federal governmental agency. The cost of the lease is not an eligible cost under the SFP.
- ▶ If this request is for a large new construction or a large modernization project, the district has consulted with the career technical advisory committee established pursuant to Education Code Section 8070 and it has considered the need for vocational and career technical facilities to adequately meet its program needs in accordance with Education Code Sections 51224, 51225.3(b) and 52336.1.
- ▶ If the district is requesting an Additional Grant for Energy Efficiency pursuant to SFP Regulation Sections 1859.71.3 or 1859.78.5, the increased costs for the energy efficiency components in the project exceeds the amount of funding otherwise available to the district.
- ▶ The district has or will initiate and enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code Section 1771.7, if the project is funded from Proposition 47 and the Notice to Proceed for the construction phase of the project will be issued on or after April 1, 2003.

Finally, to reduce the need to submit extensive supporting documentation, the OPSC will ask that the architect of record or other design professional certify to the following:

- ▶ The date that the DSA approved the plans and specifications.
- ▶ The number of classrooms demolished and not replaced and the number of classrooms constructed. (This is necessary to verify that no new construction, except the replacement of demolished facilities, is done with modernization funds.)
- ▶ That the cost estimate for the work in the plans and specifications as submitted to the DSA is at least 60 percent of the total grant provided by the State's and district's matching share.

MODERNIZATION GRANT AMOUNTS

The modernization grant is based on the number of pupils assigned to the project. This number may simply be the number of students enrolled at the site where the modernization will occur. This is usually true when all of the buildings at the site are 25 years or older for permanent buildings and 20 years or older for relocatable structures. In cases where only some of the buildings at the site are over age, and therefore eligible for modernization, the number of pupils assigned to the modernization project will probably be less than the total pupils on the site. The Form SAB 50-04 will assist the district in determining the proper number of pupils to be included in the application. When this number is determined, it is then possible to calculate the modernization grant amount as described in the next section. The following are the types of grants:

- ▶ Modernization Grant
 - Modernization Grant for 50-Year-Old Buildings
- ▶ Supplemental Grants

MODERNIZATION GRANT

The pupil grant amount is intended to provide the State's share for all essential project costs, which include but are not limited to funding for design, the modernization of the building, education technology, unconventional energy, tests, inspections, and furniture and equipment. To calculate the district's modernization share, multiply the modernization grant by 0.6667.

Modernization Grant Calculation

The modernization grant for each pupil housed in buildings to be modernized is established by law². The grant amount is adjusted every year in January, based on changes to the Class B construction cost index, by action of the SAB. As of January 2003, the modernization grants, which represent the State's 60 percent share of the project, are as follows:

▶ Modernization Grant Amount

Classification	Modernization Grant Amount	Comments
Elementary Pupil	\$2,523	
Middle School Pupil	\$2,669	(Include grade six pupils if part of a 6–8 grade school.)
High School Pupil	\$3,494	
Special Day Class – Non-Severe	\$5,378	
Special Day Class – Severe	\$8,038	

▶ Modernization Grant for 50-Year-Old Buildings

Classification	Basic Grant Amount
Elementary	\$ 3,504
Middle School	\$ 3,706
High School	\$ 4,852
Special Day Class – Non-Severe	\$ 7,469
Special Day Class – Severe	\$11,169

² Education Code Section 17074.10.

A modernization grant request must be for at least 101 pupil grants, or the remaining modernization eligibility at that school site if less than 101 grants are available.

SUPPLEMENTAL GRANTS

The supplements are intended to recognize special costs associated with projects of a certain type or located in certain areas. The district also uses the Form SAB 50-04 to supply information related to the supplemental grants. There are many possible supplemental grants as follows:

- ▶ Project Assistance
- ▶ Fire Code Requirements
- ▶ Energy Efficiency
- ▶ Site Development for 50-Year-Old Buildings
- ▶ Geographic Location
- ▶ Small Size Projects
- ▶ Urban Locations, Impacted Sites, Security Requirements
- ▶ Rehabilitation
- ▶ Handicap Access and Fire Code Compliance
- ▶ Elevators

The following is a brief explanation of the supplemental grants:

Project Assistance

The SAB may provide additional project grants for project assistance to small school districts with enrollment of 2,500 pupils or less. The current additional grant of \$2,131 may be used for costs associated with the preparation and submission of the SFP eligibility and funding applications, including costs related to support documentation such as site diagrams. The grant amount will be adjusted each year using the Class B index. The district can find the current amount on the OPSC Web site.

Fire Code Requirements

The Modernization grant will be increased for each pupil in a project that includes an automatic fire detection and alarm system. The current increase is as follows:

▶ Modernization Grant Increase	
Classification	Grant Increase
Elementary Pupil	\$118
Middle School Pupil	\$146
High School Pupil	\$143
Special Day Class—Non-Severe	\$251
Special Day Class—Severe	\$376

The amounts shown above are the 80 percent State share and are adjusted annually in the same manner as the Modernization Grant.

Energy Efficiency

A supplemental grant is available to districts with projects that have increased costs associated with plan design and other project components for school facility energy efficiency. The facilities in the proposed project must exceed the nonresidential building energy efficiency standards as specified in Title 24, Part 6 of the California Code of Regulations by 10 percent.

Site Development for 50-Year-Old Buildings

A supplement grant is provided for the purpose of upgrading existing utilities as necessary for the modernization of 50 year or older permanent buildings. Sixty percent of the estimated utility costs, up to a maximum of twenty percent of the Modernization Grants (pupil grant), are available. Allowable utility cost fall under five categories³:

- ▶ Water
- ▶ Sewage
- ▶ Gas
- ▶ Electric
- ▶ Communication systems

It is important to understand that site development costs have restrictions on their use. The district representative should consult the SFP regulations and the OPSC project manager if he or she is unsure if a particular item is an allowable cost before including the work in the project.

If a district is requesting a supplemental grant associated with site development on the Form SAB 50-04, verification must be submitted to support the request. To assist in gathering the supporting detail, the OPSC has developed a Site Development Worksheet for Additional Grants that is located on the OPSC Web site. The district may use this worksheet or similar method to submit this information to the OPSC.

Geographic Location

A supplemental grant is available to districts with projects that are located in areas of California that are remote, difficult to access, or lack a pool of contractors. A district may qualify and request an augmentation to the modernization grant because of their geographic location.

Small Size Projects

A supplemental grant is available to districts with projects that house no more than 200 pupils. The grant is intended to provide additional funds to modernize core facilities and to make up for the lack of economies of scale for small projects. The modernization grant can be increased by 12 percent for a project that will house less than 101 pupils, or by four percent if the project will house over 100, but no more than 200 pupils.

Urban Locations, Security Requirements and Impacted Sites

Districts with projects in urban locations on impacted sites may request a supplemental grant if:

- ▶ The useable site acreage for the project is 60 percent or less of the site size recommended by the CDE based on current CBEDS Report at the site at the time of the CDE final plan approval for the modernization project.

Urban locations on impacted sites are generally in areas of high population density. Districts with projects on these impacted sites are also faced with extra security requirements. The supplemental grant provides funds for security fences, watchpersons, increased premiums for insurance for contractors, and storage or daily delivery of

³ SFP Regulation Section 1859.78.7, "Modernization Additional Grant for Site Development Necessary for 50 Years or Older Permanent Buildings".

construction materials to prevent theft and vandalism. If a district requests grants due to these circumstances, the OPSC will verify the district's eligibility pursuant to the CDE Final Plan Approval letter.

If the above criterion is met, the urban supplemental grant is calculated on a sliding scale as follows:

► Modernization Urban Grant Adjustment

If...

the useable acres are 60 percent of the CDE recommended site size, as described above...

Then...

the urban grant adjustment is 15 percent of the Modernization Grant and of the funding for small size projects*, and

a 0.333 percent increase to the urban grant adjustment for each percentage decrease in the CDE recommended site size below 60 percent.

* SFP Regulation Section 1859.83(b), "Excessive Cost for Projects that House No More than 200 Pupils (Small Size Project)"

Rehabilitation

A district may apply for the rehabilitation of facilities that the SAB has determined are an imminent health and safety risk to the pupils, if the cost/benefit analysis to mitigate the problem and remain in the building is less than 50 percent of the current replacement cost. If the district qualifies, the district is eligible for funding of rehabilitation costs as a modernization project.

Handicap Access and Fire Code Compliance

A district may receive an additional three percent increase in the modernization grant for handicap access and fire code requirements. The OPSC must be able to verify this request from the plans and specifications.⁴

Elevators

If the DSA requires 2-stop elevators in the modernization project, the modernization grant will be increased by \$67,387 for each two stop elevator. The district must attach the DSA letter that requires the elevators be included in the project for handicap access compliance. The modernization grant will be increased by \$12,128 for each additional stop required.⁵ The grant amount will be adjusted annually using the Class B index.

DISTRICT PROJECT CONTRIBUTION

Every modernization application is a joint funding effort between the local school district and the State through the SFP. The State grant is discussed in the section entitled "Modernization Grant", earlier in this chapter. The total State grant represents 60 percent of the total project cost, with the district contributing the remaining 40 percent of the necessary funding.

The district contribution may come from virtually any source. The sole exception is that when savings from another SFP project are used as match, it must be from a modernization project only. This restriction exists due to legal requirements pertaining to the bond funds, which the State uses as a program-funding source.

The district need not have the entire 40 percent local contribution on deposit at the time that the project approval is made. However, at the time of the project fund release, the district must certify that the district's match-

⁴ SFP Regulation Section 1859.83(f), "Excessive Cost Hardship Grant".

⁵ SFP Regulation Section 1859.83(f), (1) and (3), "Excessive Cost Hardship Grant".

ing share has been deposited in the County School Facility Fund; has been expended by the district for the project; or will be expended by the district prior to the Notice of Completion for the project. Thus the district has considerable flexibility in how the local share is arranged and contributed. The district representative should be aware, however, that regardless of when the share is contributed to the project, the district must be able to show at closeout that 40 percent of the expenditures on the project were from local sources. If the district is unable to demonstrate the 40 percent expenditure requirement has been met, the apportionment will be reduced.

Unable to Meet the Contribution

Districts that are unable to contribute all of the 40 percent local share of a project, can pursue financial assistance through the financial hardship provisions of the SFP. Districts must submit financial data to the OPSC for "pre-approval" of financial hardship status (see Chapter 10, Financial Hardship) before submitting a funding application. In addition, this "pre-approval" enables districts to request a separate apportionment for design costs, if necessary.

SAB APPROVAL PROCESS

The SAB approval can either be an apportionment or "unfunded" approval, depending on the availability of funds for modernization. If there are no funds available, the project will be placed on a list of unfunded projects to await possible future funding.

FUND RELEASE

After the funding application is apportioned by the SAB, the next step in the process is the actual fund release to the County School Facilities Fund for use by the district.

The SFP grant is processed for release when the district submits a Fund Release Authorization (Form SAB 50-05). The Form SAB 50-05 submitted by the district is an important document that cannot be altered or modified by the OPSC. Therefore, an improperly completed Form SAB 50-05 will be returned with a letter of explanation to the school district for correction.

When a properly executed form is received, the OPSC sends a School Facilities Fund Release notification to the district representative and county office of education. The notification indicates the type of grant released, amount, school district, application number, school name, and date processed.

It is important to understand that a Form SAB 50-05 must be submitted within 18 months of the SFP grant apportionment by the SAB, or the entire new construction or modernization adjusted grant will be rescinded without further SAB action. If this should happen, the pupils housed in the project will be added back to the district's eligibility and the district may re-file the application at any future time.

The Form SAB 50-05 can be downloaded from the OPSC Web site. A replica of the form can be found in Appendix 3, SFP Required Forms. The properly executed Form SAB 50-05 should be submitted to:

Office of Public School Construction
 Accounting
 1130 K Street, Suite 400
 Sacramento, CA 95814

to the

Chapter 10 Financial Hardship

In this chapter. . .

- ▶ Introduction
- ▶ Qualifying for Financial Hardship Assistance
- ▶ Financial Hardship Assistance Request
- ▶ Approval of Financial Hardship Assistance
- ▶ Renewal of Financial Hardship Assistance

INTRODUCTION

Financial hardship assistance is available for those districts that cannot provide all or part of their funding share of a School Facility Program (SFP) project. In order to receive financial hardship assistance, a district must have made all reasonable efforts to raise local funding and must also demonstrate that it is unable to contribute all or a portion of the matching share requirement.

If the district meets the financial hardship criteria, it is eligible for financial assistance for new construction or modernization projects. It may also be eligible for a separate apportionment for the following:

- ▶ For new construction or modernization projects, an early apportionment for design costs.
- ▶ For new construction projects, an early apportionment for site acquisition.

A district seeking financial assistance must have an approved financial hardship status prior to submitting an Application for Funding (Form SAB 50-04) for either a new construction or modernization grant request. In order to obtain this approval the district must provide verification that a reasonable effort was made to meet the district's matching share requirement, and must have confirmation from the Office of Public School Construction (OPSC) that the district is unable to contribute the entire matching share requirement. When this is accomplished, the OPSC will recommend that the district be approved as a financial hardship and will send a 'pre-approval' letter to the district.

QUALIFYING FOR FINANCIAL HARDSHIP ASSISTANCE

To apply for financial hardship, send a letter to the OPSC Financial Hardship Audit Unit stating why the district is requesting financial hardship. Along with the letter, the district must submit the documents listed below:

▶ Documentation for Financial Hardship Application

Legal Requirement	Financial Documentation Required
Levy maximum developer fee allowed	School Board Resolution regarding developer fees
Demonstrate local effort to raise revenues	Evidence of least one of the following: <ul style="list-style-type: none"> • Debt level at 60 percent of bonding capacity • Total district bonding capacity less than \$5 million • The district had a successful registered voter bond election for at least the maximum allowed under Proposition 39 within the previous 2 years. • Other evidence which demonstrates that all reasonable local efforts have been made as approved by the SAB

continued on following page. . .

► Documentation for Financial Hardship Application ...

Legal Requirement

Financial inability to contribute the match

Financial Documentation Required

Evidence that facility funds are not available:

- Financial Hardship Project Worksheet
- Financial Hardship Worksheet
- Latest independent audit reports
- Encumbrances
- Expenditure reports
- Listing of the district's unused sites
- Forms SAB 50-01 and SAB 50-02 for "interim housing" allowance calculation for new construction projects only

If the financial hardship package is incomplete, a letter will be sent to the district requesting the necessary documentation to make the request complete. If the requested information is not submitted in a timely manner, the request will be returned unprocessed. The district may re-file the request whenever the missing documents become available.

County offices of education do not need to provide documentation regarding developer fees or evidence of reasonable effort to raise local funds.

FINANCIAL HARDSHIP ASSISTANCE REQUEST

In order to qualify for financial hardship assistance, the school district must demonstrate that it has made all reasonable efforts at the local level. The district must also provide evidence that it is unable to pay all or a portion of the district's share of the project. The process of providing the required evidence is discussed in this section.

Evidence of Reasonable Effort to Fund Matching Share

As previously mentioned, the law requires that a district seeking financial hardship assistance must demonstrate that all reasonable efforts have been made to raise local revenues for the SFP match requirement. The State Allocation Board (SAB) has adopted regulations that set criteria to determine that this requirement is met. The district must be levying developer fees at the maximum rate justified by law and must verify it meets at least one of the following:

Bonding Capacity and Indebtedness Threshold. The current outstanding indebtedness of the district, at time of financial hardship request, is at least 60 percent of the district's total bonding capacity. A district with a total bonding capacity of less than \$5 million meets this requirement regardless of the level of indebtedness. Outstanding indebtedness includes General Obligation Bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and Certificates of Participation (COPs) that was issued for capital outlay school facility purposes, on which the district is paying a debt service.

The required documentation needed is a certification from the county auditor controller stating the district's assessed valuation, outstanding indebtedness, and remaining bonding capacity.

Voter Bond Election. The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

The required documentation needed:

- Copy of ballot issue.
- Original bond election estimates that support the amount of bond for which the district sought election.
- Date of election; amount of bond; purpose of bond; percent of "Yes" vote on bond.
- Copy from County Auditor-Controller certifying the district's current bonding capacity and outstanding indebtedness.

County Superintendent of Schools. A county superintendent of schools automatically meets the reasonable effort. The County Superintendent must then complete a financial review to determine the level of financial assistance needed.

Other Evidence of Reasonable Effort. If the district does not meet the reasonable effort requirements outlined above, it may present to the SAB other evidence of reasonable efforts to fund its matching share. This can be done using a School District Appeal Request (Form SAB 189). This form and instructions for completing the form are available on the OPSC Web site. In addition to the completed Form SAB 189, the district must also submit updated Financial Hardship Worksheets for each fund within the Capital Project Funds and the latest independent audit report. If the hardship justification is approved by the SAB, the district may then file its request for financial hardship using the approved SAB item as evidence of having met the reasonable effort test to fund its matching share for its projects. The district must then submit all of the requested financial documents necessary for a final financial hardship review, as described in the table "Documentation for Financial Hardship Application" on page 55.

Financial Review

The OPSC will conduct an analysis of the district's financial information to verify that the district is unable to provide all or a portion of the necessary matching funds for an eligible project. The analysis will include the applicant's financial records including those maintained by the California Department of Education (CDE) and the county office of education. The review will determine whether available non-operational funds and savings from other SFP projects are sufficient to fund all or a portion of the matching share requirements on a project. See Regulation Section 1859.81 for more information on the financial review.

Financial Hardship Project Worksheet. This is used by the OPSC to estimate the district's share of the project. The district must submit a separate Financial Hardship Project Worksheet for each project for which it is requesting financial assistance. The worksheet can be found on the OPSC Web site.

Financial Hardship Worksheet. This worksheet is used by the OPSC to determine the amount of the cash contribution to be provided by the district. These worksheets are based on the latest independent audit report and then brought current to application date with subsequent transactions that have occurred in the funds. Detail of the expenditures made for the subsequent events must accompany this worksheet. If this is not submitted, all of the expenditures shown will be disallowed and deemed as "funds available".

On the worksheet, the district will identify restricted funds such as class size reduction, as well as the purpose for any restrictions on funds, and will identify all bonds and COPs authorized and sold to date of financial hardship request. If the district has unsold bonds or COPs, possible restrictions on the use of these funds should be noted.

Latest Independent Audit Report. The district's latest independent audit report is used by the OPSC to verify the financial condition of the district. The district must submit the entire audit report.

Developer Fee Information

The district must be levying developer fees at the maximum rate justified under law or have an alternative revenue source equal to or greater than the developer fee otherwise justified.¹ As evidence, please include a copy of the resolution from the district's school board authorizing the levying of the fee. If the district is not levying the maximum fee allowed by law in accordance with current statute, include a copy of the district's recent Implementation Study and/or the Needs Analysis to support the amount being levied or justification for an alternative revenue source.

If the district entered into an agreement with a city, county, or other government entity regarding developer fees, please submit a copy of that agreement. In addition, please submit documents showing the amount of fees that could have been collected during the time frame of the agreement versus the amount that was actually collected and shown as revenue for the district.

¹Education Code Section 17075.10.

If the district received any benefit, building, land, etc., in lieu of developer fees please submit documentation regarding the "in lieu" received and the value of the developer fees that were negated due to the "in lieu" agreement(s). If the district did not enter into agreements regarding developer fees, please submit a statement to that effect.

The current developer fees can be found on the OPSC Web site at www.opsc.dgs.ca.gov. Developer fee amounts are adjusted every even numbered year at the January State Allocation Board (SAB) meeting based on an index specified in law. In order to maintain financial hardship eligibility, districts must implement the new developer fee within six months after an index change.

Encumbrances. The district must provide contracts and all other documentation supporting any encumbrances or obligations the district is claiming. All funds identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

Interim Housing Deduction from Available District Funding. From the funds available as a matching housing contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. In addition, from the fund available as a matching contribution, the district may also retain \$19,776 per approvable portable toilet unit in each reporting period for the cost to provide interim toilet facilities for the currently unhoused pupils of the district. This amount is adjusted annually. The current amount can be found on the OPSC Web site.

Expenditure Reports. The district must submit expenditure reports, Summary of Expenditures and Construction Progress (Form SAB 184) and Detailed Listing of Warrants Issued by the District (Form SAB 184A), for each project for which the district is requesting financial hardship. If no funds have been spent on a project, the district must submit a statement to that effect. The OPSC will review any prior apportionment and the expenditures reported. All expenditures above and beyond a prior apportionment will be considered as a matching contribution. The SAB will not reimburse the district for expenditures made prior to the financial hardship approval.

Listing of the District's Unused Sites. The district must submit a listing of the district's unused sites and intended use. If the district has no unused sites, submit a statement to that effect.

APPROVAL OF FINANCIAL HARDSHIP ASSISTANCE

Once the financial hardship review is complete, the OPSC will send a letter to the district stating the available funds and expenditures that will be considered available for match purposes. If the district disagrees with the OPSC's findings, the district may submit additional information for consideration. Once the district has been approved for financial hardship (has a pre-approval letter), the district may submit its Form SAB 50-04, for the projects and specific phases listed in the financial hardship approval letter.

When a district is approved for financial hardship, the approval is valid for six months. If, within the six months, the district wishes to submit additional applications or phases of a previously approved project, it must have a pre-approval letter for those additional specific projects or subsequent phases prior to filing the Form SAB 50-04. To obtain pre-approval within the six months, the district must submit a Financial Hardship Project Worksheet for the project along with expenditure reports. The district does not need to update other financial information unless the six month period is past.

If the district's request for financial hardship status is denied by the Board, the district may be eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation satisfactory to the Board that it is unable to afford the full rental amount.

Subsequent Financial Hardship Request

Once a district receives funding as a financial hardship, the district should be aware that for a period of three years, all capital facilities funding received by the district from any source will be considered available for the matching share on a future financial hardship request. The exceptions are:

- ▶ Approved interim housing expenditures;
- ▶ Funding to pay for multiyear encumbrances approved at the initial financial hardship approval;
- ▶ Funding that is transferred into a Special Reserve Fund and is used for the purpose of the Federal Renovation Program;

RENEWAL OF FINANCIAL HARDSHIP ASSISTANCE

If the district does not submit an Application for Funding (Form SAB 50-04) within six months of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status by submitting a new request for financial hardship status.

The district will need to update its financial information by providing all required documentation as listed in the table "Documentation for Financial Hardship Application" on page 55 .

Financial Hardship Review for Financial Hardship Projects on Unfunded List

If a district's project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

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Chapter 11

Facility Hardship Grant

In this chapter...

- ▶ Introduction
- ▶ Eligibility for Facility Hardship Grants
- ▶ Application and Approval Process
- ▶ Interim Housing

INTRODUCTION

Under very limited circumstances, a need to replace or construct new facilities may exist for reasons other than enrollment growth. For instance, a classroom or support facility may no longer be safe to occupy due to a structural failure or other severe health threat. To address these unusual situations, the State Allocation Board (SAB) has developed a facility hardship grant. The purpose of the grant is to assist districts with funding where it has been determined that the district has a critical need for pupil housing because the condition of the facilities, or the lack of facilities, presents an imminent threat to the health and safety of the pupils.

By definition a facility hardship is an unusual, often unique situation. It is difficult to describe a "normal" process since each request must be reviewed and analyzed on a case-by-case basis. This chapter outlines the process but by no means addresses all possible facility hardship situations. When a significant and serious threat exists to the health and safety of students or staff in any public school environment or if an existing facility has been destroyed by natural disaster, the district should contact the Office of Public School Construction (OPSC) project manager for guidance.

ELIGIBILITY FOR FACILITY HARDSHIP GRANTS

To be eligible for a facility hardship grant the district must demonstrate that one of two conditions exists: facilities must be replaced due to an imminent health and safety threat, or existing facilities have been lost to fire, flood, earthquake or other disaster. If the district is able to qualify for a facility hardship grant under one of these two conditions, there must also be an unmet need to repair or replace the facility to accommodate projected enrollment. In other words, the facility to be replaced must be needed to house students under the standards of the School Facility Program.

Replacement Due to Imminent Health or Safety Hazard

In this case, existing facilities must be replaced to ensure the health and safety of the pupils because of circumstances such as the following:

- ▶ An imminent hazard exists because the existing facilities are in close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission source; or
- ▶ The existing facilities have serious structural deficiencies, which must be repaired or corrected as specified by the Division of the State Architect (DSA); or
- ▶ There are existing traffic safety problems; or
- ▶ The pupils live in a remote area and transportation to existing facilities is not possible or poses a serious threat to the health and safety of the pupils; or
- ▶ Other situations exist which pose a threat to the health and safety of the pupils.

A facility hardship approval to replace facilities is limited to the most severe instances of need. Clear demonstration that the health and safety of the children is in jeopardy is needed.

Documentation. Typical supporting documentation should be in the form of written statements reports by a qualified expert or specialist appropriate for the specific area of concern. This documentation must be them reviewed and written concurrence provided by the appropriate experts representing local or State agencies that have jurisdiction relating to the problem area. For example, air quality threats might involve a medical doctor or other certified professional on staff at the county or State Department of Health; traffic problems might be supported by the California Highway Patrol, and so forth. If structural deficiencies are the basis of safety concerns, a licensed structural engineer's report illustrating that the structure is out of compliance with codes in place at the time of original construction with DSA's concurrence will be required. In any case, the statement provided to the OPSC must indicate how the problem poses an immediate threat to the health and safety of the children. Refer to Appendix 2, Potential State Agency Involvement for possible contact information.

Cost/Benefit Analysis. If the district has substantiated a health and safety issue and wishes to replace existing facilities, a cost/benefit analysis must be prepared and submitted to the OPSC. The analysis should include only the minimum work necessary to mitigate the identified health or safety problems and compare these with the cost to replace the facility. The cost/benefit analysis may include applicable site development costs.

If the request is for replacement facilities that are needed as a result of structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain the DSA's approval. The cost/benefit analysis must include a narrative of the structural deficiencies and a description of the repair approach required to perform the minimum work necessary to obtain DSA's approval to mitigate the facility's threat to the health and safety of the students and staff. The analysis must also include a detailed cost estimate for the minimum work necessary described in the narrative. "Soft costs" such as architect fees, testing and inspection may be included in the cost estimate as a separate line item but should not be included in the cost/benefit analysis. The analysis and detailed cost estimate must be signed by the authoring licensed design professional. The OPSC requires the district to submit the DSA's concurrence with the report.

If the total cost to mitigate the health or safety problem and remain in the facility exceeds 50 percent of the Current Replacement Cost of the facility, it can be considered for abandonment and replacement. However, if the cost to remain in the facility is less than 50 percent of the Current Replacement Cost, the district may qualify for Rehabilitation. A qualifying Replacement project will receive 50 percent of the eligible cost. A Rehabilitation project will receive 60 percent of eligible costs. For more information, refer to Chapter 9, Modernization Funding.

Facilities Lost or Destroyed as a Result of a Disaster

A district may apply for the replacement of school facilities that were lost or destroyed as a result of a disaster, such as fire, flood or earthquake, for the following facility types:

- ▶ Classroom or related facility
- ▶ Library/media center
- ▶ Multipurpose room
- ▶ School administration
- ▶ Gymnasium
- ▶ Toilet

Qualifying facilities must be required to ensure the health and safety of the pupils and must no longer be useable for school purposes as recommended by the California Department of Education and approved by the SAB. The district is also required to demonstrate satisfactorily to the State Allocation Board (SAB) that the facility was uninsurable or the cost of insurance was prohibitive.

Documentation. Supporting documentation for facility hardship requests for the replacement of lost or destroyed facilities would include the following:

- ▶ Photos and written verification from the appropriate expert that documents the loss or the extent of damage to the school facility.
- ▶ Copy of the district's insurance policy that documents the level and type of coverage provided.
- ▶ Written verification from the district's insurance carrier that documents the amount of funds that the district has and/or will recover as a result of the disaster.
- ▶ If the facility is damaged, as opposed to entirely destroyed, the district must submit a licensed structural engineer's report, as outlined in this chapter, illustrating the extent of the damage and that the facility poses an immediate threat to the health and safety of the students and staff. The district would also be required to submit a cost/benefit analysis, as outlined in this chapter, signed by the authoring licensed design professional. The OPSC requires the district submit the DSA's concurrence with the report.

APPLICATION AND APPROVAL PROCESS

In addition to the documentation supporting the health and safety issue and the cost/benefit analysis, as applicable, all facility hardship requests must also include the following:

- ▶ An Application for Funding (Form SAB 50-04) completed as applicable to make the initial request for conceptual approval by the State Allocation Board for the specific facility hardship type.
- ▶ A School District Appeal Request (Form SAB 189) that summarizes the district's request for a facility hardship including how the condition presents an imminent threat to the health and safety of the students and staff.
- ▶ A plot diagram that indicates the overall site layout, the facilities designation of the buildings and square footage. The diagram should indicate the specific structures at the school site for which the facility hardship request is being submitted.

After the analysis of the report(s) and review of the cost by the OPSC, an item will be prepared for presentation to the SAB for consideration of conceptual approval. If the SAB approves the district's request for new or replacement facilities, the district is eligible for funding as a new construction project. The district can then proceed with hiring an architect in order to complete plans, obtain DSA approval, and apply for funding grants. A district that receives a conceptual approval has 18 months, or 24 months if a new replacement school site is required, to submit a complete funding application (including DSA plan approvals, cost estimates, etc.). Funding for a Facility Hardship is subject to the availability of funds.

INTERIM HOUSING

To remove students from unsafe situations as soon as possible, districts eligible for facility hardship are encouraged to apply for relocatable classrooms under the OPSC's State Relocatable Classroom Program. In some instances, the SAB may consider reduced rental payments during the life of the emergency situation. For additional information regarding this program, please access the OPSC Web site at www.dgs.opsc.ca.gov for the State Relocatable Handbook and to obtain names of contacts that can assist you.

References:

- Regulation Section 1859.76, "Additional Grant for Site Development Costs."
- Regulation section 1859.82, "Facility Hardship Grant."
- Regulation Section 1859.83, "Excessive Cost Hardship Grant."

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Chapter 12 Program Accountability

In this chapter...

- ▶ Introduction
- ▶ Progress Report
- ▶ Expenditure Report
- ▶ Expenditure Audit

INTRODUCTION

The School Facility Program (SFP) has significantly increased program flexibility and responsibility at the local level, while reducing the State's oversight role. In general, the State's fiscal concerns are limited to verifying that the expenditures and certifications of program requirements made by the district for the project comply with the law, that the district followed applicable State requirements pertaining to construction and to verify that the project progresses in a timely manner as specified in statute. To assist with this oversight, a district is required to submit expenditure reports and evidence of progress during the construction of the project. On a project that requires less than a year to complete, only an expenditure report is required.

PROGRESS REPORT

The SFP requires that an approved project be constructed within certain time frames. To ensure that this happens, evidence of progress is generally due after funds are released to the district for the project¹. The specific evidence required and the timeframe for submitting such evidence depends on the type of funding received. The possible types of funding include Separate Design (Financial Hardship), Separate Site (Financial Hardship), Separate Site (Environmental Hardship), and/or Adjusted Grant. The table below defines the specific criteria for meeting the substantial progress requirement and indicates the filing time requirements based on the type of funding received.

▶ Substantial Progress Reports

Funding Received	Due Date for Submitting Evidence of Progress	Evidence of Progress Required
Separate Design (Financial Hardship project only)	18 months from Fund Release	<p><i>One of the following:</i></p> <ul style="list-style-type: none"> • Submittal of a complete Adjusted Grant funding application package to the OPSC. • Submittal of a district certification that complete plans and specifications have been submitted to the Division of the State Architect (DSA). • Submittal of a complete Separate Site funding application package to the OPSC. <p><i>Or:</i></p> <ul style="list-style-type: none"> • Submittal of a narrative of evidence, satisfactory to the SAB, detailing why complete plans have not been submitted to the DSA.

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¹ In cases where separate site environmental hardship funds are involved, the due date is based on the apportionment date instead of the fund release date.

► Substantial Progress Reports...

Funding Received	Due Date for Submitting Evidence of Progress	Evidence of Progress Required
Separate Site (Financial Hardship)	18 months from Fund Release*	<p data-bbox="836 451 1228 507"><i>Submittal of a progress report certifying that all of the following have been achieved:</i></p> <ul data-bbox="836 513 1260 756" style="list-style-type: none"> <li data-bbox="836 513 1077 538">• Obtain the final site appraisal. <li data-bbox="836 544 1228 600">• Complete all California Environmental Quality Act (CEQA) requirements. <li data-bbox="836 607 1260 663">• Obtain final California Department of Education (CDE) site approval. <li data-bbox="836 669 1260 756">• Obtain final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site. <p data-bbox="836 762 861 787"><i>Or:</i></p> <ul data-bbox="836 793 1268 880" style="list-style-type: none"> <li data-bbox="836 793 1268 880">• Submittal of a narrative of evidence, satisfactory to the SAB, detailing the circumstances (beyond district control) which precluded progress from being achieved.
Separate Site (Environmental Hardship)	12 months from the apportionment date or anniversary of conversion from Separate Site Financial Hardship, and on each subsequent anniversary if necessary.	<p data-bbox="836 901 1085 926"><i>Submittal of one of the following:</i></p> <ul data-bbox="836 932 1268 1081" style="list-style-type: none"> <li data-bbox="836 932 1268 988">• A progress report satisfying the same criteria set forth for Separate Site (Financial Hardship) funding. <li data-bbox="836 994 1268 1050">• A request for an extension (which is supported by written letters of concurrence from the DTSC and the CDE). <li data-bbox="836 1056 1268 1081">• Other reasonable evidence of effort the district has made.
Adjusted Grant	18 months from Fund Release†	<p data-bbox="836 1102 1268 1127"><i>Submittal of a progress report certifying one of the following:</i></p> <ul data-bbox="836 1133 1268 1284" style="list-style-type: none"> <li data-bbox="836 1133 1268 1189">• 75 percent of site development work necessary prior to construction is complete. <li data-bbox="836 1195 1212 1251">• 90 percent of construction activities have been contracted for. <li data-bbox="836 1257 1236 1284">• 50 percent of construction activities are complete. <p data-bbox="836 1290 861 1315"><i>Or:</i></p> <ul data-bbox="836 1321 1268 1408" style="list-style-type: none"> <li data-bbox="836 1321 1268 1408">• Submittal of a narrative of evidence, satisfactory to the SAB, detailing the circumstances (beyond district control) which precluded progress from being achieved.

* If toxic substance issues are delaying site progress, the district may convert the site apportionment to an Environmental Hardship apportionment. Environmental hardship projects may request annual extensions with appropriate substantiation.

† The progress-reporting requirement for Adjusted Grant funding can be suspended if one of the following occur before the reporting deadline:

- The district submits a Notice of Completion for the project. If more than one construction contractor is involved in the project, a Notice of Completion is required for each construction contract.
- The district submits an Expenditure Report (Form SAB 50-06), which shows that the project is substantially close to 100 percent completion.

Substantial Progress Audit

Upon receipt of the substantial progress report, the OPSC will analyze the information and will notify the district within 60 days if it intends to recommend to the SAB that the evidence submitted does not demonstrate substantial progress. If the OPSC does not respond to the district within 60 days of submittal, the OPSC concurs with the district that substantial progress has been made.

EXPENDITURE REPORT

Throughout the construction period of a project, the district will file one or more expenditure reports. The first expenditure report is due one year after the first fund release or upon completion of the project, whichever occurs first. Additional expenditure reports are due annually from the date the first report is due until the project is complete. A project is considered complete when either of the following occur:

- ▶ The notice of completion for the project has been filed.
- ▶ Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

Preparing the Expenditure Report

A district submits a record of project expenditures by using the Expenditure Report (Form SAB 50-06). This form allows the district to report all expenditures from district and State funds in summary form. To support the Expenditure Report, the Office of Public School Construction (OPSC) has developed an Expenditure Worksheet which is available on the OPSC Web site at www.opsc.dgs.ca.gov. The district is encouraged to use this worksheet to gather and record the expenditure detail and to accompany the Form SAB 50-06.

EXPENDITURE AUDIT

Within two years of receipt of the final expenditure report from the district, the OPSC must initiate an audit of the expenditures. The purpose of the expenditure audit is to assure that project expenditures have been made in accordance with the laws and regulations that govern the SFP. If the district is not notified by the OPSC within that time frame that an audit will be made, the expenditures submitted by the district and certifications made on the Forms SAB 50-04 and SAB 50-05 will be accepted. If the OPSC has notified the district that an audit will be made, the OPSC must complete the audit within six months, unless additional documentation requested from the district has not been received.

Eligible Expenditures

The following table lists those expenditures that are typically eligible costs under the SFP:

▶ Eligible Expenditures		
Expenditure	New Construction	Modernization
Acquisition and Installation of portable classrooms	⊙	
Acquisition and conversion of an existing government or privately-owned building, or privately-financed school building	⊙	
Construction	⊙	⊙
Construction management	⊙	⊙
Demolition	⊙	⊙
Design	⊙	⊙
Engineering	⊙	⊙
Fire safety improvement		⊙
Furniture and Equipment (including telecommunication equipment to increase school security)	⊙	⊙

continued on following page

▶ Eligible Expenditures ...		
Expenditure	New Construction	Modernization
Identification, assessment, or abatement of hazardous asbestos		⊙
Inspection	⊙	⊙
Landscaping	⊙	
Necessary utility costs	⊙	⊙
Plan checking	⊙	⊙
Playground safety improvements		⊙
Purchase and installation of air-conditioning equipment and insulation materials and related costs		⊙
Replacement of portable classrooms		⊙
Seismic safety improvements		⊙
Site acquisition	⊙	
Site development	⊙	⊙*
Testing	⊙	⊙
Upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology		⊙
Utility connection and other fees	⊙	⊙

* For 50 years or older modernization projects utilities work only, for permanent facilities, per Regulation Section 1859.78.7.

Site Closeout Reviews

Based on recent changes in the law, districts that receive funding for "clean sites" will be audited based on Regulation Section 1859.74, in which the district may be entitled to 50 percent of the lesser of the appraised or actual purchase price of property. Districts that purchase sites that require hazardous waste removal substantiated by a Response Action, will be eligible to receive 50 percent of one and one-half times the value of the site to monitor and clean the site. Additional costs beyond this new cap will be subject to provisions contained in section 1879.74.2 and following.

Ineligible Expenditures

District representative should be aware that some expenditures are not permitted under the SFP. If the district representative is uncertain about a specific expenditure, the OPSC audit staff can assist the district accordingly.

The following is a list of the expenditures that may potentially be disallowed during an SFP final expenditure audit:

- ▶ Administrative and overhead costs.
- ▶ District force account labor that does not comply with the Public Contract Code.
- ▶ Modernization expenditures for:
 - New building area that does not replace building area of "like kind."
 - New site development that is not for replacement, repair or additions to existing site development work.
 - Removal of hazardous waste from a modernization project that exceeds ten percent of the total modernization apportionment.
 - Costs on leased facilities unless owned by another district or county superintendent.
 - Acquisition and development of real estate.
 - Demolition costs not attributable to replacement of "like kind" building area.

- ▶ Any expenditure that cannot be reasonably attributed to a project.
- ▶ Relocation costs that do not conform to Title 25, California Code of Regulations, Section 6000, et. seq. (see Regulation Section 1859.74(a)(1)).
- ▶ Expenditures associated with a “use of grant” (see Regulations Section 1859.77.2) State Allocation Board (SAB) approval that were not constructed as specified in the original approval.
- ▶ Campus supervision that goes beyond construction site security.
- ▶ Expenditures on a financial hardship project that exceed the district’s grant amount plus interest for the project.
- ▶ Interim housing expenditures associated with a new construction project.
- ▶ Relocation costs such as goodwill that is not court ordered, and the difference between the salvage value and new value of furniture and equipment costs when the business vendor retains the furniture and equipment.
- ▶ Legal costs not directly attributable to the project.
- ▶ Expenditures associated with facility hardship SAB approvals that were not constructed as originally approved (see Regulation Section 1859.82).

References:

Section 17074.25 and Section 1859.79.2 for modernization projects (Expenditures).
As provided in Sections 1859.74, 1859.74.1 and 1859.75 (Site Acquisition).

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Chapter 13

Additional SFP Requirements and Features

In this chapter. . .

- ▶ Introduction
- ▶ General Information
- ▶ Project Savings
- ▶ Restricted Maintenance Account

INTRODUCTION

There are a number of topics related to the School Facility Program (SFP) that do not fit neatly into one of the other program chapters. These topics are gathered here for easy reference. They may apply to new construction, critically overcrowded school facilities, joint use, and modernization or only to one program, as noted in the discussion.

GENERAL INFORMATION

Class B Index

The grant amounts in the SFP are adjusted each January based on the change in the Class B Index. This index is developed using cost data published by the Marshall Swift Company relating to buildings of primarily steel and concrete construction.

SAB Appeal Process

In some cases a school district's application may appear to be outside the standards of the SFP and the Office of Public School Construction (OPSC) is unable to recommend approval. When this occurs, a district can appeal directly to the State Allocation Board (SAB) using a School District Appeal Request (Form SAB 189). On this form, the district states why the SAB should grant the district's appeal based on law, regulation, or SAB policy.

Prior to the item being scheduled for SAB consideration, the OPSC will review and analyze the appeal as to legal issues, program impact, funding ramifications, and public policy considerations. Based on the evidence submitted by the district, the OPSC may support the district's request, deny the request, or provide alternative recommendations to the SAB. In any case, all of the recommendations made by OPSC to the SAB will be based on supporting laws, regulations, or legal opinions. Districts generally have a representative available at the SAB meeting to provide testimony, if needed. This process applies to all applications.

PROJECT SAVINGS

Districts that do not receive financial hardship assistance may retain project savings achieved by utilizing cost saving measures and efficient project management. A district may utilize these project "savings" for other high priority facility capital outlay purposes in the district.

Savings for Non-Financial Hardship Districts

Districts may expend the savings for any of its high priority capital facility needs. A district may also use the savings as a part of the match for other SFP projects, with the only requirement being that the district's share of the savings must be used towards a project of like kind. For example, the State's share of the savings on a new construc-

tion project may only be used to match another new construction project, and the State's share of the savings from a modernization project may only be used to match another modernization project.

Savings for Financial Hardship Districts

Any savings from a project that received financial hardship assistance must be used to reduce the financial hardship grant of that project or any other financial hardship project within the district. If the district has no other financial hardship project, the savings must be remitted to the State.

RESTRICTED MAINTENANCE ACCOUNT

The SFP requires participating school districts to assure that a State funded project is kept in good repair. To meet this requirement, school districts must establish and maintain a restricted account within the district's general fund for ongoing and major maintenance of school buildings. The district must deposit no less than 3 percent of the district's general fund budget each fiscal year for a period of 20 years after receiving funds through the SFP.

Unified districts with an average daily attendance (ADA) of 1,200 or less, elementary districts with ADA of 900 or less and high school districts with an ADA of 300 or less may be permitted to deposit less than the maximum 3 percent by certifying that the district can reasonably maintain its facilities with a lesser dollar level maintenance account.

The school district must annually certify that it has publicly approved an ongoing and major maintenance plan that outlines the use of the funds deposited into the restricted account.

References:

- Education Code Section 17070.75(a)
- Regulation 1859.91, "Implementation of Priority Points Due to Insufficient State Funds."
- Regulation 1859.92, "Priority Points for New Construction Projects."

Appendix 1 State Agency Contact Information

Department of General Services – Office of Public School Construction (OPSC)

Ms. Luisa M. Park, Executive Officer
 1130 K Street, Suite 400
 Sacramento, CA 95814
 916.445.3377 Tel 916.324.0623 Fax
www.opsc.dgs.ca.gov

In addition to its main headquarters in Sacramento, the OPSC has four satellite offices to allow districts easier access to staff.

Colton
 San Bernardino County Superintendent of Schools
 North 1040 East Cooley Drive
 Colton, CA 92324
 909.433.4861 Tel 909.433.4862 Fax

Redding
 Shasta County Office of Education
 1644 Magnolia Avenue
 Redding, CA 96001
 530.225.0212 Tel 530.225.0243 Fax

Fresno
 Fresno County Office of Education
 2030 Fresno Street, Room 210T
 Fresno, CA 93721
 559.497.3916 Tel 559.497.3917 Fax

San Diego
 San Diego County Office of Education
 6401 Linda Vista Road, Room 406
 San Diego, CA 92111
 858.292.3598 Tel 858.614.0365 Fax

Department of General Services – Division of the State Architect (DSA)

Mr. Stephan Castellanos, FAIA, State Architect
 1130 K Street, Suite 101
 Sacramento, CA 95814
 916.445.8100 Tel 916.445.3521 Fax
www.dsa.dgs.ca.gov

DSA Regional Office – San Francisco Bay Area
 1515 Clay Street, Suite 1201
 Oakland, CA 94612
 510.622.3101 Tel

DSA Regional Office – Los Angeles Basin
 311 South Spring Street, Suite 1301
 Los Angeles, CA 90013
 213.987.3995 Tel

DSA Regional Office – Sacramento
 1225 R Street
 Sacramento, CA 95814
 916.445.8730 Tel

DSA Regional Office – San Diego
 16680 West Bernardo Street
 San Diego, CA 92127
 858.674.5400 Tel

California Department of Education – School Facility Planning Division

Mr. Duwayne Brooks, Director
660 J Street, 3rd Floor, Suite 350
Sacramento, CA 95814
916.322.2470 Tel 916.322.3954 Fax
www.cde.ca.gov/facilities/

Department of Toxic Substances Control

Mr. Edwin F. Lowry, Director
1001 I Street
Sacramento, CA 95814
916.324.1826 Tel
www.dtsc.ca.gov

Department of Industrial Relations

Mr. Chuck Cake, Director
770 L Street, Suite 1160
Sacramento, CA 95814
415.703.4810 Tel
www.dir.ca.gov

Appendix 2 Potential State Agency Involvement

INTRODUCTION

This listing is only a sample of potential State agency involvement. There are many other agencies throughout the state that may become involved in the school construction process.

► Potential State Agency Involvement List

Agency Name/Contact Information	Role
California Energy Commission www.energy.ca.gov ▶ Bright School Program 916.654.4053	Helps schools identify ways to reduce energy use in school facilities.
Department of General Services Office of Small Business Certification and Resources www.pd.dgs.ca.gov/smbus ▶ Disabled Veteran Business Enterprise Participation Program 916.375.4940	Provides a listing of certified DVBE firms. Note: The DVBE Program administered by the Department of General Services does not apply to school district's contracts.
Department of Health Services www.dhs.ca.gov ▶ California Indoor Air Quality Program 510.540.2476	Provides assistance and training to school districts that have air quality problems.
Department of Transportation www.dot.ca.gov ▶ District Transportation Planning Division 916.327.3859	Determines whether a school is likely to have an impact on the state transportation system or any of its facilities.
Office of Emergency Services Hazard Mitigation www.oes.ca.gov ▶ Public Assistance 916.845.8200	Provides funds for school construction projects that reduce or eliminate future damage from disasters (seismic retrofit, modernization, flood control). Administer both federal and state funding for repair and replacement of eligible facilities damaged by a disaster event.
Office of Planning and Research www.opr.ca.gov ▶ State Clearinghouse 916.322.2318 state.clearinghouse@opr.ca.gov	Distributes state required environmental documentation to various governmental agencies for review and comment as part of the CEQA process.

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Appendix 3 School Facility Program Required Forms

The following forms are used in conjunction with the School Facility Program. It is the user's responsibility to check the OPSC's Web site (SAB Forms) for the most current version of the form as older versions of the form may not be accepted.

- ▶ Enrollment Certification/Projection (Form SAB 50-01)
- ▶ Existing School Building Capacity (Form SAB 50-02)
- ▶ Eligibility Determination (Form SAB 50-03)
- ▶ Application for Funding (Form SAB 50-04)
- ▶ Fund Release Authorization (Form SAB 50-05)
- ▶ Expenditure Report (Form SAB 50-06)
- ▶ Application for Joint-Use Funding (Form SAB 50-07)
- ▶ Application for Preliminary Apportionment (Form SAB 50-08)

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Appendix 4 Services Matrix

INTRODUCTION

During the planning, design, and construction of a school facilities project, many individuals and firms come together to contribute to the project in specific ways. Unless responsibility is assigned by law, the decision about who should perform a given task generally rests with the school district as owner. A lack of clarity regarding responsibilities may lead to a situation where a task is assigned to more than one individual or firm, creating a duplication of effort which can be wasteful and counterproductive.

The Services Matrix is the work of a small group formed by the Joint Committee on School Facilities. District representatives may wish to consult the matrix to determine all of the responsibilities to be assigned on a project and to avoid duplication of effort.

The Services Matrix attempts to accomplish four principle objectives:

- ▶ Identify those tasks in a typical school construction or renovation project which must be performed by specific team members.
- ▶ Identify the tasks which cannot be performed by certain team members.
- ▶ Identify tasks which may be assigned to any of several team members at the owner's discretion.
- ▶ Provide the owner with a tool for use in making decisions about task assignments and preparing contracts for services.

The Services Matrix addresses a project which has a construction manager as one team member. In projects where this is not the case, the tasks assigned to the construction manager could typically be performed by either the architect, Inspector of Record, or the owner.

▶ Services Matrix: Pre-Design Phase

Task	Responsible Party					
	Owner	Architect/ Engineer	Construction Management/ Multi-Prime	Inspector of Record	Division of the State Architect	Contractor
Design professional selection	●	✘	▶	✘	✘	✘
Master project schedule (concept thru occupancy) and schedule monitoring	●	▶	▶	✘	✘	✘
Complete district specifications and standards	●	▶	▶	✘	✘	✘
Existing record drawings	●	▶	▶	✘	✘	✘
Site surveys	●	▶	▶	✘	✘	✘
Soils investigation	●	▶	▶	✘	✘	✘
Hazard materials data, EIR's, etc.	●	▶	▶	✘	✘	✘
Appraisals	●	▶	▶	✘	✘	✘
Detailed written program	●	▶	▶	✘	✘	✘

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Matrix Key

- ✘ Party cannot be responsible
- ▶ Party may be assigned responsibility (Owner's choice)
- Party is typically responsible
- Party must be responsible, task not assignable to others

► Services Matrix: Pre-Design Phase...

Task	Responsible Party					
	Owner	Architect/ Engineer	Construction Management/ Multi-Prime	Inspector of Record	Division of the State Architect	Contractor
Base sheets for "As built" (existing buildings only)	▶	●	▶	✕	✕	✕
Site investigations to gather data on existing conditions	▶	●	▶	✕	✕	✕
Data collection/meetings with facilities staff	▶	●	▶	✕	✕	✕
Data collection/meetings with design committee	▶	●	▶	✕	✕	✕
Priorities for any additional funding	●	▶	▶	✕	✕	✕
Project budgets/cost analysis	●	▶	▶	✕	✕	✕
Preparation of OPSC applications	●	▶	▶	✕	✕	✕
Investigation of DSA requirements/status	▶	●	▶	✕	✕	✕
Investigation of SFM requirements/status	▶	●	▶	✕	✕	✕
Investigation of California Department of Education requirements	▶	●	▶	✕	✕	✕
Investigation of applicable requirements of local agencies having jurisdiction (i.e., health, fire, public works, utilities, etc.)	▶	●	▶	✕	✕	✕
Develop Information Management Plan	●	▶	▶	✕	✕	✕
Develop Cost Management Plan	●	▶	▶	✕	✕	✕

Matrix Key

- ✕ Party cannot be responsible
- Party is typically responsible

- ▶ Party may be assigned responsibility (Owner's choice)
- Party must be responsible, task not assignable to others

► Services Matrix: Design Phase

Task	Responsible Party					
	Owner	Architect/ Engineer	Construction Management/ Multi-Prime	Inspector of Record	Division of the State Architect	Contractor
Schematic Design Drawings	✗	■	✗	✗	✗	✗
Design Development Drawings	✗	■	✗	✗	✗	✗
Cost Estimating and Budget Tracking	▷	▷	●	✗	✗	✗
Value Engineering	▷	▷	●	✗	✗	✗
Preparation of Construction Document production schedule	▷	●	▷	✗	✗	✗
Master Project Schedule monitoring/reporting	▷	▷	●	✗	✗	✗
Preparation of final Construction Documents (drawings and technical specifications)	✗	■	✗	✗	✗	✗
Preparation of "boiler plate" Specifications (invitation to Bid, Proposals, General Conditions, Supplemental Special Conditions)	▷	●	▷	✗	✗	✗
Preparation of Alternate (Cost Adjustments)	✗	■	✗	✗	✗	✗
Quality Control and coordination of Construction Documents	✗	■	✗	✗	✗	✗
Preparation of OPSC application documents	●	▷	▷	✗	✗	✗
DSA Plan Review submittals and approvals	✗	■	✗	✗	✗	✗
Local Agency Plan Review submittal and approvals	✗	■	✗	✗	✗	✗
Independent Coordination and Constructibility Plan Review	▷	▷	●	▷	✗	✗
Maintenance and Operations Staff Plan Review	■	✗	✗	✗	✗	✗
Facilities Staff Plan Review	■	✗	✗	✗	✗	✗
Design Committee Plan Review	■	✗	✗	✗	✗	✗
Packaging of Documents for bidding	✗	✗	■	✗	✗	✗
OPSC Plan Review submittals and approvals	▷	●	▷	▷	✗	✗
California Department of Education Plan Review and approvals	▷	●	▷	▷	✗	✗

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Matrix Key

- ✗ Party cannot be responsible
- Party is typically responsible

- ▷ Party may be assigned responsibility (Owner's choice)
- Party must be responsible, task not assignable to others

► Services Matrix: Design Phase...

Task	Responsible Party					
	Owner	Architect/ Engineer	Construction Management/ Multi-Prime	Inspector of Record	Division of the State Architect	Contractor
Coordinate results of various reviews, resolve conflicting comments	✘	■	✘	✘	✘	✘
Verify that all plan review issues are resolved	✘	■	✘	✘	✘	✘
Cash Flow projection reports	▷	▷	●	✘	✘	✘
Tracking OPSC funding status	●	▷	▷	✘	✘	✘
Construction Market Study	▷	▷	●	✘	✘	✘
Develop Contractor Work Scopes (multi-prime only)	✘	✘	■	✘	✘	✘
Prepare Cost Estimates by Work Scope (multi-prime only)	✘	✘	■	✘	✘	✘

Matrix Key

- ✘ Party cannot be responsible
- Party is typically responsible

- ▷ Party may be assigned responsibility (Owner's choice)
- Party must be responsible, task not assignable to others

► **Services Matrix: Bid and Award Phase**

Task	Responsible Party					
	Owner	Architect/ Engineer	Construction Management/ Multi-Prime	Inspector of Record	Division of the State Architect	Contractor
Reproduction and distribution of Bid Documents	▶	●	▶	✕	✕	✕
Advertising and Legal notices	●	▶	▶	✕	✕	✕
Contractor marketing/bidder's interest campaign	✕	▶	●	✕	✕	✕
Contractor pre-qualification	●	▶	▶	✕	✕	✕
Pre-Bid meeting (Single Contact)	✕	●	▶	✕	✕	✕
Pre-Bid meeting (Multi-Prime CM Contract)	✕	▶	●	✕	✕	✕
Answer bidder's questions/interpret bid documents	✕	■	✕	✕	✕	✕
Addenda	✕	■	✕	✕	✕	✕
Bid opening	●	▶	▶	✕	✕	✕
Recommendation for award to Owner	✕	●	▶	✕	✕	✕
Preparation of OPSC post-bid documents	▶	●	✕	✕	✕	✕
Draft and issue contract	●	▶	▶	✕	✕	✕
Review Contractor insurance and bonds	●	▶	▶	✕	✕	✕
Issue Notice to Proceed	●	▶	▶	✕	✕	✕
Prepare reports to District Bond Committee	●	▶	▶	✕	✕	✕
Public Relations activities/presentations	●	▶	▶	✕	✕	✕
Pre-construction meeting	▶	▶	●	▶	✕	✕
Contract Administration and coordination of multiple trade contractors (Multi-Prime CM only)	✕	✕	■	✕	✕	✕
Continuous On-Site Supervision for Owner	✕	✕	■	✕	✕	✕
Continuous On-Site Supervision for Contractor	✕	✕	✕	✕	✕	■
Construction Schedule	✕	✕	✕	✕	✕	■
Monitor On-Site Safety Program	✕	✕	●	✕	✕	▶
Off-site construction permit acquisition	✕	✕	✕	✕	✕	■
Evaluations and approval of substitution requests	✕	■	✕	✕	✕	✕
Cash Flow projection reports	✕	▶	●	✕	✕	✕

continued on following page...

Matrix Key

- ✕ Party cannot be responsible
- Party is typically responsible

- ▶ Party may be assigned responsibility (Owner's choice)
- Party must be responsible, task not assignable to others

► Services Matrix: Bid and Award Phase...

Task	Responsible Party					
	Owner	Architect/ Engineer	Construction Management/ Multi-Prime	Inspector of Record	Division of the State Architect	Contractor
Submittal/Shop Drawing Schedule	✗	▷	●	✗	✗	▷
Review and approval of Submittals/Shop Drawings	✗	■	✗	✗	✗	✗
Answering Requests for Information (RFI's)	✗	■	✗	✗	✗	✗
Tracking of RFI's	✗	▷	●	▷	✗	▷
Evaluation of Change Order requests – costs and/or time extensions	▷	▷	●	▷	✗	✗
Approval of Change Orders	✗	■	✗	✗	✗	✗
Tracking status of all Change Order requests	✗	▷	●	▷	✗	✗
Review/Observation of overall quality of Construction work	✗	●	▷	▷	▷	✗
Review/Observation of technical aspects of compliance with construction documents	✗	●	✗	▷	▷	✗
Review and Approve Contractor's solutions/recommendations for correction of observed non-conforming work	✗	●	✗	▷	▷	✗
Review of Contractor's Schedule of Values and Pay Requests	▷	▷	●	▷	✗	✗
Approval of progress payment requests	▷	●	✗	▷	✗	✗
Site/staff interface and coordination (at existing facilities)	▷	▷	●	▷	✗	▷
Coordinate interim housing (at existing facilities)	▷	▷	●	▷	✗	▷
Hazardous material inspection (at existing facilities)	■	✗	✗	✗	✗	✗
Means, methods and materials of construction	✗	✗	✗	✗	✗	■
Construction progress/site meetings	▷	▷	●	▷	✗	▷
Coordination of technical inspections and testing	✗	✗	✗	●	▷	▷
DSA required progress reports	▷	●	✗	▷	✗	▷
Coordination with DSA and SFM inspectors	✗	✗	✗	●	▷	✗
Resolution of Owner/Contractor disputes	●	▷	▷	▷	✗	✗

continued on following page

Matrix Key

- ✗ Party cannot be responsible
- ▷ Party may be assigned responsibility (Owner's choice)
- Party is typically responsible
- Party must be responsible, task not assignable to other.

► Services Matrix: Bid and Award Phase...

Task	Responsible Party					
	Owner	Architect/ Engineer	Construction Management/ Multi-Prime	Inspector of Record	Division of the State Architect	Contractor
Scheduling of start-up, testing, adjusting and balancing of equipment	✘	✘	⊙	▷	✘	✘
Cleanup	✘	✘	✘	✘	✘	⊠
Preparation of Punchlist	▷	⊙	▷	▷	✘	✘
Punchlist work completion	✘	✘	✘	✘	✘	⊠
Punchlist of completed work	▷	⊙	▷	▷	▷	✘
DSA close-out documents	▷	⊙	▷	▷	▷	▷
OPSC close-out documents	⊙	▷	▷	✘	✘	✘
Documentation of "as built" changes to drawings	✘	▷	▷	⊙	✘	▷
Preparation on final "as built" drawings	✘	▷	▷	▷	✘	⊙
Occupancy/Fire Marshal	▷	▷	▷	⊙	✘	▷
Warranty, operation and maintenance certificates, documentations and materials	▷	⊙	▷	✘	✘	✘
Schedule training sessions for District Maintenance staff	▷	▷	⊙	✘	✘	✘
Warranty inspection and report (prior to 12 month expiration)	⊙	▷	▷	✘	✘	✘

Matrix Key

- ✘ Party cannot be responsible
- ⊙ Party is typically responsible

- ▷ Party may be assigned responsibility (Owner's choice)
- ⊠ Party must be responsible, task not assignable to others

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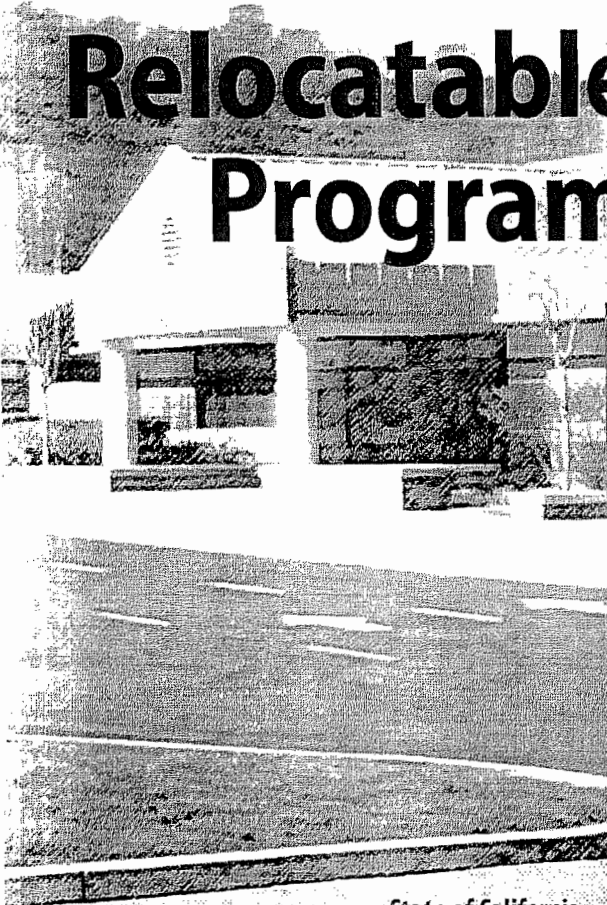
Appendix 5 Summary of Bond and Deferred Maintenance Allocations

The programs, funding, and approvals over the period since 1988 are shown in the following table:

▶ Summary of Bond Allocations (Amounts are in Millions of Dollars)										
	Jun 1988	Nov 1988	Jun 1990	Nov 1990	Jun 1992	Nov 1992	Mar 1996	Nov 1998	Nov 2002	Total
New Construction	\$ 585.0	\$ 682.0	\$ 630.0	\$ 631.0	\$1,403.0	\$ 678.0	\$1,127.8	\$2,900.0	\$ 6,350.0*	\$14,986.8
Modernization	\$ 136.0	\$ 93.0	\$ 123.0	\$ 105.0	\$ 446.0	\$ 192.0	\$ 705.0	\$2,100.0	\$ 3,300.0	\$ 7,200.0
Hardship	—	—	—	—	—	—	—	\$1,000.0	—	\$ 1,000.0
Class-size Reduction	—	—	—	—	—	—	—	\$ 700.0	—	\$ 700.0
Critically Overcrowded Schools	—	—	—	—	—	—	—	—	\$ 1,700.0	\$ 1,700.0
Joint Use	—	—	—	—	—	—	—	—	\$ 50.0	\$ 50.0
Ed-Tech Counties	—	—	—	—	—	—	\$ 45.0	—	—	\$ 45.0
Air-Conditioning	\$ 26.0	—	\$ 33.0	\$ 44.0	\$ 49.0	\$ 12.0	\$ 26.8	—	—	\$ 190.8
State Relocatables	\$ 53.0	—	\$ 14.0	\$ 20.0	—	—	\$ 28.0	—	—	\$ 115.0
Asbestos	—	\$ 25.0	—	—	\$ 2.0	\$ 7.0	—	—	—	\$ 34.0
Northridge Earthquake	—	—	—	—	—	\$ 11.0	\$ 13.4	—	—	\$ 24.4
60/40	—	—	—	—	—	—	\$ 40.0	—	—	\$ 40.0
Roofs	—	—	—	—	—	—	\$ 30.0	—	—	\$ 30.0
Joint Use (EC Section 17052)	—	—	—	—	—	—	\$ 25.0	—	—	\$ 25.0
Child Care	—	—	—	—	—	—	\$ 5.0	—	—	\$ 5.0
Contingency Reserve	—	—	—	—	—	—	\$ 19.0	—	—	\$ 19.0
Total Bond Funds	\$ 800.0	\$ 800.0	\$ 800.0	\$ 800.0	\$1,900.0	\$900.0	\$2,065.0	\$6,700.0	\$11,400.0	\$26,165.0

* \$100 million for charter schools

▶ Summary of Deferred Maintenance Allocations (Amounts are in Millions of Dollars)												
	92-93	93-94	94-95	95-96	96-97	97-98	98-99	99-00	00-01	01-02	02-03	Total
Excess Repayments	\$ 53.6	\$ 47.5	\$ 44.6	\$ 40.5	\$ 40.7	\$ 35.0	\$ 29.3	\$ 25.7	\$ 20.7	\$ 18.1	\$ 15.6	\$ 371.3
Other Legislation	—	—	\$ 24.7	\$ 50.0	—	\$ 100.0	\$ 137.6	\$ 143.7	\$ 176.1	\$ 176.3	\$ 208.0	\$1,016.4
Total	\$ 53.6	\$ 47.5	\$ 69.3	\$ 90.5	\$ 40.7	\$ 135.0	\$ 166.9	\$ 169.4	\$ 196.8	\$ 194.4	\$ 223.6	\$1,387.7



State Relocatable Classroom Program Handbook

January 2003

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Preface

About this Handbook This handbook contains topics relating to the State Relocatable Classroom Program. These topics help organize the program's process and make it easier to locate specific information. The first topic is an "Overview" of the key points of the program. It also includes a description of the administering body of the law. The remaining topics follow the program's application process.

About the Format Information is presented topically, eliminating the use of numbered section references. First, locate the topic you want using the Table of Contents. Then, you can quickly locate specific information on a particular topic by scanning key labels provided in the left margins.

The symbols used throughout this handbook have the following meanings:

- Bullets indicate lists of items or topics.
 - Examples and exhibits generally follow topic discussions.
-

Updates To obtain the latest version of this handbook you may download it from the Internet (at no cost):

- <http://www.opsc.dgs.ca.gov>
-

STATE RELOCATABLE CLASSROOM PROGRAM HANDBOOK

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Overview

Introduction The State Relocatable Classroom Program provides classroom facilities to School Districts and County Superintendents of Schools to house the districts' kindergarten through 12th grade student population. This handbook provides guidelines necessary to prepare an application under the provisions of the State Relocatable Classroom Law, Chapter 14, Part 10, Section 17085. (Previously Chapter 25, Part 10, Section 17785), Barclays California Code of Regulation, Section 1862.50.

Eligibility Criteria/Priority of Placement On April 28, 1999, the State Allocation Board (SAB) revised the current eligibility criteria for funding priority levels to be consistent with the School Facility Program (SFP). The priority levels determine the order in which buildings will be approved for placement. The priority levels for placement are:

Priority Level	Criteria
A	<p>Facility Hardship: eligibility based on the district having a SAB approved Lease-Purchase Program (LLP) hardship project, or a SFP facility hardship project; or,</p> <p>Standard Eligibility: eligibility based on the standard eligibility formula using basic teaching station loading standards "and a one year projection for Average Daily Attendance (ADA) as determined by the <i>Enrollment Certification Projection</i>, Form SAB 50-01 ; or,</p> <p>the district application for State Relocatable Classroom(s) may be based on "the number of teaching stations approved (but not yet constructed) pursuant to the SFP."</p>
B	Eligibility based on unhoused community day pupils.
C	Eligibility based on the district agreeing to hire an additional teacher for the relocatable classroom.
D	Eligibility based on interim housing needs during a modernization project.
E	<p>Eligibility based on:</p> <ul style="list-style-type: none"> • licensed child day care programs; or • recreation and enrichment activity programs for school-age children on a school site.

Time Limit for Delivery The following conditions shall apply to all applications for relocatable classroom(s):

- Districts must submit the completed site and building plans to the Division of State Architect (DSA) within 60 days of receiving the manufacturer's building plans from the OPSC or the building may be reassigned to another district.
- Districts must accept delivery of the relocatable classroom(s) within 60 days after it is deemed available by the OPSC or the building assignment may be reallocated.

California Environmental Quality Act (CEQA) Districts must certify compliance with the California Environmental Quality Act (CEQA) on the *Application to Lease State Relocatable Classroom(s)*, Form SAB 25-2.

Multi-Track Year-Round Education (MTYRE) Districts other than high school districts must certify on the *Application to Lease State Relocatable Classroom(s)*, Form SAB 25-2, that it meets the Multi-Track Year-Round Education (MTYRE) requirement addressing the feasibility of the district to proceed on a MTYRE calendar by the California Department of Education. Specific guidelines and requirements for MTYRE may be obtained from the:

Waiver and Review Committee
 California Department of Education
 School Facilities Planning Division
 P.O. Box 944272
 Sacramento, CA 94244-2720

Tel: 916.327.5462

Application Process

Introduction	To lease relocatable classrooms, the district provides initial information verifying eligibility. In addition, the district must certify that it meets the conditions as outlined on the <i>Application to Lease State Relocatable Classroom(s)</i> (Form SAB 25-2).
Documents Required before SAB Approval	The following documents are required to prepare an application for SAB approval of a relocatable classroom: <ul style="list-style-type: none"> • <i>Enrollment Certification/Projection</i>, Form SAB 50-01 • <i>Eligibility Worksheet</i>, Form SAB 25-1 • <i>Application to Lease State Relocatable Classroom(s)</i>, Form SAB 25-2
Documents Required after SAB Approval	The following documents are required after SAB approval: <ul style="list-style-type: none"> • <i>Site Readiness Certification</i>, Form SAB 25-3 • <i>Certification for Reimbursement</i>, Form SAB 25-4
Placement Process after SAB Approval	When relocatable classrooms are available and the OPSC has a completed application package, an item will be presented to the SAB for approval. After approval of the application, the district: <ul style="list-style-type: none"> • Selects an architect, who performs the following: <ul style="list-style-type: none"> ▶ Develops site plans for DSA approval. ▶ Obtains the manufacturer's building plans. ▶ Submits site and building plans to DSA within 60 days of obtaining manufacturer's building plans. ▶ Delivers a copy of the DSA approved site and building plans to the OPSC and the building manufacturer or mover. ▶ Assists the District with the selection of a site inspector. ▶ Sends the <i>Verified Report</i>, Form DSA-6 and <i>Building Inspector Qualification Record</i>, Form SSS-5 for DSA approval. ▶ Issues a final, 100 percent complete, <i>Verified Report</i>, Form DSA-6 for the DSA and sends copy to the OPSC. ▶ Signs "Notice of Completion" for the DSA and the OPSC. • Selects a site inspector (with the architect's assistance). • Contracts for electrical services, if applicable. • Purchases furniture and equipment. • Accepts delivery of the classrooms within 60 days of plan approval or building availability.

**Placement Process after
SAB Approval...**

- Signs "Notice of Completion."
 - Obtains insurance for building.
 - Submits Inspector of Record's 100 percent complete final *Verified Report* (Form DSA-6) to the OPSC.
 - Signs lease agreement that was issued to the district by the OPSC and returns it for final processing.
 - Occupies the building.
 - Requests reimbursement for eligible costs on *Certification for Reimbursement*, Form SAB 25-4.
-

Preparing for Delivery

Introduction The district is responsible for obtaining the architectural and on-site inspection services needed for delivery and placement of the relocatable classroom(s). The costs associated with the electrical hook-up, fire alarm hook-up and DSA plan check are reimbursable up to a maximum of \$9,450.00 per classroom. The district is responsible for the insurance and normal maintenance of the relocatable classroom(s). These costs are not reimbursable by the SAB.

Site Preparation The district, at its own expense, must make the following site preparation prior to the delivery of the relocatable classroom(s):

- Prepare a location on the school site that is cleared and graded with the elevation of a 30' × 50' pad within 9" of level in any direction. Buildings must be placed a *minimum of four feet apart*.
- Determine that the site has a minimum soil bearing capacity of 1,000 pounds per square foot.
- Build a pad at least 30' × 50', turf-free with at least 2 percent drainage to prevent water from ponding beneath and around relocatable(s).
- Place the relocatable(s) in location(s) clear of any sprinkler systems to reduce the problems of deterioration, dry rot or rust. Any damage to the relocatable(s) resulting from unsuitable placement is a *maintenance responsibility of the district*.
- Ensure the location and access allow for maneuvering space of, or the entry turnaround and exit for, a large truck and trailer (85 feet clearance at front or back). Any damages to the district's property or to the site caused by inadequate maneuvering space for the delivery of a relocatable classroom(s) is the *responsibility of the district*.
- Furnish a hard surfaced walkway in compliance with Title 21, Chapter 1, Subchapter 2, of the California Administrative Code "Access Public Building by Persons with Disabilities."
- Connection of the building to an adequate fire alarm system in accordance with current law.

Delivery to Site Relocatable classroom(s) will be delivered and installed by the building manufacturer or mover when the site plans have been approved by the DSA. The plans must indicate the building location, handicap access, fire alarm connection, and electrical service. Any deviations from the approved plan must be made by a change order approved by the DSA.

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District Responsibilities

Utility Costs	The completion of design and construction of the electrical and fire alarm connection is the responsibility of the school district; however, the districts will be reimbursed for the electrical hook-up cost in accordance with SAB policy. See page 11 for reimbursement amounts.
Lease Payments	The district must make lease payments of \$4,000 per year for each relocatable classroom delivered. The lease will start once the State contractor or manufacturer has completed set-up of the building and has submitted a <i>Verified Report</i> , Form DSA-6 to the OPSC, but not more than 30 days after delivery of the building to the site.
Hardships	The SAB policy allows school districts that have a Lease-Purchase Program hardship project or a School Facility Program facility hardship project to be eligible for a rental decrease of \$2000 per year. The reduced rental payment applies only to currently leased relocatable classroom(s) located on the site where the "hardship" project is approved. Districts must submit a written request for the reduced rent accompanied with an approved Facility Hardship (FH) SAB item.
Maintenance	Pursuant to the terms of the lease, districts shall at their own expense undertake all necessary maintenance, repair, renewal, and replacement costs to ensure the relocatable classroom(s) are in good repair and working order at all times.
Insurance	Districts are required to keep the property adequately insured at all times at their own expense, with extended coverage for vandalism and malicious mischief. The State must be listed as beneficiary against fire. Insurance effective date must commence on the date the manufacturer has completed delivery and set-up of the building.
Conditions of Occupancy	The classroom(s) may not be occupied until the completion of the installation as evidenced by issuance of the architect and Inspector of Record's final, 100 percent complete <i>Verified Report</i> , Form DSA-6.

STATE RELIABLE CLASSROOM PROGRAM HANDBOOK
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Reimbursements

District's Responsibilities The district is responsible for obtaining the architectural and on-site inspection services needed to place the Relocatable Classroom(s). The cost associated with the site preparation, electrical hook-up, plumbing connection, DSA plan checking, insurance, and maintenance are also the district's responsibility. The district will be reimbursed up to \$9,450.

Documentation Required for Reimbursement The district must provide the following documentation for reimbursement:

- *Certification for Reimbursement*, Form SAB 25-4.
- The Architect's final 100 percent completed *Verified Report*, Form DSA-6.
- The Inspector of Record's final 100 percent completed *Verified Report*, Form DSA-6.

Reimbursement Amounts The district may be reimbursed for the following costs per classroom:

Item	Reimbursement Amount
DSA/ORS Plan Checking Fees	up to \$ 450
Eligible Architect Fees	up to \$2,000
Eligible Electrical Hook-Up Costs	up to \$3,500
Eligible Fire Alarm Hook-Up Costs	up to \$1,000
Eligible On-Site Inspector Fees	up to \$ 500
Furniture and Equipment	up to \$2,000

Total reimbursement is limited to \$9,450 per classroom.

Reimbursement requests must be submitted to the OPSC within 90 days of delivery or the district will be deemed ineligible for reimbursement.

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Special Circumstances

Building Alterations Relocatable classroom(s) may not be altered or modified in any way.

Relocating a Classroom If the district has a greater need for a relocatable classroom(s) at another school within its jurisdiction, it may relocate the classroom(s) *at its own expense*. However, the district must notify the OPSC, in writing, *prior* to relocating the building. In addition, the district must obtain the DSA approval for the new site.

A copy of the architect and inspector's final, 100 percent complete, *Verified Report*, Form DSA-6 must be provided to the OPSC for the new site.

Returning a Classroom To return a relocatable classroom(s) the district must send a letter to the OPSC stating the current site of building(s), address, and the OPSC building number(s) to be returned along with the date the district wishes to return the classroom(s).

The costs associated with relocatable classroom(s) return will be borne by the State; however, site restoration costs after termination of use of facilities are the responsibility of the district. The district is required to restore the relocatable classroom(s) to a "like new" condition and must assure that the relocatable classroom(s) is totally accessible to the moving contractor. If the moving contractor arrives at the site and the relocatable classroom(s) are not accessible (85 feet clearance at front or back), the school district will be responsible for any additional costs attributable to the move.

The State shall be allowed to leave the relocatable classroom(s) on the district site until such time as the State needs to remove them for delivery to another district.

District Pre-Purchase The SAB policy dated July 22, 1987, allows eligible districts to purchase a relocatable classroom with their own funds when adequate funds are not available to the SAB. These costs may be authorized for reimbursement by the SAB when funds are subsequently made available. Contact the OPSC, State Relocatable Classroom Program Team, for details.

**District Purchase or "Buyout"/
Base Purchase Price Table**

Education Code Section 17089.2 allows school districts and County Superintendents of Schools to purchase State Relocatable Classrooms that were under lease on or prior to December 1, 1991, either by outright purchase or by a nine (9) year interest free installment payment plan. Installment payments shall be a minimum of \$2,500 for the first year, \$2,750 minimum for the second year, and not less than \$3,000 for the third through ninth year, or until paid off. The purchase price to be paid by the district for each relocatable classroom is determined by utilizing the SAB's base purchase price reduced by the rental payments made by the district (see table below). Under no circumstance shall the purchase cost to the district be less than \$4,000 per relocatable classroom. Contact the OPSC State Relocatable Classroom Program Team for additional details.

School Year	Base Price	School Year	Base Price
09/80-08/81	\$32,500	09/86-08/87	\$35,500
09/81-08/82	\$33,000	09/87-08/88	\$36,000
09/82-08/83	\$33,500	09/88-08/89	\$36,500
09/83-08/84	\$34,000	09/89-08/90	\$37,000
09/84-08/85	\$34,500	09/90-08/91	\$37,500
09/85-08/86	\$35,000	09/91-12/01/91	\$38,000

Documentation Required for "Buyout"

The district must provide the following documentation:

- *Application to Purchase State Relocatable Classroom(s)*, Form SAB 25-46
- *Application to Purchase State Relocatable Classroom(s) Attachment A*, Form SAB 25-46A

Furniture and Equipment

Introduction Included with the relocatable classrooms are allowances for furniture and equipment to accommodate one teacher and up to 27 students.

Ordering Furniture and Equipment Upon approval of the State Relocatable Classroom Application by the SAB, the district is authorized to order furniture to adequately equip a classroom. The OPSC will reimburse the district up to \$2,000 per relocatable classroom for furniture and equipment which is included in the total reimbursement of \$9,450 per building (Refer to page 11 for more information regarding reimbursements).

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Forms

The following forms are used in conjunction with the State Relocatable Classroom Program. It is the user's responsibility to check the OPSC's Web site (**SAB Forms**) for the most current version of the form as older versions of the form may not be accepted.

- SAB 25-1 – Eligibility Worksheet
 - SAB 25-2 – Application to Lease State Relocatable Classroom(s)
 - SAB 25-3 – Site Readiness Notification
 - SAB 25-4 – Certification for Reimbursement
 - SAB 25-46 – Application to Purchase State Relocatable Classroom(s)
 - SAB 25-46A – Application to Purchase State Relocatable Classroom(s) Attachment A
 - DSA-6 – Verified Report (available from the Division of the State Architect)
-

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Planning Phase (Phase P)

Eligibility Overview

Introduction

This section focuses on the preparation of application packages for Phase P approval and/or apportionment. Eligibility is determined with the following elements:

- projected enrollment
- existing adequate area
- eligible area for new construction or modernization.

Documentation Required

Application packages must include the following four forms in order to be considered a complete submittal:

- *Projected Average Daily Attendance* (Form SAB 411)
- *Classroom Loading Summary* (Form SAB 600S) (one for each existing school)
- *Justification Document - New Construction and Modernization/Reconstruction* (Form SAB 600)
- *Application For Apportionment* (Form SAB 506) (one for each project)

The application package and forms are available through the Office of Public School Construction (OPSC) or via the internet at www.dgs.ca.gov/opsc/forms.htm.

It is the goal of the OPSC to process the application to the State Allocation Board, (SAB) for approval within 60 days of receipt. Please contact the Eligibility Supervisor if your application does not get processed in this timeframe.

Application Submittals

Districts should not submit an application unless it is complete or it may be returned to the district.

Districtwide vs. High School Attendance Area

A unified school or high school district may file an application for new construction or modernization under a High School Attendance Area (HSAA) basis.

In this Section

This section discusses the following topics/subtopics:

TOPIC/SUBTOPIC	SEE PAGE
Eligibility Overview	1-1
Projected Average Daily Attendance (Form SAB 411)	1-2
New Housing Development Augmentation	1-2
Classroom Loading Summary (Form SAB 600S)	1-3
• <i>Student Loading Standards</i>	1-6
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• <i>Type of Project Requested</i>	1-12
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Projected Average Daily Attendance - Form SAB 411

Introduction

The applicant district must provide historical and current enrollment data that allows for an estimate of the district's future pupil population. The projection is used in the preparing of the *Justification Document- New Construction and Modernization/Reconstruction* (Form SAB 600) for determining the district's eligibility under the Lease-Purchase Program. The district's enrollment is certified on the *Projected Average Daily Attendance* (Form SAB 411) using either California Basic Education Data System (CBEDS) or sixth month of school year (Spring) enrollment data. The enrollment reported may only include those students who attend in the school district.

In addition to reporting historical enrollment information, the Form SAB 411 permits the district to record information impacting the district's enrollment resulting from prison construction or new housing development construction.

Availability

The Form SAB 411 is currently available on the Internet at www.dgs.ca.gov/opsc/forms/htm and is capable of computing the district's projected enrollment. If the district does not have access to the Internet, please contact the OPSC Eligibility Supervisor for a copy of the excel version of the Form SAB 411 program on a 3 1/2 inch diskette.

For those districts which cannot access the internet nor have access to the excel program on an IBM compatible computer, please contact OPSC for a paper copy of the Form SAB 411.

Projected ADA

The Form SAB 411 provides the following three projection of Average Daily Attendance (ADA):

1. One year projection (utilized for State Relocatable Classroom Program).
2. 3/4 year projection (for either 100% or 50/50 State funded projects).
3. 5/6 year projection (for either 50/50 state funded projects or Advance Site and Plans applications). ☺

New Housing Development Augmentation

Introduction

Commonly called the House Count Augmentation, the district estimates the number of students (student yield factor) to be generated by a new housing development and these students are factored into the enrollment projection of the district. See the Application Package for additional details.

SAB Yield Factor

The SAB yield factor for housecount purposes are as follows:

DISTRICT TYPE	YIELD FACTOR
Elementary School District	.5
High School District	.2
Unified School District	.7

Alternative Yield Factor

The district may, as an option, use its own student yield factor to determine the impact of new housing developments in the district. The factor must be supported by a student yield factor report that is less than one (1) year old. Please leave this item blank if you wish to use the SAB Yield Factor.

Housing Unit Defined

A housing unit is any residential unit for which a construction permit has been issued for street and utility improvements. In addition, any fully constructed unit that has never been occupied qualifies as a housing unit for augmentation purposes.

Housing Unit Documentation

The district must submit the following documentation:

- A development map, identifying the portion of the development that will be under construction within the next year and the number of housing units involved. A development map must be on an 8 ½ by 11 sheet of paper, identify each housing unit in the development and identify the portion of the development to be under construction within the next year. This will support the number of units stated in the district's cover letter for the specific development.
- A cover letter summarizing the information from all the maps
(see sample in the Eligibility Package) ☞

Classroom Loading Summary - Form SAB 600S

Introduction

All teaching stations are deemed chargeable unless excluded by law, regulation or SAB policy.

The applicant district must provide information about the number of existing classrooms in the district. This information will be used to determine the student capacity of the district's existing classroom. Additional space is provided on the Form SAB 600S to identify other facilities that may not be included in the district's inventory of classrooms such as leased portable classrooms or class size reduction classrooms.

Standard Classrooms

Any teaching station that is at least 800 square feet and was originally designed as a teaching station is considered a standard classroom. In the case where the SAB modernized a facility under the Lease-Purchase Program, the number of teaching stations may have been reduced in accordance with provisions in the Law.

Small Classrooms

Teaching stations that are less than 600 square feet are not considered a part of the district's inventory of classrooms. Standard classrooms that have been redesigned to be less than 800 square feet for purposes of Class Size Reduction Programs, Resource Specialist Programs or for other purposes may be evaluated as if the redesign did not occur.

District Owned Portable Classrooms

Portable classrooms owned by the district are to be counted as part of the district's inventory of classrooms.

Resource Specialist Program	Resource Specialist Program (RSP) classrooms which were constructed under the Lease-Purchase Program as a result of a RSP allowance are not part of the district's inventory of classrooms. Teaching stations that were converted to RSP use are considered classrooms.
Class Size Reduction	The district may exclude teaching stations acquired or constructed for Class Size Reduction (CSR) purposes when justified by the <i>Class Size Reduction Classroom Exclusion</i> (Form SAB 526 CSR).
Cross Loading of Classrooms	<p>The district will only be required to house students at the grade levels served by a school site; however, the facilities must be fully utilized before consideration will be given to fund the construction of teaching stations for that grade group.</p> <p>Example: The K-6 schools were loaded on the Form SAB 600S with students as currently utilized. The results indicate that there are two empty 1-3 grade classrooms and a need for four 4-6 grade classrooms. The two empty classrooms must be loaded with 4-6 grade students to maximize the use of all the teaching stations. Therefore, the district has a net need of two 4-6 grade classrooms. The empty classrooms will not be loaded with 7-8, 9-12 or continuation students as they are not normally served at these sites.</p>
Portable Abandonment/ Replacement	<p>Portable classrooms may be abandoned by either a structural report process or by the use of the 20 year rule.</p> <p>If the district has owned and/or leased a portable classroom for at least 20 years, the district may elect to abandon the building without a structural review. Please clearly identify the portable classroom to be abandoned on the Form SAB 600S for the appropriate school.</p> <p>See <i>Appendix 9, Abandonment and/or Rehabilitation, Page 9-1</i>, for the structural abandonment and replacement process.</p>
Abandonment of Permanent Structures	Under certain circumstances a district may be able to abandon structurally adequate, as well as structurally inadequate, facilities. See <i>Appendix 9, Abandonment and/or Rehabilitation</i> for the structural abandonment process.
Portable Classroom Exclusion	<p>Lease, lease-purchase and lease-with-option-to-buy portable classrooms are excluded from the district's inventory of teaching stations for the initial five (5) years of the agreement. This exclusion may be extended for either an additional five (5) year or a two (2) year exclusion period depending on the following criteria:</p> <ul style="list-style-type: none"> • An additional five-year exclusion may be granted if the continued use of the leased portable is supported by additional growth in ADA. Additional growth is determined by dividing the difference between the original projection of enrollment and five-year current projected enrollment by 30. The quotient gives the number of leased portable classrooms supported by additional growth. The five-year exclusion is not available to lease-purchase and lease-with-option-to-buy portable classrooms. • Two-year exclusion may be granted if the portable classroom is not supported for continued use under the five-year exclusion provisions. The two-year exclusion may be granted provided the exclusion is necessary to maintain eligibility for a project

Continued on the next page

Portable Classroom Exclusion (Cont.)

previously approved. This exclusion may not be used to support a new project that has not yet been approved by the SAB.

Note: The maximum extension for a leased portable classroom is five years. The maximum extension for a lease-purchase or leased-with-option-to-buy portable classroom is two years.

Portable Classrooms Not Eligible for Exclusion

The following are examples of portable classrooms that are not eligible for exclusion from the district's inventory of teaching stations:

- A portable classroom that received an approval for continued use by the SAB is considered a part of the district's inventory of teaching stations until the SAB has approved the abandonment of the facility.
- Portable classrooms leased or lease-purchased at less than fair market value do not qualify for exclusion. Fair market value is determined to be the rental fee for State Relocatable Classroom Program, unless otherwise determined by the SAB on an individual case basis.

State Relocatable Classroom

Portable classrooms leased under the provisions of the State Relocatable Classroom Program, Education Code Section 17085, commencing with Chapter 14, are excluded from the district's inventory of teaching stations. If the district elects to purchase one of these buildings, then the district portable is owned.

If the district elects to time-purchase one of these buildings, the building would be excluded for up to 5 years from the date the SAB approves the time-purchase.

State Day Care

Portable classrooms leased pursuant to "Migrant Portable Education Program", Education Code, Chapter 6, Part 10, Article 5 are not considered a part of the district's inventory of teaching stations.

Pre-School/Child Day-Care/Regional Occupation Program/Adult Education

Classrooms that have been continually used for the preceding five years at least 50 percent of the time for operation of pre-school programs as defined in Education Code Section 17042 (B)(2) are excluded from the district's classroom inventory. In order to be eligible for this exclusion, the classroom must be located at a school that operates on a multi-track year-round schedule.

Buildings purchased for use as adult education, child care or Regional Occupation Programs with special override taxes, federal funds, local or State funds are also eligible for exclusion.

Cost Sharing Program (Mello-Roos)

A district may seek reimbursement (Education Code Section 17018.5) for facilities it constructed under the Community Facilities Act of 1982, the district may exclude those teaching stations but only for purposes of determining eligibility for reimbursement. ☺

STUDENT LOADING STANDARDS

State Loading Standards

The State Loading Standards for students in each grade group for both modernization and new construction applications are as follows:

GRADE GROUP	LOADING STANDARD IN ADA PER CLASSROOM
K single (Double)	29 (55)
1-3	29
4-6	33
7-8 (lab)	30 (26)
9-12 (lab)	28 (24)
Continuation	15
Elementary SDC	<i>(see Education Code for loading standards)</i>
Secondary SDC	<i>(see Education Code for loading standards)</i>

District Loading Standards

The district may reduce the Student Loading Standards by up to three (3) ADA provided the district has historical documentation adopted by the district's board on or before July 1, 1992 that includes a student/ teacher ratio lower than the above Standards. The district may not reduce the loading standards for Continuation High School or Special Day Classrooms.

Special Day Classroom (SDC)

The loading standard for SDC classrooms is in accordance with Education Code Section 17047 *(see Education Code for loading standards)*.

Small Classroom

Any classrooms that are between 600 and 800 square feet are loaded at 20 ADA for all grade levels except continuation high schools and special day classes. Those classrooms are loaded per the schedule.

ROP or Adult Education Classrooms

Teaching stations constructed with Bond funds specifically approved for either Regional Occupation Program (ROP) or Adult Education purposes are not deemed a part of the district's inventory of classrooms. As an alternative, the District Representative may certify that the ROP or Adult Education facility was constructed with funds generated from the ROP or Adult Education programs. The certification must specifically identify the funding source for the facility to be excluded.

**Student Capacity of Facilities Constructed with Local Funds
Student Capacity of**

The SAB allowable building area for a project funded by the SAB is the building area approved for funding by the SAB. For those facilities constructed with local funds, the SAB allowable building area is the SAB building area generated by the ADA capacity of the facility constructed.

The student capacity of schools or additions to existing schools constructed with local funds after January 1, 1993, shall be determined by dividing the area of the construction by the square footage standards for the grade level housed in the facility. For purposes of this

Continued on the next page

**Facilities Constructed
with Local Funds
(Cont.)**

section, the date of the first contract in the project shall determine if the area was constructed after January 1, 1993.

The student capacity of area in excess of the 110% of a project constructed under the state program shall determined in the same way.

Justification Document - Form SAB 600

Introduction

The *Justification Document-New Construction and Modernization/Reconstruction* (Form SAB 600) combines the information from the Form SAB 411 and the Form SAB 600S to determine the district's eligibility for building new classrooms or modernizing existing buildings. ☺

MULTI-TRACK YEAR-ROUND EDUCATION ADJUSTMENT

Introduction

The Multi-Track Year Round Education (MTYRE) adjustments on the Form SAB 600 is the larger of the following:

1. The number of students that received Operational Grant funding from the CDE.
2. The Substantial Enrollment Requirement (SER) for a district to be considered a MTYRE district.
3. The sum of all the 20% capacity adjustment for projects that were approved as MTYRE projects.

The Waiver and Review Committee is responsible for classifying districts as MTYRE as well as considering waiver from being MTYRE district and recommending waiver of the project from being constructed to operate on a MTYRE basis. Please submit your request to:

Waiver and Review Committee
School Facilities Planning Division
California Department of Education
560 J Street, Suite 165
Sacramento, CA 95814

If the district is only submitting requests for modernization projects, this section does not apply and need not be completed.

Operational Grant

Districts that operate MTYRE schools may request Operational Grant funding from the CDE. Should the district receive funding, the number of students reported by the CDE must be reduced from the district's eligibility to construct new facilities. The reduction is permanent even if the district does not apply for or receive grants in subsequent years.

Substantial Enrollment Request (SER)

A district must either meet the SER requirement of Education Code Section 17017.6 or 17017.7, as appropriate, or agree to an eligibility reduction as follows:

DISTRICT TYPE	APPLICATION TYPE	ELIGIBILITY REDUCTION
Elementary and Unified	Districtwide	6% of the K-6 current enrollment
	High School Attendance Area	8% of the current enrollment of the district
High School	Districtwide	6% of the current enrollment of the district
	High School Attendance Area	<ul style="list-style-type: none"> • 8% of the K-12 current enrollment of the district and the feeder districts, or • 20% of the project ADA

20% Capacity Adjustment

A project is considered to operate on a MTYRE basis when the district agrees to increase the student capacity of the project by 20%. The district may request a waiver from this requirement through the Waiver and Review Committee.

ALLOWANCE AREA

Project ADA

The project ADA is the number of unhoused ADA assigned to the project before the 20% capacity adjustment requirement. Please note that this is different than the project capacity.

Resource Specialist Program (RSP)

Each project is entitled to building area to serve the needs of RSP students based on the number of unhoused K-12 students, excluding special day classroom students and continuation high pupil units. The allowable building area for each site is computed pursuant to Education Code Section 17047 (see *Education Code for loading standards*).

Relocatable Bonus (3B)

If at least 10% of the total building area is relocatable, the allowable building area for the project may be increased by three square feet per unhoused ADA. A relocatable building is defined in Education Code Section 17042.5 (b).

Grades K-6

Use the following building area allowances for K-6 ADA:

IF projected K-6 ADA for the district is...	THEN the K-6 allowable building area is computed for ...																						
Less than 300 (small school formula)	<p>The entire district at:</p> <table border="1"> <thead> <tr> <th>ADA</th> <th>Allowance (sq. ft.)</th> </tr> </thead> <tbody> <tr><td>6-25</td><td>1,712</td></tr> <tr><td>26-50</td><td>4,066</td></tr> <tr><td>51-75</td><td>6,099</td></tr> <tr><td>76-100</td><td>7,704</td></tr> <tr><td>101-133</td><td>9,005</td></tr> <tr><td>134-166</td><td>10,914</td></tr> <tr><td>167-199</td><td>12,840</td></tr> <tr><td>200-232</td><td>14,296</td></tr> <tr><td>233-285</td><td>16,773</td></tr> <tr><td>286-299</td><td>17,655</td></tr> </tbody> </table>	ADA	Allowance (sq. ft.)	6-25	1,712	26-50	4,066	51-75	6,099	76-100	7,704	101-133	9,005	134-166	10,914	167-199	12,840	200-232	14,296	233-285	16,773	286-299	17,655
ADA	Allowance (sq. ft.)																						
6-25	1,712																						
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134-166	10,914																						
167-199	12,840																						
200-232	14,296																						
233-285	16,773																						
286-299	17,655																						
300 or more	59 square feet per project ADA.																						

Grades 7-8 New School and Additions

The building area allowance for grades 7-8 is computed at 80 square feet per unhoused ADA.

Grades 9-12 New School

The building area allowance for grades 9-12 is computed in accordance with Education Code Sections 17046 and 17046.7 (see Education Code for loading standards).

Special Day Classrooms (SDC)

The building area allowance for assigned SDC for each project is computed in accordance with Education Code Section 17047 (see Education Code for loading standards).

Continuation High School New School

The building area allowance for continuation high school pupil units is computed as follows:

PUPIL UNITS	ALLOWANCE (SQ. FT.)
5-20	2,300
21-40	2,300 + 125 per pupil unit over 20
41-60	4,800 + 120 per pupil unit over 40
61-90	7,200 + 115 per pupil unit over 60
91-120	10,650 + 105 per pupil unit over 90
121-150	13,800 + 90 per pupil unit over 120
Over 150	16,500 + 60 per pupil unit over 150

**Grades 7-9 or 7-10
New School and
Additions**

The building area allowance for middle schools grades 7-9 or 7-10 is computed in accordance with Education Code Section 17045.

Grades K-6 Additions

Use the following building area allowance for K-6 ADA:

IF the projected K-6 ADA for the district is ...	THEN the K-6 allowable building area is computed for ...
Less than 300 (small school formula)	Utilizing the small school formula, determine the building area permitted by the district as if they did not have an existing school. Determine the average square footage per ADA and apply this value to the unhoused K-6 ADA assigned to the project.
300 or more	59 square feet per project ADA

Grades 9-12 Additions

Utilizing the 9-12 formula, determine the building area permitted for the existing ADA capacity of the school plus the ADA assigned. Determine the average square footage per ADA and apply this value to the unhoused ADA assigned to the project.

**Continuation High
School Additions**

Utilizing the continuation high school formula, determine the building area permitted for the existing pupil unit capacity plus the new pupil units assigned. Determine the average square footage per pupil unit and apply this value to the unhoused continuation pupil units assigned to the project.

**Modernization Bank
Area Allowance**

The district must assign projected ADA to under 30 year old classrooms before assigning projected ADA to qualifying 30 year or older classrooms.

Each projected ADA, housed in classrooms that are at least 30 years old, generate a bank of modernization bank of building area. The allowable area per ADA is as follows:

SCHOOL	ALLOWABLE (SQ. FT.)
Elementary	59
Middle	80
High	92
Continuation	92
County Supt.	108

Utilization of Modernization Bank	Once the district's modernization bank of building area is determined, the district may allocate the area to any school building in the district that qualifies to be modernized. The district must modernize all building areas of the first qualifying building before selecting the next qualifying building.
Eligible building area	Buildings eligible to be modernized are permanent buildings that were constructed or modernized at least 30 years ago or portable buildings that were constructed or modernized at least 20 year ago.
Portable classrooms	If the district elects to modernize a portable classroom, the portable classroom will be eligible for abandonment 20 years from the date of the notice of completion on the modernization work.
Insufficient Modernization Bank	Should the available modernization bank be insufficient to modernize the next entire building, the district must elect to either fund the excess building area or choose to not modernize the building. ☹

Application For Apportionment - Form SAB 506

Introduction	<p>All school districts participating in the State School Building Lease Purchase Program must file a <i>Application for Apportionment</i> (Form SAB 506). This document is submitted for a new application as well as amendments to applications previously filed. A separate application must be filed for each project.</p> <p>The Form SAB 506 is self explanatory, however, if you need assistance completing it, contact the OPSC Eligibility Supervisor. The following information has been provided for items on the form needing further clarification.</p>
District Representative	<p>The district's board must identify one or more persons to serve in the capacity of District Representative to:</p> <ol style="list-style-type: none"> 1. File applications with the SAB. 2. Act as a liaison between the district and the SAB. 3. Sign contracts, agreements and change orders that have been approved by the district's governing body.
Facilities	<p>A project is required to have enough classrooms to adequately house the ADA assigned. In the event that the district is not constructing the required number of standard classrooms in the project, the district must certify that the district has reviewed its educational plan with CDE and they jointly agree that the facilities have adequate teaching station equivalents to serve the ADA assigned to the project. The Facility shall be loaded at the State approved capacity even if the district subsequently determines that the school design is inadequate to house the ADA assigned to the project.</p>

Administrative Cost Allowance

Pursuant to Education Code Section 17019.5, an administrative cost allowance is provided to small districts. These funds may be used for any cost associated with the administration of the project.

Applications approved by the SAB after January 1, 1998, are eligible for the following allowance:

TYPE	ALLOWANCE
New Construction	\$6,958
Modernization or Reconstruction	\$1,674

Project Budget

This value is formula driven and designed to provide an estimate of the total project budget. The specific area cost allowance and approved architect's estimate are used to establish the project budget for purposes of the construction phase approval. The bid(s) and other approved project adjustments will determine the final project budget. ☞

TYPE OF PROJECT REQUESTED

Priorities

The district may file an application for any of the several types of applications authorized under the Lease-Purchase Program. In each case, the district may agree to fund at least 50% of the eligible project cost, generally known as Priority for Funding Level 1. As an alternative, the district may request 100% State funding of the eligible project cost, generally known as Priority for Funding Level 2. For new construction types of applications, in order to receive priority 1 or 2, the district must also meet the Year Round district and Year Round project requirements.

New Construction

This type of application is for the construction of new facilities based on the district's increasing student population.

Modernization

This type of application is for the educational renovation of buildings. The allowable cost is limited to 25% of the replacement cost of the building being modernized.

Abandonment/ Replacement

This type of application is solely for the purpose of abandoning and replacing existing facilities. The abandonment and replacement requirements and procedures are found in *Appendix 9, Abandonment and/or Rehabilitation, Page 9-1.*

Cost Sharing

This type of application, pursuant to Education Code Section 17018.5, permits a district to be reimbursed for a facility that was constructed with funds generated under the Mello-Roos Community Facilities Act of 1982. The maximum State contribution on these applications is up to 75% of the eligible cost of the project.

Joint Use

A district may choose to apply for a separate library, gymnasium, or multi-use building pursuant to specified funding provisions, or increase the building area of a school project in order to accommodate community needs. Community funding is required for additional building area beyond the needs of the school district in either case.

Reconstruction

A district may reconstruct a building if all the following conditions are met:

- The building is eligible for modernization funding.
- The building's existing ADA capacity will be increased by at least 10% or by five teaching stations whichever is less. The district must have the unhoused ADA to comply with this requirement.
- The resulting ADA capacity of the school site would not generate more building area than currently exists at the site.
- The cost to reconstruct the building is equal to or less than 75% of the replacement cost of the building.

If the reconstruction work is part of a larger modernization project, please identify the project as a modernization project.

Rehabilitation

The district may request the rehabilitation of a building if all of the following conditions are met:

- The building is eligible for modernization funding.
- The cost to rehabilitate the building does not exceed 75% of the replacement cost of the building.
- The building does not meet the structural safety requirements of the Field Act for the year in which the building was constructed.

These types of applications may be presented to the SAB for consideration on a case-by-case basis. If the rehabilitation work is part of a larger modernization project, please identify the project as a modernization project.

Seismic Retrofit Project

The district may request seismic retrofit funding if it has a school that meets all of the following:

1. The facility is structurally adequate and eligible for modernization funds under the Lease-Purchase Program.
 2. All classrooms in the district or high school attendance area which do not require seismic structural improvements have been fully loaded before any unhoused pupils were assigned to a project requesting seismic funding.
 3. The district has submitted a report from a licensed structural engineer which identifies minimum work necessary to address the seismic structural improvements necessary to avert probable earthquake damage. The report must also include a statement that the facility meets the structural requirements in existence when the facility was originally constructed.
 4. The district has submitted a letter from the Division of the State Architect which concurs with the findings in the structural report addressed above.
 5. An accounting of all capital facilities funding potentially available to the district, including any Federal or local funding and State funds other than those provided through the SAB now or during the life of the project. ☺
-

Phase P Fund Release

Introduction Once the district or County Superintendent has received an approval and apportionment of funds for an application, funds will be released to the district upon receipt of the following:

1. Executed Lease-Purchase Agreement.
2. Certification of an executed Architect Agreement.
3. Certification of California Environmental Quality Act (CEQA) compliance.

Lease-Purchase Agreement The district or County Superintendent must enter into a 40 year Lease-Purchase Agreement with the State of California.

Architect Agreement Certification The district must certify on the *Architect Agreement Certification* (Form SAB 533A) that there is an executed Architect Agreement which complies with the requirements of the SAB.

California Environmental Quality Act (CEQA) The district or County Superintendent must certify that they have satisfied the documentation requirements relating to CEQA on the Form SAB 490. ☒

Guidelines for Architectural Services

Introduction The SAB has established guidelines relating to Architect Agreements that include errors and omissions insurance as well as the maximum allowable fee.

Selection of Architect The district should solicit qualifications based proposals from several architects. Refer to Government Code Section 4526 et. seq. for more information.

The district is expected to negotiate the best possible terms and conditions for the architectural services.

Errors and Omissions Insurance It is the responsibility of the district to ensure that general practice architectural errors and omissions insurance coverage of at least \$500,000 is provided and paid for by the architect.

Furthermore, it is the responsibility of the architect to ensure that each consultant or sub-consultant is covered by a minimum of \$500,000 errors and omissions insurance.

SAB Architect Fee Schedule The following is the maximum eligible SAB architect fee schedule under the Lease-Purchase Program:

CONTRACT AMOUNT	NEW CONSTRUCTION PERCENTAGE RATE	MODERNIZATION PERCENTAGE RATE
First \$500,000	9 %	12 %
Next \$500,000	8 ½ %	11 ½ %
Next \$1,000,000	8 %	11 %
Next 4,000,000	7 %	10 %
Next \$4,000,000	6 %	9 %
Excess of \$10,000,000	5 %	8 %
Performance Specification Portables	4 %	NA

Final Determination	The final determination for the architect fee is made at the time of the bid approval. Adjustments to this fee will be calculated if approvable change orders arise.
Performance Specification Portables	A project in which the architect provides the performance specification but is not responsible for insuring DSA approval of the plans results in a reduced architect fee of 4% of the contract amount. If the portables are a part of a bid which includes work by which the architect does get DSA approval, please contact OPSC for the method of computing the final allowable architect fee.
Additive Change Orders	A fee is calculated per contract to include the cost of all approved additive change orders with the exception of items resulting from errors and omission on the part of the architect.
Separately Bid Work	<p>If the OPSC requires the district to bid the Service-Site Development work separately, the architect fee will be calculated separately for that bid in accordance with the agreed upon fee.</p> <p>If the district elects to bid work, excluding OPSC required separately bid the Service-Site Development work, the district must fund the additional architect fees beyond the maximum fee schedule allowed.</p>
Construction Management Project	The eligible architect fee shall be computed based on each trade contract, Construction Management (CM) fee and CM general conditions. In addition, the estimated architect fee must be computed for the sum of all the trade contracts, CM fee and general conditions as if it were one construction contract. The district must reduce the building cost allowance for the project for the additional architect fee resulting from a Construction Management project.
Budgetary Constraints	<p>The architect must exercise his best judgement in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the project's construction allowance.</p> <p>It is the responsibility of the architect to design a project within SAB cost standards. If a construction bid exceeds these standards, the architect is responsible for making the necessary changes in the DSA approved plans, specifications and bid documents at no additional cost to the client.</p>
Termination of Client/Architect Agreement	<p>The termination of an architectural agreement must be done in accordance with the terms of the client architect agreement. It is the district's responsibility to ensure that allowable termination scenarios are specified in the agreement.</p> <p>If the contract termination is challenged by the architect, the district must defend the termination under the provisions of the agreement at no cost to the State.</p> <p>Furthermore, the OPSC will consider the amount of compensation agreed under the original contract to be the maximum for the project. Thus, if the amount owed to the original architect plus the amount owed to a new architect to complete the project exceeds the amount of the original contract, the district will be required to fund the additional amount. ☺</p>

Site Selection Phase (Phase S)

Introduction

The selection of a school site is critical to both a safe and supportive environment for the curriculum and learning process. The eligible size of property to be acquired is limited to the minimum land area necessary to conduct an adequate educational program.

Criteria

The following criteria will be considered by the CDE, School Facilities Planning Division when selecting a site:

- safety
- location
- environment
- soils
- topography
- size and shape
- accessibility
- public services
- utilities
- land/development costs
- availability
- political implications.

Role of the California Department of Education

The CDE, School Facilities Planning Division, is required to review and recommend approval of all new school sites and additions to school sites regardless of the funding source. To ensure that the best possible site selection is made with a balance of educational and financial considerations, the district must comply with the following procedures:

- The district must identify a minimum of three (3) approvable sites to be reviewed with the School Facilities Planning Division. These sites must be identified on the CDE Form, *Approval Procedures and Site Report, SFPD 4.0*. If the School Facilities Planning Division finds that one of the three proposed sites is not approvable, another approvable site must be added to the list for consideration.
- If there are not three approvable sites in the area in which the new school is to be located, the School Facilities Planning Division must state this fact in a site review letter addressed to the OPSC.

The final selection of the proposed site must be approved and certified by the CDE.

In this Section

This section discusses the following topics/subtopics:

TOPIC/SUBTOPIC	PAGE
Site Ownership Certification - Form SAB 509	2-2
Real Property Appraisals	2-2
Site Purchase	2-3
Relocation Assistance	2-7

Site Ownership Certification - Form SAB 509

Introduction	This document is a certification made by the district representative that the school district holds legal title to the site contained in the application. The title must be free of any liens and encumbrances which would adversely affect the use of the site for school purposes. All land related to a project is subject to a 40-year lease-purchase agreement between the State and the school district.
District Owned Site	For those projects being constructed on a district owned site, the <i>Site Ownership Certification</i> , Form SAB 509, is required prior to the Construction (Phase C) SAB approval.
Sites Not Previously District Owned	For those projects which include the acquisition of real property not previously owned by the district, a grant deed to the property or the <i>Site Ownership Certification</i> (Form SAB 509) is required prior to the Construction (Phase C) SAB approval.
County Superintendent of Schools Building Project	In the event a facility is to be constructed by a County Superintendent of Schools on property owned by a school district, it is not necessary for the county to acquire land. In lieu of the site ownership certification, a 40-year ground lease agreement from the district to the county must be executed. In addition, the district that is leasing the site to the County Superintendent of Schools must provide the Form SAB 509.

Real Property Appraisals

Definition	A real property appraisal is a written estimate of the fair market value of a real property.
Appraisal Specifications	Appraisal specifications must comply with those established by the Appraisal Institute.
Appraisal Options	<p>To ensure that site acquisition conforms to law and that fair market value is properly determined, the district must comply with the SAB real property appraisal process.</p> <p>Either one or two appraisals may be obtained to meet site acquisition requirements. A comparison of appraisal options is provided in the table below:</p>

COMPARISON OF APPRAISAL OPTIONS	
One Appraisal	Two Appraisals
<ul style="list-style-type: none"> • One appraisal per parcel. • The appraisal must be reviewed by the OPSC. • For valuations approved by OREDS, the appraisal fee is an eligible project cost. 	<ul style="list-style-type: none"> • Two appraisals per parcel. • Appraisal fees are eligible project. • OPSC must review the appraisals only in the event that the valuation(s) are relatively disparate.

Appraisal Costs

The costs associated with the preparation of required appraisals are eligible State funded expenditures.

Updates

Updates to an appraisal are permissible under the following circumstances:

CIRCUMSTANCE A
The valuation date of the appraisals will exceed 60 days at the time of the district's request for a site apportionment and no more than 150 days at the time of the site apportionment. However, an appraisal exceeding 60 days at the time of the site apportionment may be updated. The appraisal update is an eligible project expenditure.
CIRCUMSTANCE B
Upon the initiation of eminent domain proceedings, the appraisal update is an eligible project expenditure.
CIRCUMSTANCE C
A court has ordered an updated appraisal due to a condemnation action. Only the appraisal which the site apportionment was based will be updated and considered an eligible project expenditure. Appraisals cannot be updated as a basis for negotiation toward a stipulated judgement.

Time Extension

When a settlement cannot be successfully negotiated and the district has not filed condemnation proceedings within the 60 day (single parcel) or 90 day (multiple parcel) time limit, a written time extension must be requested by the district and obtained from the OPSC Executive Officer. If a written extension is not granted, the SAB will hold the district responsible for any increased costs exceeding the approved appraised value. ☹

Site Purchase

Introduction

Eminent domain gives a public entity the right to acquire land for public use. Site acquisition is a local responsibility.

The district and its legal counsel carry the burden of negotiating the acquisition, complying with statutory requirements, and bringing the acquisition of the real property to a successful conclusion. It is desirable that the district consult with its legal counsel before taking steps to acquire real property. Legal counsel often insists on early consultation so that each action will give maximum support to the district's case should condemnation proceedings be necessary.

Acquisition of real property may be accomplished through:

- a negotiated settlement, or
- condemnation proceedings.

Negotiated Settlement within the Appraised Valuation

A negotiated settlement culminates when the property owner accepts an offer within the amount of an approved appraisal. This settlement represents the SAB cost standard for the acquisition.

Negotiation Deadlines

To ensure that the site acquisition is completed in an expeditious manner, the following deadlines must be adhered to:

- A settlement must be negotiated or condemnation filed within 60 days (single parcel) or 90 days (multiple parcels) of the SAB site acquisition apportionment.
- A time extension may be granted if a written request is made to the OPSC Executive Officer prior to the expiration of the original 60 or 90 day deadline. There must also be good reason to believe that a successful negotiation can be achieved.

Negotiated Settlement above the Appraised Valuation

Under rare circumstances, a settlement may be negotiated above the approved appraised valuation at an amount authorized by the SAB. Authorization to negotiate a settlement above the approved appraised valuation may be warranted if satisfactory evidence from a relevant source is provided. This evidence may include:

- the owner's appraisal;
- another current appraisal;
- recent court awards for similar properties;
- probable testimony in a potential trial;
- opinion of district's legal counsel;
- potential trial costs.

Usually, any evidence will be evaluated by the OPSC. However, an independent appraiser (party other than the original appraiser) may evaluate evidence provided that prior authorization is obtained from the OPSC Executive Officer.

In all instances, the evaluation of the evidence accomplishes one of the following:

- The evidence is unsubstantiated. Therefore, negotiation above the approved appraised valuation will not be permitted.
- The evidence is fully substantiated. Since the increase in the appraised value is warranted, a negotiated settlement up to a maximum amount requested by the property owner may be authorized.
- The evidence is partially substantiated. Since a partial increase in the appraised value is warranted, the negotiated settlement may not exceed the maximum finding of the evaluation.

Limitations

Any increase resulting from a substantiated appraisal is limited to the larger of the following limitations:

- No monetary limit will be specified for real property provided that the negotiated purchase price does not exceed \$100,000.00.
- The negotiated purchase price may not exceed the approved appraised valuation by more than 10 percent.

Note: All offers of negotiated settlement exceeding the approved appraised valuation are subject to approval by the SAB.

Condemnation Proceedings

The acquisition of private real property through condemnation can be achieved through the following legal actions:

LEGAL ACTION	DEFINITION
Stipulated Judgement	Occurs when an agreement to sell a property is negotiated with the assistance of the Court.
Order of Immediate Prejudgment Possession	Allows a government to take legal possession of a real property prior to the Court's interlocutory or final judgement of the property value.
Interlocutory Judgement	Occurs when the Court makes a decision on the request to condemn a property. The decision is followed by a final judgement of the property value.

Stipulated Judgement Proceedings

When the district pursues a settlement by means of a stipulated judgement, the summons and complaint, and lis pendens issued by the Court must be submitted to the OPSC. These terms are defined as follows:

TERM	DEFINITION
Summons	A notification to the property owner to appear in court.
Complaint	Explains the nature of the proceeding to the court.
Lis Pendens	Notice to the public that a title to real property is pending litigation.

An agreement to a stipulated judgement may be negotiated within the approved appraised value of the property. However, if an agreement cannot be reached in this manner, negotiations above the appraised value of the property may be authorized. In this instance, the procedures delineated in negotiating a settlement above the appraised evaluation must be enforced.

Order of Immediate Prejudgment Possession

An Order of Immediate Prejudgment Possession allows the district to take legal possession of a real property prior to the Court's interlocutory or final judgement. The action of immediate possession irrevocably sets the date of the property's valuation.

Continued on the next page

Order of Immediate Prejudgment Possession, (Cont.)

Before the district may file an Order of Immediate Prejudgment Possession with the Court, the OPSC Executive Officer must authorize the action under any of the following prescribed circumstances:

CIRCUMSTANCE A
<ul style="list-style-type: none"> • Acquisition is necessary to stop ongoing or eminent development of the property which will have a substantial effect on the value. • If an acquisition involves more than three parcels under different ownership and at least two-thirds of the parcel owners have indicated a willingness to agree to a negotiated settlement, then immediate possession may be authorized for the remaining parcels. <p>Note: In the above mentioned situation, development of the property may occur upon receipt of final DSA approved construction plans. Written authorization must be obtained from the OPSC Executive Officer prior to any development or improvement.</p>
CIRCUMSTANCE B
<p>If the demolition, removal or replacement of structures or other facilities existing on the property will require an unusual amount of time to complete and therefore cause an unacceptable delay in the project, immediate possession may be authorized. However, the district must certify that acceptable final plans have been submitted to the DSA and that DSA approval will be granted shortly after the demolition or removal is completed.</p>
CIRCUMSTANCE C
<p>The final plans have been approved by the DSA.</p>

Any request by the district for immediate possession which does not meet the immediate possession prescribed circumstances previously discussed must be accompanied by a school board resolution agreeing to fund any amount of a court award exceeding the approved appraised value.

In all cases, the counsel representing the district in the condemnation proceedings must provide the OPSC Executive Officer with a brief written summary of the property owner's claims. The summary must stipulate that there are no known claims by the property owner which would be likely to cause the Court to award a substantial increase (more than 50 percent) above the approved appraised value.

Deposits with the Court

When the district is authorized by the OPSC Executive Officer to take immediate possession of a given parcel, site funds apportioned are released to the district for deposit with the Court.

The date of deposit establishes the property valuation date.

Interlocutory Judgement Proceedings

If a settlement cannot be negotiated with the aid of the Court in a stipulated judgement, then the Court makes a decision on the request to condemn a property. The Court's condemnation decision is followed by the final judgement.

Final Judgement

The final judgement is the Court’s final determination of the value of the property. It is the district’s responsibility to submit to the OPSC a certified copy of the judgement bearing the Court’s seal. When such documents are received, the OPSC can submit to the SAB a request for an increase in the site apportionment to meet any judgement above the high appraisal. ☺

Relocation Assistance

Introduction

Any person, business, farm operation, or nonprofit organization displaced as a result of a real property acquisition may receive financial assistance to relocate. Relocation assistance is administered by the SAB in accordance with the State relocation guidelines adopted by the California Commission of Housing and Community Development.

Relocation Criteria

Those entities eligible for relocation assistance include any person, business, farm operation or nonprofit organization occupying the subject property at the time the first written offer to purchase the property was made. In addition, any entity being relocated shall:

- receive fair and equitable treatment; and
- not suffer disproportionate injuries from a program designed for the public’s use;
- not be required to relocate unless adequate replacement housing is available.

Types of Relocation Reports

Upon the district making its first written offer to purchase real property and the displacement of occupants is evident, either a relocation plan or a statement of exemption or relocation entitlement report must be prepared as follows:

TYPE OF REPORT	DESCRIPTION
Relocation Plan	<p>The relocation plan is the primary relocation report. This report must be prepared on any project which involves the displacement of one or more residential occupants.</p> <p>The purpose of the plan is to provide an assessment of who or what will be relocated, how the relocation will be accomplished, and how much it will cost. The plan serves to assure that an orderly relocation can be accomplished and that an adequate supply of comparable replacement housing is available.</p>
Statement of Exemption	<p>This report must be prepared on any project not involving the displacement of residential occupants.</p> <p>The statement contains a description of all parcels and all improvements, covenants and/or leases covered by the project. When it is anticipated that a project will involve any moving expenses, the statement must contain budget estimates of the moving costs and overhead.</p>
Relocation Entitlement	<p>This report must be prepared on any project involving the displacement of any person, business, farm operation or nonprofit organization.</p> <p>The purpose of the report is to provide an estimate of the actual costs of purchasing or renting replacement housing.</p>

Preparation/Submittal of Relocation Reports

Preparation of the relocation report is left to the discretion of the district. The following relocation reports must be completed and submitted to the OPSC in a timely manner:

TYPE OF REPORT	DEADLINE FOR SUBMITTAL
Relocation Plan or Statement of Exemption	Prior to or during the appraisal stage of the project.
Relocation Entitlement	Prior to or on the date site acquisition negotiations take place. This report must be submitted prior to the initiation of a relocation assistance fund release.

Forms SAB 506A/SAB 506B (Cost Estimates)

All costs related to the relocation of displaced entities must be identified on the Form SAB 506A and Form SAB 506B cost estimates.

SITE CATEGORY	
SUB-CATEGORY	DESCRIPTION
Site Support	Identifies all costs related to the development of relocation reports and determination of relocation claims (see Section 3, Site Support Costs, page 3-4).
Relocation Assistance	Actual costs related to the displacement of any persons, businesses, farm operation or nonprofit organization in conjunction with the acquisition of real property.

Required Fund Release Documents

The following chart identifies the documents that are required to release relocation assistance costs:

ITEM	DESCRIPTION
Evidence to Clear Title	Verification that the district holds clear title to the subject real property.
Certification of Conformance	District certification that regulations pursuant to the Relocation Assistance Law have been adopted or that a party/entity specified in Government Code, Section 7261.5, has been contracted for performance of services under the law.
Relocation Entitlement Report	Complete report identifying the actual costs involved in the displacement of all affected parties.
Claims	<p>All documents used to justify expenses incurred by claimants. A summary of these claims must also accompany the itemized claims.</p> <p>Justification may include:</p> <ul style="list-style-type: none"> • invoices related to moving expenses, storage costs, insurance valuation, the reasonable expenses related to the search of a replacement site, etc.; and/or • incidental expenses including legal, escrow fees, closing/related costs, surveys, appraisals, plat maps, etc. <p>These claims must be submitted to the OPSC on a continuous basis. All claims are subject to the approval of the OPSC Executive Officer.</p>

Fund Release Advances

The district may request an advance fund release of up to 80 percent of the relocation assistance budgeted at the site acquisition stage of the project. However, the advance may not exceed \$250,000.00.

All advance fund release requests must be made in writing and specify the amount of the proposed advance. 🗑️

Development of Cost Estimates: Forms SAB 506A and SAB 506B

Introduction

This topic focuses on the preparation of the *Estimated Project Cost Detail*, Form SAB 506A, and the *Summary of Estimated Costs*, Form SAB 506B. The cost estimate details the expenditures associated with the following categories:

- A. Site
- B. Plans
- C. Construction
- D. Tests
- E. Inspection
- F. Furniture and Equipment
- G. Contingencies

The cost estimates are used to develop a construction budget in preparation for the Construction (Phase C) SAB recommendation.

Form SAB 506A

The form *Estimated Project Cost Detail*, Form SAB 506A, provides a detailed breakdown of all project costs. This form should be expanded to support the scope of the project as depicted on the project plans.

Form SAB 506B

The *Summary of Estimated Costs* (Form 506B) provides a summation of the costs detailed on the Form SAB 506A.

Cost Itemization

All items listed on the cost estimate should be clearly itemized by unit size, quantity and unit cost. Lump sums are not permitted.

Overhead and Profit

All costs associated with overhead and profit must be integrated into the unit cost itemization.

Updates

Upon submittal of DSA approved plans, new cost estimates must be prepared if those previously submitted are older than 90 days along with the *Certification of Changes to Final Plans and Specifications* (Form SAB 390) to explain changes.

Required Signatures

The cost estimates must contain the original signatures of a licensed architect or structural engineer.

In this Section

This section discusses the following topics/subtopics:

TOPIC/SUBTOPIC		SEE PAGE
A.	Site	3-3
	• <i>Site Support Costs</i>	3-4
B.	Plans	3-5
C.	Construction	3-6
	• <i>Building Cost Standards</i>	3-6
	• <i>Demolition</i>	3-11
	• <i>Interfacing</i>	3-11
	• <i>Multi-Story Replacement of Facilities</i>	3-12
	• <i>Utility Services</i>	3-13
	• <i>Capital Development Fees</i>	3-14
	• <i>Off-Site Development</i>	3-15
	• <i>Service Site Developments/Fire Code Requirements</i>	3-16
	• <i>General Site Development</i>	3-18
	• <i>Additional Funding for Multi-Story Construction</i>	3-20
	• <i>Supplemental Allowance</i>	3-21
• <i>Energy Conservation</i>	3-22	
• <i>Deferred Items</i>	3-24	
D.	Tests	3-24
E.	Inspection	3-24
F.	Furniture and Equipment	3-25
G.	Contingencies	3-27

A. Site

Description

The eligible costs and fees associated with the *site* classification are defined as follows:

ITEM	DESCRIPTION
Purchase Price of Property	The eligible costs associated with the acquisition of real property.
Appraisals	Costs associated with securing real property appraisals and necessary updates as mandated.
Escrow Fees	All charges normally included in the escrow agreement such as: <ul style="list-style-type: none"> • escrow charges • title insurance • loan fees <i>Note: Property taxes are ineligible.</i>
Surveys	If required, the costs for a certified survey must include: <ul style="list-style-type: none"> • grades and lines of streets, pavements, and adjoining properties; • right-of-way, restrictions, easements, boundaries and contours of the building site; • locations, dimensions and floor elevations of existing buildings; • other improvements and trees; • full information as to available service and utility lines, both public and private
Site Support (85%)	See <i>Site Support Costs, on page 3-4.</i>
Relocation Assistance	Actual costs related to the displacement of any person, business, farm operation, or non-profit organization in conjunction with the acquisition of real property (see <i>Section 2, Relocation Assistance, page 2-7.</i>)
Other	Justified fees which may include, but are not limited to, the following: <ul style="list-style-type: none"> • court costs • legal services (i.e., review of contracts, legal documents) • condemnation proceedings

SITE SUPPORT COSTS

Introduction

Site support costs provide funds for the:

- preparation of environmental impact documents,
- development of relocation reports,
- determination of relocation claims,
- negotiation of site purchases.

Eligible State Funded Costs

The State will fund a maximum of 85 percent of the amount expended on eligible site support costs. The State funded portion will be deducted from the project's building cost allowance prior to issuing an authorization to bid the project.

Loan Option/ Repayment

The balance (15 percent) of the eligible costs must be funded by the district. The district may request an advance from the State not to exceed 15 percent.

The advance must be repaid as follows:

- Payments shall be equal to one-half of one percent of the district's prior fiscal year General and Adult Education Funds budgets, exclusive of amounts budgeted for capital outlay or debt services, to a maximum of \$100,000.00 per year.
- Payments including interest are due on January 1, of each year until the advance is repaid. The first payment is due January 1, following the fiscal year in which the warrant is issued for the site support costs.

Note: The interest rate shall be established pursuant to Education Code Section 16334.

Required Document for Loan Option

The following document is required prior to release of *site support* loaned funds:

FORM	DESCRIPTION
SAB 507	District Resolution Certifying to Repay Additional Apportionment to the State Lease-Purchase Fund

Site support costs approved in the application shall be authorized for payment at Site (Phase S) SAB approval. ☞

B. Plans

Description

The eligible costs and fees associated with the *plans* classification are defined as follows:

ITEM	DESCRIPTION
Architect Fees	Fees as negotiated in the Architect's Agreement but not to exceed the SAB Architect Fee Schedule (see <i>Section 1, Architect Agreement, page 1-14</i>)
DSA/ORS Plan Check Fee	Fees as determined by the Division of the State Architect for the review of plans as required by law. Refer to Title 24, Part 1, Chapter 4 of the California Code of Regulations.
CDE Plan Check Fee	Fees as determined by the California Department of Education, School Facilities Planning Division, as required by law.
Energy Analysis Fee	Fees as determined by the SAB (see <i>Calculation of Energy Consultant Fee, page 3-23</i>).
Preliminary Tests	Includes the following costs: <ul style="list-style-type: none"> • soil tests, foundation tests, exploratory borings, and similar testing required prior to construction; • site investigation and reports pertaining to toxic and solid waste hazards where required by Education Code Section 17213.
Administrative Cost Allowance	An Administrative Cost Allowance is available to small districts only.
Other	Other plan costs such as: <ul style="list-style-type: none"> • advertising construction bids • printing limited to twenty-five plan sets for bidding and construction purposes • termite/dry rot inspection as necessary • asbestos/lead inspection as necessary

C. Construction

Description

Every new construction project receives an allowance to construct the building and provide for the full site development of a school site. The State's cost standard for site development is based on the current *Lee-Saylor Construction Cost Manual*. The eligible costs associated with the construction classification include the broad categories of building construction, site development, energy conservation, and supplemental funding for multi-story construction.

BUILDING COST STANDARDS

Introduction

The SAB has established cost standards for the construction of eligible school building facilities. The building construction cost standards may not be exceeded.

Building Types B & D

The following chart describes the building types utilized under the State School Building Lease-Purchase Program:

BUILDING TYPE *		
COMPONENT	CLASS B	CLASS D
Floors/Roofs	<ul style="list-style-type: none"> • reinforced concrete on steel decking; or • formed slabs resting on the frame; or • poured to become an integral part of frame • composed of prefabricated panels which may be mechanically stressed 	<ul style="list-style-type: none"> • supported on wood or steel joists or trusses • ground floor may be concrete slab • upper floors may be concrete plank, steel deck or wood
Exterior Walls	<ul style="list-style-type: none"> • masonry or reinforced concrete, metal, glass, or stone 	<ul style="list-style-type: none"> • closely-spaced wood; or steel studs • skeleton wood frame on which some form of curtain wall is applied (includes pre-engineered pole buildings), • load-bearing or non-bearing (non-bearing walls may be supported by columns, bents, or arches constructed of concrete, steel or wood)
Interior Partitions	<ul style="list-style-type: none"> • masonry, reinforced concrete or gypsum • light-weight & movable partitions are used as non-bearing walls 	<ul style="list-style-type: none"> • no specific attribute

*Building cross sections must be provided for both new and modernization projects to verify building type.

Base Cost Standards

The Class B and Class D base building cost standards are identified on the schedule which follows. Please note, each building area is priced at the facility classification most nearly represented in the plans.

FACILITY CLASSIFICATION		UNIT COST PER SQUARE FOOT	
		CLASS B	CLASS D
TEACHING STATIONS	Arts and crafts, high school & intermediate	\$81.78	\$78.86
	Business machines	81.21	78.31
	Homemaking	92.14	88.85
	Kindergarten	82.24	79.30
	Music, high school & intermediate	91.90	88.62
	Science, General	85.98	82.91
	Science laboratory (above grade 6)	117.33	113.14
	Shop, high school & intermediate	85.94	82.87
	Standard, elementary	81.16	78.26
	Standard, high school & intermediate	77.68	74.91

Continued on the next page

Base Cost Standards,
continued

FACILITY CLASSIFICATION		UNIT COST PER SQUARE FOOT	
		CLASS B	CLASS D
NON-TEACHING STATIONS	Administrative spaces	\$91.23	\$87.97
	Corridor, enclosed	71.55	68.99
	Corridor, covered	35.96	34.68
	Gymnasium	111.26	107.29
	Kitchen	136.63	131.75
	Food Service	79.71	76.86
	Library	88.29	85.14
	Multi-purpose, Type I	91.61	88.34
	Multi-purpose, Type II	78.48	75.68
	Performing Arts Facility	116.32	112.17
	Resource Specialist Program (RSP)	83.10	80.14
	Shower/Locker	101.15	97.54
	Staff Workroom	87.19	84.08
	Storage, Mechanical and Janitor	67.73	65.31
OTHER FACILITIES	Toilets	187.12	180.44
	Warehouses and Agricultural	40.45	39.01
	Employee parking basements	40.45	NA
	District Maintenance	68.35	65.91
	Other	87.19	84.08

FACILITY CLASSIFICATION		ABBREV.	UNIT COST PER SQUARE FOOT	
			CLASS B	CLASS D
NON-SEVERE HANDICAP	Specific Learning Disability	SLD	\$83.10	\$80.14
	Mildly Mentally Retarded	MMR	83.10	80.14
	Severe Disorder of Language	SD	92.51	89.21
SEVERE HANDICAP	Visually Handicapped	VH	89.38	86.18
	Orthopedically and Other Health Impaired	OOH	83.10	80.14
	Autistic	AUT	89.38	86.18
	Severely Emotionally Disturbed	SED	89.38	86.18
	Severely Mentally Retarded	SMR	89.38	86.18
	Developmentally Handicapped	DH	89.38	86.18

Special Day Complex

A special day complex consists of at least one special day class teaching station as well as a medical therapy unit. In addition to instruction space, the teaching station and/or medical therapy unit may include toilets, showers, changing areas, large equipment storage and daily living skills space.

The medical therapy unit may also include clinic/administrative areas, waiting areas for out patients and clients and space for physical and occupational therapy activities.

The Class B and Class D base building cost standards for a special day class complex are identified on the schedule as follows:

FACILITY CLASSIFICATION		ABBREV.	UNIT COST PER SQUARE FOOT	
			CLASS B	CLASS D
SEVERE HANDICAP	Severely Mentally Retarded	SMR	\$90.50	\$87.26
	Orthopedically and Other Health Impaired	OOH	88.70	85.54
	Developmentally Handicapped	DH	94.08	90.72
	Deaf-Blind/Multi	DBM	94.08	90.72

Note: The cost standard for toilet and shower areas located within a Special Day Complex are calculated according to the *Base Cost Standards* (see pages 3-7 & 3-8).

Adjustment Indices

The following adjustment factors, where applicable, are made to the base building cost allowance:

TYPE OF ADJUSTMENT	BUILDING TYPE	
	CLASS B	CLASS D
Construction Cost Index Factor	✓	✓
Geographic Area Index Factor	✓	✓
Small Building Index Factor	✓	✓
Urban (Dollar Amount)	✓	✓
Security Allowance (Dollar Amount)		✓

Construction Cost Index

The current construction cost index for Class B or Class D, as applicable, is applied to the base building cost allowance and are provided by Marshal & Swift.

The final allowance is determined utilizing the indices in effect at the time the project is first bid.

Geographic Area Adjustment

An adjustment factor for the geographic area in which a project is located is applied to the base building cost allowance (see *Appendix 11, Geographic Adjustment Factors*).

Small Building Index

An adjustment factor is applied to projects containing less than 12,000 square feet of building area. Use the following chart to determine the appropriate small building adjustment:

BUILDING AREA (SQUARE FEET)	MULTIPLIER	BUILDING AREA (SQUARE FEET)	MULTIPLIER
Under 800	1.15	6,400 – 7,199	1.07
800 – 1,599	1.14	7,200 – 7,999	1.06
1,600 – 2,399	1.13	8,000 – 8,799	1.05
2,400 – 3,199	1.12	8,800 – 9,599	1.04
3,200 – 3,999	1.11	9,600 – 10,399	1.03
4,000 – 4,799	1.10	10,400 – 11,199	1.02
4,800 – 5,599	1.09	11,200 – 11,999	1.01
5,600 – 6,399	1.08	12,000 or more	none

Urban Adjustment

An urban adjustment is applied to the building cost allowance accordingly:

CLASS B	CLASS D
An urban adjustment factor of 24 percent will be applied to the Class B building cost allowance for those projects located in areas of high property values and high population density.	An urban adjustment factor of one percent will be applied to the building cost allowance in areas of high population density.
<p>In either case, the district must provide justification describing the necessity of this adjustment. The circumstances which would warrant this adjustment include:</p> <ul style="list-style-type: none"> existing site is less than 75 percent of the CDE's recommended site size, extent of development on surrounding property, and existence and extent of traffic congestion. 	

The architect must provide a list of costs he anticipates the contractor will add to his bid for unique urban costs such as remote warehouse costs, material transportation to the site, security costs, employee parking costs, etc.

Security Adjustment

In areas where high crime rates exist, a security allowance may be provided for those Class D construction projects requiring security fencing, other protective structures and a watchperson. These items must be described in the plans and/or specifications. The district must provide justification describing the necessity of these security measures. The circumstances which would necessitate this adjustment include:

- Lack of site space for contractor to work and store materials;
- High risk of vandalism and theft (materials must be delivered to and from the site daily);
- Twenty-four hour, seven day, around the clock watchperson is required;
- Union agreement of basic trades requires contractor to provide parking for trades men, and;
- Increased premiums for insurance during construction in high density areas.

Final Adjustment to the Building Cost Allowance

A final cost allowance is determined as an outcome of OPSC’s review of the final plans. The allowance is adjusted according to the construction cost index in effect as of the date of the issuance of the bid authorization. The allowance is adjusted for the final time based on the construction cost index in effect as of the date of the bid opening. ☺

DEMOLITION

Description

Costs associated with the removal of building(s) which stand in the footprint and /or inhibits access to the proposed building are considered demolition costs. All itemized demolition costs will be given individual funding consideration. ☺

INTERFACING

Allowable Costs

Eligible interfacing costs include those costs associated with the connection of electrical, intercom, fire alarm and communication systems of an existing building to a new building area. All itemized interfacing costs will be given individual funding consideration. ☺

MULTI-STORY REPLACEMENT OF FACILITIES

Introduction

The district is eligible for replacing single-story school building(s) with one or more multi-story structures if the existing school site is less than 50 percent of the recommended site size as determined by the CDE, School Facilities Planning Division. The request for the replacement of single-story facilities at a project site must be made prior to the construction apportionment (Phase C).

Replacement of Portable Facilities

There are additional requirements for portable facilities replaced with multi-story structure(s):

- A district-owned portable 20 years of age or older may be either moved or replaced,
- A district owned portable less than 20 years of age must be moved,
- If a portable is moved to another site, the relocation costs are eligible expenditures and the portable building area will be included in the calculation of the districts "existing adequate area".

Note: Proceeds from a sale of a portable facility are considered available rent.

Multi-Story Replacement Facility

When a single-story facility is replaced with one or more multi-story buildings, not more than one-third of the final project area may represent the area of the replaced single-story facility.

Cost Standards/Area Assessment

The area being replaced as part of a project is subject to State cost standards (see *Building Cost Standards, pages 3-6 through 3-11*). This area will be considered in the district's calculation of "existing adequate area".

UTILITY SERVICES

Introduction

Utility service development include improvements of water, sewer, gas, electric and telephone. These improvements provide service from the closest existing utility connection to the project site meter or major building lateral location. Connection fees associated with the utility connection are also eligible project cost.

Eligible Utility Services Expenditures

The following utility services may be included as eligible project expenditures:

SERVICE	DESCRIPTION
Water	<ul style="list-style-type: none"> The installation of a main supply line (domestic water only) from the utility company connection to the meter. Meters not provided by the serving utility. Installation of a domestic water system, to include a well, pump and necessary appurtenances (except a pump house), from the main supply line to the first building lateral. Connection fee (funds deferred for invoice verification).
Sewage	<ul style="list-style-type: none"> The installation of main sewage disposal line from the utility company connection to the first building lateral. The installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system. Connection fee (funds deferred for invoice verification).
Gas	<ul style="list-style-type: none"> The installation of main supply line from utility company to the meter. The installation of meters not provided by the serving utility. Connection of a Liquefied Petroleum Gas (LPG) system from the main supply line to the first building lateral (including storage tank costs if purchased). Connection fee (funds deferred for invoice verification).
Electric	<ul style="list-style-type: none"> The installation of service from the serving utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Distribution panels or switch gear are considered building cost items. Transformers, transformer pads and protective bollards. Connection fee (funds deferred for invoice verification).
Telephone	<ul style="list-style-type: none"> The installation of service from the serving telephone company to the nearest distribution center.

Additions to Existing Schools

For additions to existing schools, all utility services must connect to the nearest available site source. If it is necessary to do otherwise, a registered engineer must certify that the existing lines will not adequately support the new facilities and that new routing is therefore required.

Connection Fees

Connection fees that are eligible must be delineated on the cost estimate. At the time of bid approval, these connection fees will be deferred and released upon invoice verification. An itemized invoice issued by the serving utilities must be submitted to the assigned OPSC project manager for review and release of these funds to the district.

Ineligible Utility Services

The following items are not eligible as utility service improvements:

- Any oversized installation beyond school needs;
- Line installation that is not part of shortest connection from serving utility to school site connection;
- Any portion of a utility that can be supplied by a utility company without charge;
- All heating systems and school communication systems, including public address systems;
- Cable television;
- Fences, or other protective structures relating to utility systems on school grounds;
- Any:
 - a) electrical, water or gas service beyond the meter,
 - b) sewer service beyond the building lateral,
 - c) telephone service beyond the distribution center, (building cost).

In all cases, items deemed "ineligible" but included in the plans and specifications must be in the Form SAB 506A and 506B cost estimates. ☞

CAPITAL DEVELOPMENT FEES

Introduction

Public utility agencies have the authority to levy user fees for the cost of capital development facilities to provide service to schools. Capital development facilities fees may be included in a project as eligible costs but are limited to facilities which provide power, water, light, heat, communications, garbage services, drainage, flood control, or the collection, treatment, and disposal of sewage.

Note: Capital development fees are not connection fees.

State Funding Limitations

State funding for capital development fees is only available for service capacities that meet the needs of the lease-purchase project. Capital development fees levied by a local agency are reduced on a dollar-for-dollar basis for those service capacities constructed as part of the lease-purchase project.

Reimbursement agreements for service capacities beyond the need of the State funded project are not eligible for funding under the Lease-Purchase Program.

Required Documents

All requests for the funding of capital development fees as a component of a lease-purchase project must include the following information:

- written evidence from the serving utility that the capital facilities fee does not exceed amounts charged to comparable non-public users (i.e., county/city ordinance). In addition, any fee assessed to the district must not exceed the proportionate share of the public utility facilities benefiting the lease-purchase project (i.e., per acre assessment);
- a written statement prepared by the serving utility itemizing all fees levied against the lease-purchase project; and
- for service to be provided after March 24, 1988: . . ." a written agreement which summarizes the negotiations between the district and serving utility company". The district cannot enter into an agreement until authorized by the Executive Officer of the State Allocation Board. ☞

OFF-SITE DEVELOPMENT

Introduction

Off-site improvements located along the perimeter of the site include street grading and paving, storm drainage lines, curbs, gutters, sidewalks, and street lighting. These improvements are commonly dedicated for public use.

Eligible Off-Site Development

Development of a site, including existing improvements, may not exceed the State's established standards. Any off-site development may not be performed on more than two sides immediately adjacent to the site. The following are off-site development State standards:

IMPROVEMENT	STATE STANDARDS
Paving of streets, curbs & gutters (includes existing improvements)	One-half of the width of a standard residential street not to exceed 20 feet from the top face of curb to centerline of street less any existing paving. Note: For roadways of a width or standard greater than those of a normal subdivision, the ineligible improvement costs may be funded by local municipality (Street and Highway Code, Section 2117) or may be included as general site development improvements for the project.
Sidewalks	Five foot width of sidewalk Note: Any portion of a sidewalk in excess of the five foot width is not eligible as an off-site development improvement but may be funded as a general site development improvement.
Street lighting, planting areas, street signs, traffic signals, street trees	Eligible only when mandated by local ordinance or is currently so developed.

Note: Local entities having jurisdiction of areas where the off-site development is proposed, must approve the related plans and specifications.

Rough Grading

When off-site development includes rough grading, the eligible portion of the off-site street improvements may be included in service site development costs when designed to balance cut and fill quantities. The cost estimate must specify the quantities needed to provide a balance of cut and fill.

Ineligible Off-Site Development

Any ineligible off-site development costs that are included in the plans and specifications must be included in the Form SAB506A and Form SAB506B cost estimates. Costs relating to off-site development improvements including rough grading which benefit adjacent properties without those properties equitably sharing in the cost are ineligible for State funding. Therefore, the associated costs (i.e., planning, testing, inspection services, etc.) are not eligible.

SERVICE SITE DEVELOPMENT/FIRE CODE REQUIREMENTS

Introduction

Service site development improvements are performed within school property lines and may include site clearance, rough grading, soil compaction, drainage and eligible erosion control. This portion of the site preparation is accomplished prior to the general site development and the construction of buildings.

Eligible Service-Site Development

Eligible service site development improvements are described in the following table:

IMPROVEMENT	DESCRIPTION
Site Clearance	Removal of trees, brush, debris, etc. Also includes demolition.
Demolition	Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or general site development improvements.
Removal/Relocation of Utility Service	Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed parking lot.
Rough Grading	Grading of required contours, including cut and fill, leveling and terracing operations. May include off-site cut and fill operations (see <i>Off-Site Development, Rough Grading, page 3-15</i>).
Soil Compaction	Soil compaction adhering to common engineering practices. Engineered fill required by soils report must be submitted for review.
On-Site Drainage Facilities	Inlets, below grade drainage facilities and retention basins. Note: Does not include the surface drainage of football fields and running tracks.
Erosion Control/ Embankment Improvements	For embankments having a slope of 2:1 and a vertical height greater than six feet, erosion control improvements such as plant material, sprinkler systems, jute mesh and straw are eligible. Stairways, handicap ramps and retaining walls are also eligible.
Portable Facilities Relocation	Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed parking lot to a permanent site. A portable building may be moved to a permanent on-site location one time only during construction. Note: The replacement of general site development items which were displaced as a result of a building relocation may be funded as general site development above the general site development allowance. These costs are approved by the SAB on a case-by-case basis.

Continued on the next page

Eligible Service-Site Development, (cont)

IMPROVEMENT	DESCRIPTION
Fire Code Requirements	<p>All-weather fire service roads and site access gates necessary to meet the State Fire Marshal requirements and which do not provide a dual use. An all-weather fire service road is defined as not exceeding 20 feet in width and composed of two inches of asphalt concrete over a maximum of six inches of aggregate base. Hydrants and related water supply lines required by DSA are an eligible service site cost.</p> <p>Note: Sprinkler systems and serving connection lines are building costs. Full school sprinkler systems are eligible in conjunction with an independent water system (well) when designed in lieu of hydrant systems.</p>

Bid Options for Service Site

The following options for bidding service site development contracts are:

NEW SCHOOL	
CIRCUMSTANCE	ACTION
Estimated Site development not exceeding \$100,000.	Site development work may be bid in concert with building contract. The total bid may not exceed the project's cost allowance established prior to the bid.
Estimated Site development in excess of \$100,000 or 10% of the estimated building cost, whichever is larger.	Site development is required to be bid independently of building contract.

ADDITIONS TO EXISTING SCHOOL		
CIRCUMSTANCE	OPTION A	OPTION B
Site development in excess of \$100,000.	Site development bid independently of building contract.	Site development bid in concert with building contract. The bid may not exceed the project's allowance established prior to the bid.

**Development
Separate Bids**

When the service site development is bid independently of the building contract, the work must be designed as a wholly separate contract rather than as an alternate to the building contract.

When bid separately, site development may include utility and off-site development, service site development and general site development. The general site development will be prorated to the amount of the separate bid to compute the remainder of the general site development allowance.

**Ineligible Service Site
Development**

Any excess or ineligible service site work included in the plans and specifications must be included in the Form SAB 506A and Form SAB 506B cost estimates. ❌

General Site Development

Introduction

General site development items encompass the exterior finishing detail of the site. This development is normally performed on-site. However, when elected by the district, general site improvements may include excess off-site or service site development work.

**Eligible General Site
Development Items**

General site development improvements are described in the following table and are deemed eligible project costs not to exceed the SAB general site development allowance.

IMPROVEMENT	DESCRIPTION
Finish grading	Final design grade.
Roads/driveways, walks, stairs, ramps, parking area, curbs and gutters	On-site facilities for vehicle and foot traffic.
Turfed/paved play area, permanent playground equipment, outdoor classrooms and places of assembly, tennis and handball courts, baseball fields, construction and surface drainage of football fields and running tracks	Outdoor instruction and play facilities. Paved, covered outdoor areas are counted and allowed as open corridor areas.
Concrete V-gutters	Drainage of on-site parking lots and field or bark areas
Planting/sprinkling, aesthetic terracing	Landscaping of building frontages, courtyards, and parking areas.
Sprinkling system, topsoil and turf	Outdoor teaching stations and play areas.
Construction/surface drainage	Football fields and running track.
Fencing, outdoor walls/screens, shelters not providing rain protection, flagpoles, utility enclosures, incinerators, pump houses, outdoor safety lighting and on-site fire lines and hydrants	Protective and service facilities.

Note: All general site items designed in excess of the computed allowance must be wholly funded by the district.

General Site Development Allowance

All new construction projects are eligible for a general site development allowance. The allowance is generated from a standardized calculation derived from the established building allowance for the project and the net gross site acreage, excluding any street easements, as recommended by the CDE.

The general site development allowance derived from the established building allowance is determined as follows:

GRADE LEVEL	ALLOWANCE
High Schools (9-12 and 10-12)	Five percent of the building allowance.
All other grades	Eight percent of the building allowance.

The portion of the allowance based on the gross site acreage, excluding any easements, is determined by the following circumstances:

CIRCUMSTANCE	ALLOWANCE
A A new school wherein site acreage is acquired as part of the project application or a new school built on a district-owned site.	\$15,000.00 per acre portion thereof.
B Addition of building(s) to an school located on a district-owned site or acquisition of additional acreage at a district-owned site.	\$15,000.00 per acre not to exceed existing the difference between the capacity of the existing facility and the master-planned capacity of the school. When not included in any prior project as master planned allowance.
C Acquisition of additional acreage at a district-owned site wherein the existing acreage and proposed acreage additions less than 75 percent of that recommended by the CDE.	Special consideration will be given to those projects wherein a need for additional general site development improvements is justified. In this instance, the <i>general</i> site development must be bid separate from any other project contract as case-by-case general site.

Additional Funding for Multi-Story Construction

Introduction

For those schools located in a densely populated urban area where site acquisition costs are high, incentives in the form of a supplemental allowance and replacement of facilities are available:

INCENTIVE	DESCRIPTION
Supplemental Allowance	Provides additional funding to alleviate the problems of a small school site. <i>(see Supplemental Allowance, page 3-21).</i>
Replacement of Facilities on sites with less than 50% of site size recommended by CDE.	Replaces single-story facilities with multi-story structures provided the replacement area does not represent more than 1/3 of the total project area. If the replacement area represents more than 1/3 of the total project area, the SAB would consider the request on a case-by-case basis. <i>(see Multi-Story Replacement of Facilities, page 3-12).</i>

Required Documents

In order to receive additional funding for Multi-Story construction, the following documents are required:

FORM	DESCRIPTION	Supplemental Funding	Replacement of Facilities
<input type="checkbox"/> SAB 506	Application for Apportionment	✓	✓
<input type="checkbox"/> None	Letter Appraisal	✓	
<input type="checkbox"/> SAB 502	Supplemental Funding Calculation	✓	
<input type="checkbox"/> SAB 600	Lease-Purchase Justification Document Showing growth eligibility. Current (within year of application).	✓	✓

Supplemental Allowance

Introduction

A supplemental allowance is available to those projects wherein the actual pupil density of the project site exceeds that recommended by the CDE, School Facilities Planning Division.

Eligible Supplemental Funding Expenditures

The following table describes eligible supplemental funding expenditures:

TYPE	DESCRIPTION
Enhancements	Construction items which will enhance the project in such a way as to mitigate the small site size.
Additional Building Area	Building area funded solely with the "Supplemental Funding" allowance.
Miscellaneous Items	These items may include but are not limited to: <ul style="list-style-type: none"> • fire safety (sprinkler and fire alarms) • handicapped access • playground apparatus • duct shafts, utility tunnels and pipe conduit chases • security features

Form SAB 502

Use of the *Supplemental Funding Calculation* (Form SAB 502) will determine the amount of supplemental funding available to a project.

Letter Appraisals

For purposes of establishing an approximate cost for the acquisition of real property and completing the Form SAB 502 the district must submit two letter appraisals for each parcel to be acquired.

Form SAB 600

The *Lease-Purchase Justification Document*, Form SAB 600, must identify all building area to be funded with the supplemental allowance calculation of the district's adequate building area.

Justification Letter

The district must provide a justification letter detailing the allocation of the supplemental funding allowance in relieving the effect resulting from a less than adequate site size.

Final Project Plans

All items to be funded from the supplemental funding allowance must be clearly identified on the plans. These enhancements must be noted on the plans as "supplemental funding" items.

Cost Estimates

A delineation of all items to be funded with the supplemental funding allowance must be identified on the cost estimates (Forms SAB 506A and SAB 506B). In addition, separate cost estimates identifying *only* the supplemental funding allowance expenditures must be submitted.

Deferment of Supplemental Funding Allowance

The district may opt to defer a portion of the supplemental funding allowance for specific expenditures to be completed subsequently to the project's main construction contract. These items and the associated costs must be identified prior to the acceptance of main construction bid. ☹

Energy Conservation

Introduction

The SAB provides a supplemental allowance to those projects promoting the use of cost effective energy conservation measures and renewable resource technologies.

Eligibility

A life-cycle cost comparison of the costs and benefits of a proposed project intergrating alternative energy measures with those of a proposed project including conventional energy measures will be reviewed by the OPSC to determine the district's eligibility for a supplemental energy conservation allowance. The supplemental energy conservation allowance is the difference between the cost of the alternate and conventional systems.

Required Documents

In order to determine energy conservation eligibility, the following documents are required.

ITEM	DESCRIPTION
Plans	Drawings depicting the projects energy conservation measures.
Life-cycle cost comparison analysis	A life-cycle cost analysis supporting the district's application for the supplemental allowance.
Form SAB 506B (Cost Estimate)	The requested supplemental energy conservation allowance must be identified in the "construction" category in the cost estimate.
1A Diagram	The 1A diagram must identify the building areas in which the use of energy conservation measures are proposed.
Consultant Contract/ District Certification	Evidence of the district's contractual agreement with the energy conservation consultant for services rendered relative to the project. Evidence may include a District Board resolution or legal agreement between the consultant and the district.

Note: It is advised that the energy conservation documents be submitted at the design development stage (Phase P) of the project. However, these documents must be submitted before final plans have been approved by DSA to be eligible for funding.

Calculation of Energy Consultant Fee

The school district is expected to negotiate an agreement with the energy consultant which is most favorable to the State in regard to compensation for professional services. The maximum schedule of fees calculated are based on the total amount of the approved proposed energy conservation measure as follows:

APPROVED SUPPLEMENTAL ALLOWANCE	FEE (%) (NOT CUMULATIVE)
Up to 50,000	7.5
50,001 — 100,000	6.5
100,001 — 200,000	5.5
200,001 — 300,000	5.0
300,001 — no limit	4.5

For example, an approved supplemental energy conservation allowance of \$200,500 would be calculated at a fee not to exceed five percent. The fee totals \$10,025.

The energy analysis consultant fees must be identified in part B. Plans, Energy Analysis Fee category on the Forms SAB 506A and SAB 506B cost estimates.

Calculation of Architect Fees

Since the energy conservation system is included in the plans and specifications the architect fee is calculated based on the amount of the construction contract which included the energy conservation measures. Upon the OPSC's approval of the energy analysis and the establishment of an energy conservation allowance, a recommendation to apportion energy analysis consultant fees will be made to the SAB at Construction (Phase C) approval.

Apportionment of Energy Analysis Consultant Fees

Final energy analysis fees will be released with the construction contract, after the Construction (Phase C) and bid approval. An estimated amount for energy consultation fee is calculated in the Planning (Phase P) approval and available to the district for energy analysis fees.

Fund Release of Final Energy Analysis Consultant Fees

Upon the OPSC's approval of the supplemental energy conservation allowance, a recommendation to apportion the allowance will be made to the SAB at the time of the construction apportionment (Phase C).

Apportionment of Energy Conservation Allowance

Since the energy conservation measures are included in the building construction contract, these funds are released with the construction contract. ☺

DEFERRED ITEMS

Description Eligible construction items that are not included in the plans and specifications and are to be performed at a later date may be deferred for the future. In order for a reservation of funds to be made, these items must be clearly identified on the cost estimates and plans. An itemized invoice issued by the vendors who provide the work for these deferred items must be submitted to the OPSC for review. The OPSC will make a determination of whether or not the costs are eligible for State Funding. ☞

D. Tests

Description The school district, in accordance with Title 24, Part 1 of the California Code of Regulations, is responsible for all necessary tests during the project's construction phase. Verification of costs must be submitted to the OPSC at time of audits.

Tests performed during construction may include soil compaction/fill tests, materials testing, etc. ☞

E. Inspection

Description In accordance with Title 24, California Code of Regulations (CCR), inspection services are required during the construction of all facilities. The school district, must solicit proposals from several DSA certified inspectors known by reputation as being well qualified and experienced in the construction of public schools. The district is responsible for negotiating an agreement with the inspector in regard to compensation for professional services economical for cost reimbursement.

Inspector's Salary The estimate for the inspector's salary must be in accordance with prevailing wages for comparable services. Inspection costs will be approvable for a period not exceeding the legal duration of the construction contract. The contract period is terminated upon the filing of the Notice of Completion.

Additional inspectors fees may be approved for those contracts in which a time extension was granted through the OPSC change order process.

Inspection fees are allowed for the legal duration of the construction contract(s) as approved by the Office of Public School Construction plus an additional 35 calendar days for work the district has deemed incomplete at the close of the construction contract period.

Inspector's Role The inspector shall act under the direction of the project architect or registered engineer in assuring compliance with the approved plans and specifications. The inspector must inspect every part of the work. In no case, shall the inspector have or assume any duties which would prohibit continuous inspection.

Note: A school district official/employee may not provide inspection services for their own school project regardless of qualifications. ☞

F. Furniture and Equipment

Introduction

A furniture and equipment allowance is provided to each project to adequately equip all spaces and functions within the facility with the proper movable furniture and equipment items. The furniture and equipment allowance is generated by the eligible building area and facility classifications.

Preliminary Allowance

The following chart is used to determine a preliminary estimate at Construction (Phase C) for the furniture and equipment allowance. The final allowance will be determined by the OPSC upon approval of the bid.

GRADES SERVED	ALLOWANCE PER SQUARE FOOT
K - 6, K - 8	\$5.00
6 - 8, 7 - 8, and 7 - 9	6.00
9 - 12, 10 - 12	7.00
Continuation High	8.00
Special Education	10.00

Final Maximum Allowance

The maximum furniture and equipment allowance, as established at the bid approval, is as follows:

- New construction applications are limited to 100 percent of the calculated allowance.
- Modernization, reconstruction and replacement of abandoned facilities applications are limited to 50 percent of the calculated allowance.*

* The allowance provided for modernization, reconstruction and the replacement of abandoned facilities is limited to 50 percent of the maximum allowance because inventory remains from the original facilities.

Central Kitchens	<p>An allowance is provided to those projects including a central kitchen which services at least two satellite serving kitchens in addition to its central kitchen site.</p> <p>In order to receive a central kitchen allowance, the district must provide:</p> <ul style="list-style-type: none"> • identification of the schools which house the satellite serving kitchens; and • the number of pupils to be served by the central kitchen.
Furniture and Equipment Cost Index	<p>Once the preliminary or final furniture and equipment allowance has been determined apply the current furniture and equipment cost index factor. The furniture and equipment cost index factor is adjusted quarterly.</p>
Furniture and Equipment Included in the Contract	<p>If the construction contract includes eligible furniture and equipment items, the district must submit an itemization of proposed purchases and the associated unit costs. The cost of these items will be transferred from the furniture and equipment allowance to the project's construction allowance. In addition, the architect fee, calculated at eight percent of the cost of these items, will be reduced from the furniture and equipment allowance.</p>
Ineligible Expenditures	<p>Built-in or fixed equipment (fixtures) and supplies are not considered movable furniture and equipment items, and are generally funded with the building construction allowance. In addition, furniture and equipment funds may not be utilized for the purchase of equipment for adult education, community use, or for intramural or inter-school sports as distinguished from the required physical education program of the district.</p>
Audit of Furniture and Equipment Expenditures	<p>Upon completion of the project, an audit of the district's furniture and equipment expenditures is conducted wherein any ineligible expenditures are reduced from the project. If prior to the final audit, the district has not completed purchasing all the furniture and equipment necessary for the project, the district must submit a list of purchase orders or encumbrances for the balance of the unexpected furniture and equipment items. This action will reserve funds for future furniture and equipment expenditures.</p>
OPSC Review	<p>Upon the district's request, the OPSC will conduct a courtesy review of the district's anticipated furniture and equipment purchases. 🗨️</p>

G. Contingencies

Calculations of Contingencies

Contingencies in the project budget provide a means for financing eligible unforeseen costs necessary to complete the project.

The contingency amount is calculated at 1½ percent of Item C, the construction category, as delineated on the cost estimate. In addition, an amount of \$2,000 is allocated to this category.

Eligible Expenditures

Upon a bid approval and authorization by the OPSC Executive Officer, expenditures from the contingency fund are allowable under the following circumstances:

TYPE OF EXPENDITURE	CIRCUMSTANCE
Non-Construction	<p>For cost increases <i>not</i> involving changes to a construction contract (i.e., inspection, tests, etc.), a transfer of funds to the budget item requiring the increase may be requested when:</p> <ul style="list-style-type: none"> • Prior to 90 percent construction completion (building), the District Representative must submit a written statement requesting a transfer of funds from the contingency fund to the specific budget item requiring the increase. • After 90 percent construction completion (building), funds will be automatically transferred based on the project's expenditure reports as submitted to the OPSC.
Construction	<p>For cost increases involving the construction contract (i.e., site development, building construction, etc.), a formal change order must be submitted to the OPSC (see <i>Section 7, Change Orders, page 7-1</i>).</p>

Ineligible Expenditures

The contingency fund is not available for any expenditures deemed ineligible such as:

ITEM	DESCRIPTION
New Construction (Building)	<p>Cost increases associated with the building portion of the construction contract that exceed the difference between the "bid allowance" and the "acceptable low bid" as established at the time of the bid approval.</p>
General Site Development	<p>Cost increases associated with general site development that exceed the general site development allowance as established by law and as calculated at the time of the bid approval.</p>

Construction Plans - Not Yet Approved By DSA

Introduction

The non-DSA approved construction plans are intended to supply sufficient information concerning quantities and types of work and materials to adequately support the cost estimate. These plans are used to develop a construction budget in preparation for the construction funding (Phase C) SAB recommendation after submittal of the DSA approved final plans and specifications to the OPSC.

It is important for the district and architect to involve the various local entities in the design phase, including planning commission, utility companies and local fire marshal.

Required Plan Components

The following components reflect the minimum essential detail to be provided in the construction plans:

COMPONENT	DESCRIPTION
Title Sheet	<ul style="list-style-type: none"> • For purposes of determining the SAB geographic index, a vicinity map showing city location in relation to adjacent cities and major highways must be included. Refer to <i>Appendix 11, Geographic Adjustment Factors</i>. • Index to plans identifying all components of the plan set. • Legends/labels identifying all building areas. In addition, building area not included in the contract (N.I.C) must be noted. • North arrow and scale to be included on all plan layout sheets. • Site plan indicating location of existing and proposed facilities.
Civil Drawings	<p>Civil drawings should indicate existing conditions and proposed changes in the site contour. A layout of the proposed installation of utilities services, on-site and off-site development should be included. Utility service connections may also be shown on plumbing and electrical site plans.</p>
Architectural Drawings	<ul style="list-style-type: none"> • Complete dimensions of all buildings areas, including corridors, both interior and exterior. Building measurements are taken from the exterior rough wall line to the center line of interior walls and partitions. Covered unenclosed corridors are measured from the exterior rough wall line to the edge of any paving or the edge of the overhang, whichever is less. • All building area must be labelled with the appropriate facilities classification (see <i>Building Cost Standards charts, pages 3-6 through 3-11</i>). • Numeric designation for all areas calculated at the actual area. • Alpha designation for all areas calculated at less than the actual area, (i.e., covered unenclosed spaces). • Relocatable plans in sufficient detail to verify compliance with SAB standards.

Note: It is vital that the construction plans accurately represent the scope of the proposed buildings so that any incongruities may be identified and addressed in the early stages of the project.

Where to Submit Plans In addition to submitting construction plans to DSA, the district must submit a set of non-DSA approved construction plans to each of the following:

AGENCY	SEND TO
Office of Public School Construction	On Autocad 14 format Office of Public School Construction 1130 K Street, Suite 400 Sacramento, CA 95814 (916) 445-3160
California Department of Education	California Department of Education School Facilities Planning Division Walk-in: 560 J Street, Suite 565 Sacramento, CA 95814 Mail-in: P.O. Box 944272 Sacramento, CA 94244-2720 (916) 322-2470

Relocatables

Relocatable classrooms are either built on-site or in a factory.

The relocatable classroom design (plans and specifications) must meet the OPSC requirements and be approvable by the DSA.

MANUFACTURED RELOCATABLES	RELOCATABLES BUILT ON-SITE
DSA approval, is not necessary prior to the entire project's receiving a Phase C approval. Performance plans and specifications are provided to the accepted bidder who then secures DSA approval.	DSA approval must be secured prior to a Construction (Phase C) approval.

Assistance

The OPSC offers a pre-plan review service to assist districts and architects in preparing project plans, specifications and cost estimates for review by the OPSC. Consult your OPSC project manager to arrange for this service. ☺

In this Section

This section discusses the following topics/subtopics:

TOPIC/SUBTOPICS	SEE PAGE
3A Diagrams: Diagrams of Existing and/or Proposed Facilities	4-3
Non-DSA Approved Final Specifications	4-6
• Bid Form	4-7
• Construction Contract	4-9
• Bonds	4-10
• Substitution of Securities	4-10

3A Diagrams: Diagrams of Existing and/or Proposed Facilities

Introduction

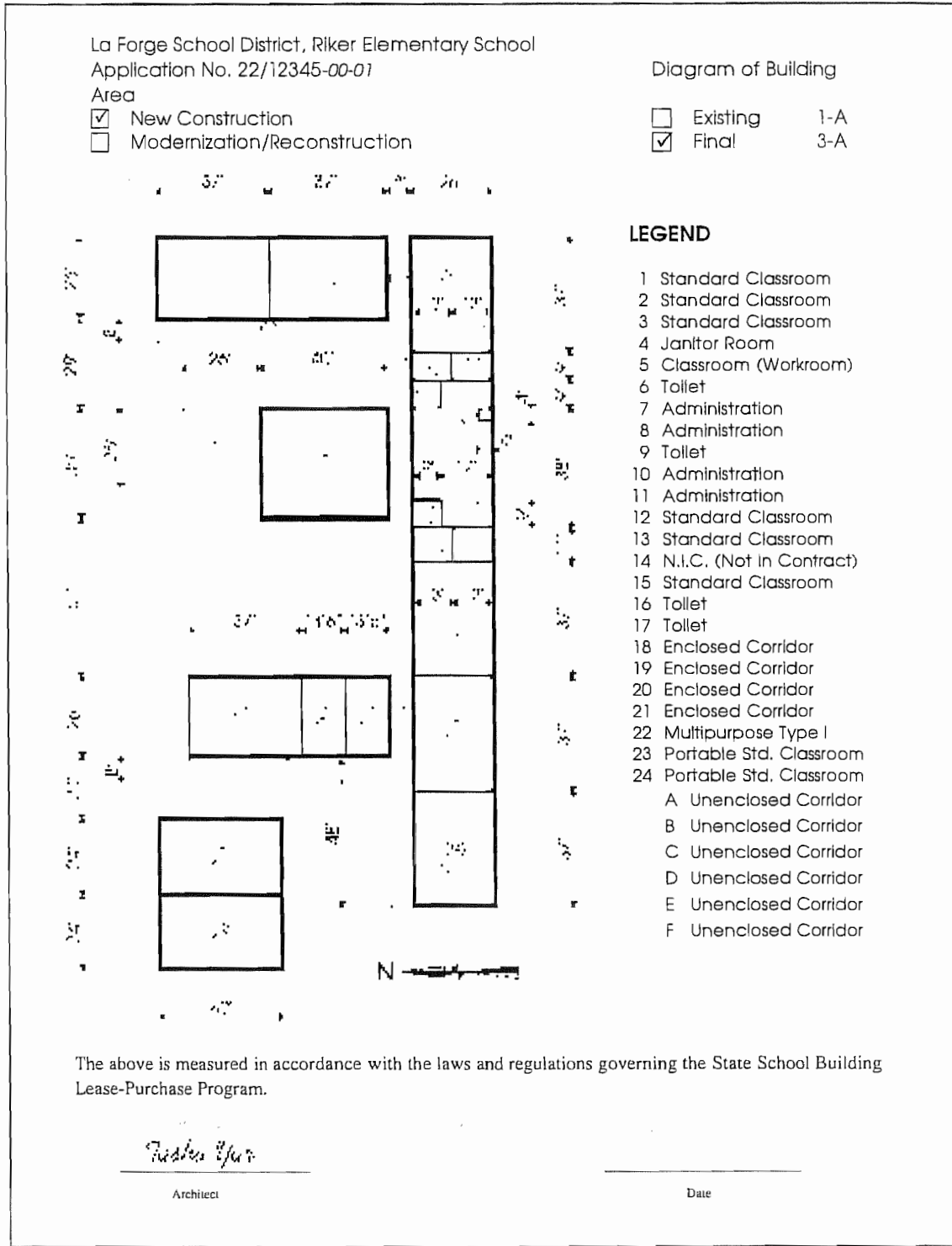
The 3A diagrams depict all existing and proposed facilities located on the project site. The 3A diagrams must accurately reflect the buildings as dimensioned in the plans.

3A Diagram Components

The major components of the 3A diagrams are described below:

COMPONENT	DESCRIPTION
Plot Plan	Indicates location of new buildings included in the project and their relationship to existing structures.
Site Summary	Provides an itemization of all buildings/building area located on the project site.
Building Diagram	<p>Complete dimensioning of all proposed buildings, including corridors, both interior and exterior. Building measurements are taken from the exterior rough wall line to the center line of interior walls and partitions.</p> <ul style="list-style-type: none"> • All proposed building area must be labelled in accordance with the appropriate facilities classifications (see <i>Example 1: 3A, Diagram page 4-4</i>). • Numeric designation for all areas calculated at the actual area. • Alpha designation for all areas calculated at less than the actual area.
Area Computation	<p>Indicates area computation detail and Sheet summary of proposed facilities (see <i>Example 2: 3A Diagram Computation Calculations Detail page 4-5</i>).</p> <p>The information on the computation is used to develop SAB building cost allowances.</p>

Example 1: 3A Diagram



Continued on the next page

Example 2: 3A Diagram Computation Calculations Detail

La Forge School District
 3A Diagram
 Riker Elementary School
 OPSC Application No. 22/12345-00-01

	DESCRIPTION	DIMENSIONS	FULL AREA
1	Standard Classroom	26.0 x 37.0	962.00
2	Standard Classroom	26.0 x 37.0	962.00
3	Standard Classroom	26.0 x 37.0	962.00
4	Janitor Room	9.0 x 13.0	117.00
5	Standard Classroom (Work Room)	9.0 x 13.0	117.00
6	Toilet Room	9.0 x 9.0	81.00
7	Administration (Conference)	9.0 x 17.0	153.00
8	Administration (General Ofc.)	(38 x 26.0) - (9.0 x 9.0) - (4.0 x 4.0)	891.00
9	Toilet Room	9.0 x 9.0	81.00
10	Administration (Nurse)	11.0 x 13.0	143.00
11	Administration (Principal)	11.0 x 13.0	143.00
12	Standard Classroom	26.0 x 37.0	962.00
13	Standard Classroom	26.0 x 37.0	962.00
14	Standard Classroom	26.0 x 37.0	962.00
15	Standard Classroom	26.5 x 39.0	1033.50
16	Toilet Room (Boys)	26.0 x 13.5	351.00
17	Toilet Room (Girls)	26.0 x 13.5	351.00
18	Enclosed Corridor (Full Area)	26.0 x 8.0	208.00
19	Enclosed Corridor (Full Area)	35.0 x 8.0	280.00
20	Enclosed Corridor (Full Area)	26.0 x 8.0	208.00
21	Enclosed Corridor (Full Area)	4.0 x 4.0	16.00
22	Multipurpose Type I	35.0 x 40.0	1400.00
23	Portable-Standard Classroom	24.0 x 40.0	960.00
24	Portable-Standard Classroom	24.0 x 40.0	960.00
A*	Open Corridor	64.0 x 8.0	512.00
B*	Open Corridor	26.0 x 25.0	650.00
C*	Open Corridor	74.0 x 8.0	592.00
D*	Open Corridor	48.0 x 8.0	384.00
E*	Open Corridor	51.0 x 8.0	408.00
F*	Open Corridor	29.0 x 8.0	232.00
	Subtotal		15,970.00
	Less 2/3 Area (Open Corridor)		- 1,852.00
	TOTAL		14,118.00 SF

SUMMARY		SQUARE FEET
FACILITY CLASSIFICATION		
Administration		1380.00
Classrooms, Standard		8771.00
Multipurpose Type I		1400.00
Janitor Room		117.00
Toilets		864.00
Enclosed Corridor (Full Area)		712.00
Unenclosed Corridor		2778.00
Subtotal		<u>15,970.00</u>
Less 2/3 Area (Open Corridor)		- 1,852.00
TOTAL		14,118.00 SF

* Note: Show at full area

Non-DSA Approved Final Specifications

Introduction	Specifications must accompany the non-DSA approved final plan submittal for each contract. The OPSC does not dictate the contents of the specifications; however, certain items must be addressed.
Submittal	Specifications must be submitted with the plans on CD Rom or Zip disk. If this is not possible, submit the specifications on diskette with separate sub-files for each division.
Specification Components	<p>The following components must be included in the specifications and submitted with the non-DSA approved plans to the OPSC:</p> <ul style="list-style-type: none"> • Bid Form • Construction Contract • Bonds • Substitution of Securities
Cash Allowance Incentives	Cash allowance incentives (i.e., bonus for early contract completion) are not permitted.
Time and Materials	Items and/or labor approved and funded by the SAB may not be accomplished on a time and materials basis.
Use of District Personnel	The use of school district personnel to install and fabricate materials is prohibited. ☹

BID FORM

Introduction

The bid form delineates the scope and terms of the contract. The format of the bid form is left to the discretion of the district. A prototype of the bid form is included in the project specifications and submitted with the non-DSA approved final plan package.

Required Elements

The following elements are required in the bid form:

ELEMENT	DESCRIPTION/REQUIREMENT
Identification	Indicate school name, location and general scope of the project.
Statement of Good Faith	<p>The following language is suggested:</p> <p>"The undersigned hereby promises and agrees to furnish all labor, materials, equipment, mechanical workmanship, transportation, and services for the erection and completion of said work, in strict accordance with the plans and specifications".</p> <p>The bidder is legally bound to perform all of the work for a stated lump sum.</p>
Base Bid	Contractor's cost to include the full scope of the project not including alternates.
Alternates	<p>For New Construction: Limited to two deductive alternates with not more than ten building construction items. The alternates may not change.</p> <p>For Modernization/Reconstruction: Limited to five alternates, additive or deductive, with not more than 20 building construction items. Alternates must be building cost items only. The building area of the project.</p>
Time of Completion	The number of calendar days necessary to complete the contract. The specified time for completion must be reasonable for the scope of the project.
Liquidated Damages	The amount per day to be deducted from the contract sum for construction delays beyond the expressed date of completion. Unusually harsh penalties for minor delays in meeting the contract terms are not acceptable.

Continued on the next page

**Required Elements
(Cont.)**

ELEMENT	DESCRIPTION/REQUIREMENT
Bid Bond	Contractors submitting bids must provide a bid bond in the amount of ten percent of the base bid, to insure the contractor's intent to culminate the contract. In lieu of the bond, the contractor may provide a cashier's check amounting to ten percent of the base bid. The bid bond must be issued by an admitted surety (an insurance organization authorized by the Insurance Commissioner to transact business of insurance in the State of California).
Notice of Bid Acceptance/Bid Life	It is recommended that a written notice of bid acceptance be issued within 60 days after the date of bid opening. At that time, the successful bidder must sign the construction contract and furnish the required bonds within five days of the notice of award.
Addenda	The bid form must indicate any addenda. The receipt of the addenda must be acknowledged by the bidder.
Designation of Subcontractors	The bidder must designate the names and location of the place of business of each subcontractor.

CONSTRUCTION CONTRACT

Introduction

The construction contract is the agreement between the successful bidder and the district. The contract delineates the terms and scope of the project. A prototype of the construction contract must be included in the project specifications and submitted with the non-DSA approved final plans package.

Required Elements

The OPSC requires the following elements be included in the construction contract:

ELEMENT	DESCRIPTION
Identity of Project	Indicate school name and location.
Contract Amount	The full amount to be paid to the contractor for the scope of the work agreed upon in accordance with the provisions of the general conditions.
Time of Completion	The number of calendar days necessary to complete the contract. The specified time for completion must be reasonable for the scope of the project.
Liquidated Damages	The amount per day to be deducted from the final contract sum for construction delays beyond the expressed date of completion. Unusually harsh penalties for minor delays in meeting the contract terms are not acceptable.
Signatures	<p>A signature block must be included for all of the following:</p> <ul style="list-style-type: none"> • District's authorized agent, or quorum of the District's Board of Trustees • Contractor • District's legal counsel
Liability	<p>Contracts between the school district and its General Contractor or Builder etc., must contain the following language:</p> <p>"The Contractor agrees that the State of California, including the State Allocation Board, is not liable for any damages of any kind arising out of this contract, and that the Contractor's sole remedy is against the District and only the District is liable for any injury the Contractor may suffer under this contract."</p>

BONDS

Introduction

The project specifications must include a facsimile of both the faithful performance bond and the labor and materials bond to be provided by the successful bidder.

Faithful Performance Bond

The bond of faithful performance assures that the contractor will perform each and all of the conditions set forth in the construction contract. The bonding must be equal to 100 percent of the construction contract sum and must be issued by an admitted surety (an insurance organization authorized by the Insurance Commissioner to transact business of insurance in the State of California).

Labor and Materials Bond

The labor and materials bond assures that the contractor and subcontractors will provide the labor and materials necessary to complete the terms of the contract. The bonding must be equal to 50 percent of the construction contract sum and must be issued by an admitted surety (an insurance organization authorized by the Insurance Commissioner to transact business of insurance in the State of California). ☞

SUBSTITUTION OF SECURITIES

Introduction

An option for the substitution of securities by the contractor must be included in the project specifications. Failure to provide this option shall void any provisions for performance retentions in the contract.

Terms of Security Substitution

The contractor may choose to have the District deposit ten percent of the contract amount in lieu of the district withholding any monies from progress payments. Normally, only 90 percent of each payment is released and the balance of ten percent is retained by the district. The substitution of securities guarantees 100 percent of each progress payment.

The substitution of securities by the contractor may be satisfied by any of the following:

- cash
 - real property holdings
 - other assets
-

Security Deposits

Securities in the amount withheld may be deposited with the following:

- District
- State or Federally chartered bank

Upon satisfactory completion of the contract, the security deposit plus any interest will be returned to the contractor. ☞

Preparing for Construction (Phase C) Approval:

Introduction

As part of the project's final design stage, the final plans and accompanying documents are developed by the project architect for each contract. The documents are used to establish a final construction budget.

The construction (Phase C) of the application provides funds which allow the district to initiate the construction of the school facilities.

Required Documents

The following documents are required to prepare an application for a Construction (Phase C) approval:

DSA APPROVED FINAL PLAN PACKAGE	
DOCUMENT NUMBER	DOCUMENT NAME
<input type="checkbox"/> none	DSA Approved Final Plans
<input type="checkbox"/> none	DSA Approved Final Specifications
<input type="checkbox"/> SAB 506A	Final Project Cost Detail
<input type="checkbox"/> SAB 506B	Final of Estimated Costs
<input type="checkbox"/> SAB 390	Certification of Changes to Final Plans and Specifications
<input type="checkbox"/> none	Addenda (if applicable)

In this Section

This section discusses the following topics:

TOPIC	PAGE
DSA Approved Final Plans and Specifications	5-2
Certification of Changes to Final Plans and Specifications, Form SAB 390	5-3
Addenda	5-3
Construction (Phase C) Apportionment	5-4

DSA Approved Final Plans and Specifications

Introduction

The components of the DSA approved final plans and specifications are usually identical to those of the non-DSA approved final plans and specifications. (see *Required Documents, DSA Approved Final Plan Package, page 5-1*).

The DSA approved final plans and specifications must be submitted to OPSC for review. After review, a construction apportionment (Phase C) will be recommended to the SAB, as appropriate.

Separate Contracts

The SAB does not approve partial construction (Phase C) apportionments. When a project is comprised of more than one contract a construction apportionment will not be recommended to the SAB until the DSA approved plans and specifications for the entire project have been reviewed by the OPSC.

DSA Approval

The DSA plan approval is verified by an approved stamp which has been initialled by the Structural safety Section, Access Compliance Section, State Fire Marshal and includes an approval date.

As submittal of specifications are required by the OPSC to be on diskette, the specifications must include a certification from the district architect that the exact specifications on the diskette have been approved by the DSA. The certification must include the dates of approval and the appropriate DSA number(s) for structural safety, access compliance and fire safety.

Since the final plans and specification must be submitted electronically, the district must certify that the plans have been approved by the DSA.

3A Diagrams

The 3A diagrams are required at this submittal only if changes have occurred in the proposed building area and teaching station designations.

Where to Submit Plans Package

The DSA approved final plans and specifications must be submitted to:

SEND TO	FORMAT
Office of Public School Construction 1130 K Street, Suite 400 Sacramento, CA 95814 (916) 445-3160	Plan: CD ROM or Zip drive readable by AutoCAD 14 Specifications: Diskette with Certification

Certification of Changes to Final Plans and Specifications, Form SAB 390

Introduction The DSA approved final plan package submitted to the OPSC must contain the *Certification of Changes to Final Plans and Specifications* (Form SAB 390).

The purpose of this form is to certify any changes made to the DSA approved final plans since the non-DSA approved final plans package submittal. Any changes reported on the Form SAB 390 must be supported by revised cost estimates *Estimated Project Cost Detail* (Form SAB 506A) and *Summary of Estimated Costs* (Form SAB 506B).

In addition, changes to the DSA approved plans and specifications by means of addenda must be accompanied by the Form SAB 390.

Certification The project architect is responsible for completing this certification. This certification addresses changes made to the following:

- Building area
- Teaching station designations
- Utility services, service site development, off-site development, and general site development

If no changes were made to the plans, a statement must be made to this effect on the Form SAB 390. ☺

Addenda

Introduction Any changes made to the DSA approved final plans or specifications must be accomplished by means of addenda and must be submitted to OPSC, along with Form SAB 390, for review.

Reviewing Agencies All addenda, except those affecting the management of the contract, must be approved by the DSA. However, the OPSC will accept non-DSA approved addenda at this stage of the project. DSA approval must be obtained prior to a construction fund release.

The OPSC must also review all addenda to determine the affect the addenda may have on the project. ☺

Construction (Phase C) Apportionment

Introduction

Upon review of the DSA approved final plan package as outlined in *Required Documents, page 5-1*, the OPSC will notify the district as to the projects final allowance and will prepare a recommendation to the SAB that the project application be approved and apportioned for construction (Phase C) funding.

Sites Not Previously District Owned

For those projects which include the acquisition of real property not previously owned by the district, a grant deed to the property or the *Site Ownership Certification (Form SAB 509)* is required prior to the construction (Phase C) SAB recommendation.

Fund Release

Construction (Phase C) funds will be released when an acceptable bid has been approved by the SAB and the district submits a *Construction Contract Certification (Form SAB 599)*. (see *Section 6, Phase C Fund Release, page 6-4*). ☛

Preparing for Bid/Bid Approval

Introduction

When a project has obtained its construction (Phase C) apportionment, the district is authorized to proceed through the bid process.

Upon the district's receipt of an acceptable bid, and its subsequent submittal to OPSC, a recommendation to approve the bid will be presented to the SAB.

Required Documents

The following documents are required to prepare a bid approval:

DOCUMENT #	DOCUMENT NAME
<input type="checkbox"/> SAB 515	Summary of Bids
<input type="checkbox"/> none	Addenda
<input type="checkbox"/> SAB 506B	Summary of Estimated Costs

In This Section

This section includes the following topics:

TOPIC	SEE PAGE
Authorization to Advertise for Construction Bids	6-2
Post-Bid Opening Documents	6-3
Notice of Approval of Low Bid, Form SAB 513A	6-3
Construction (Phase C) Fund Release	6-4

Authorization to Advertise for Construction Bids

Introduction

When a project receives a construction apportionment, the district is authorized to advertise for construction bids.

Bid Authorization Components

The OPSC's notification to the district of the final project allowance acknowledges specific items related to the bid and advises the district of particular obligations:

ITEM	OPSC ACKNOWLEDGMENTS
Addenda	Any addenda received by OPSC to date.
Bid Allowance	The construction cost allowance.
Project Area	The project's building area.
Deferred Construction Items	Those construction items deferred from the bid allowance for future release.

ITEM	DISTRICT OBLIGATIONS
DVBE Provisions	Compliance with Disabled Veteran's Business Enterprises Contract Participation Goals (see <i>Appendix 12, Disabled Veteran's Business Enterprises Contract Participation Goals, Page 12-1</i>).
Bid Life	Sixty-day bid life. (Recommended).
Submittal of Bid Documents	The district must bid project within one year of the construction apportionment (Phase C).

Re-Bid

Rejection of any or all bids must be reviewed by the OPSC. The district must secure its own legal counsel's opinion should it choose to reject any bid. In the event of a failed bid the OPSC is available to assist and provide expertise which may assist in a successful re-bid of the project. ☺

Post-Bid Opening Documents

Introduction When the district has received bids, its governing board holds bids under submission. In addition, the district specifies the bid it intends to accept subject to SAB approval.

Required Documents The following documents are required prior to the OPSC initiating a bid approval:

DOCUMENT	DESCRIPTION
Summary of Bids	The district utilizes the <i>Summary of Bids</i> , Form SAB 515 to notify the OPSC of all bids received.
Bid Form	The bid form completed by the low bidder.
Addenda	Addenda as specified on the bid form that were not previously submitted to the OPSC.
Summary of Estimated	An updated <i>Summary of Estimated Costs</i> (Form SAB 506B) noting the actual bid costs as well as all eligible previous or future work not included in this bid.

Notice to School District of Low Bid Approval - Form SAB 513A

Introduction The OPSC evaluates the bid documentation submitted by the district for compliance to program requirements.

Upon the OPSC acceptance of the appropriate bid documentation (see Topic *Post-Bid Opening Documents, above*), the lowest bid is acceptable when it is within the project's established construction allowance. The project's construction allowance is updated to reflect the construction cost index as of the date of the bid opening.

When the low bid is deemed to be acceptable, the OPSC will recommend to the SAB that the contract be approved.

Form SAB 513A Upon SAB bid approval, the OPSC will issue a completed *Notice to School District of Low Bid Approval* (Form SAB 513A) to the district. This notice specifies the following:

- Successful bidder; and
- Terms of the contract, including the acceptable contract amount; and
- Delineates the conditions for the contract's award. ☞

Construction (Phase C) Fund Release

Introduction

The district is authorized to execute the construction contract and related documents once the *Notice to School District of Low Bid Approval* (Form SAB 513A) is received from the OPSC.

The construction fund release will be generated upon the district's submittal of the *Construction Contract Certification* (Form SAB 599). All remaining funds will be released with the exception of deferred items and contingencies.

Certification of Required Documents

The following documents are required to be certified to the OPSC on the *Construction Contract Certification* (Form SAB 599) prior to the release of construction funds:

DOCUMENT	DESCRIPTION	
Executed Construction	A fully executed contract including the elements identified in <i>Section 4, Construction Contract, page 4-9</i> .	
Executed Bonds	Fully executed and notarized: <ul style="list-style-type: none"> • Performance Bond issued by an admitted surety (see <i>Section 4, Bonds, page 4-10</i>). • Labor and Materials Bond issued by an admitted surety (see <i>Section 4, Bonds, page 4-10</i>). 	
District Certification	If a district contribution is specified on the <i>Notice of Approval of Low Bid (Form SAB 513A)</i> a certification that the specified contribution has been deposited in the district's Lease-Purchase State School Building fund is required.	
District's Acceptance Award of Contract	IF the contract ...	THEN ...
	is signed by an authorized signatory on the Form SAB 506	a school board resolution or certified board minutes indicating the district's award of the contract to the successful lowest bidder is necessary.
	is signed by the Board of Trustees	a school board resolution or certified board minutes is not necessary.

**Items Deferred For
Future Release**

Once the district has provided acceptable documentation of those items deferred from a construction contract and a final allowance is established by the OPSC, funds may be released (see *Deferred Items, page 3-24*).

Contingencies

Contingency funds are released as expenditures are justified (see *G. Contingencies, Eligible Expenditures, page 3-27*). ❏

Change Orders

Introduction

Once a project is under construction any changes or alterations to the DSA approved plans and specifications can be accomplished only through the "change order" process. The change order must be submitted to the OPSC for review in order to be eligible for funding.

Approval Criteria

In order for a change order to be approved, at least one of the following criteria must be met:

- The change is necessary for the health, welfare, and/or safety of the children.
 - The change is required by the DSA/Office of Regulation Services.
 - The change is necessary to complete the project as approved by the SAB.
-

Restrictions

Under the following circumstances, changes or alterations will not be approved:

- SAB cost standards are exceeded.
 - Performance is subsequent to the filing of the "notice of completion".
 - Performance is subsequent to acceptance by the governing body of the district.
 - Items in the change order were included as a deductive alternate in the construction contract and the alternate was accepted by the district.
-

Modernization

All executed change orders shall be submitted as they occur. In addition, the DSA approved change orders will be required at close-out audit.

Any non-building cost change orders must be submitted for review and approval prior to funding.

Any unexpended building cost allowance not supported by expenditure reports shall be returned to the State.

Change orders may not exceed 25% of the current replacement value. The district may fund any excess up to 50% of the current replacement value.

Components

It is suggested that change orders be prepared according to the American Institute of Architects (AIA) Change Order G701 document. Change orders must include the following components:

COMPONENT	DESCRIPTION/REQUIREMENT
Application Number	Identify project's application number as assigned by OPSC.
School District/ School Name	Identify school district and name of project.
Contractor	Identify the contractor.
Documentation	A detailed description of the change required.
Justification	Provide a reason why changes are necessary.
Requester	Party requesting change.
Change in Price	Identify dollar amount of each item (add/deduct).
Architect's Statement	Architect must certify all of the following: <ul style="list-style-type: none"> • The changes are necessary; and • The district has reviewed and accepted the change; and • The request is valid; and • Approval is recommended and that costs do not exceed State allowances.
Signatures	The following signatures are required: <ul style="list-style-type: none"> • Contractor • School District • Architect • DSA

Preliminary Approval Preliminary approvals from the OPSC are required on any item exceeding \$100,000.00.

Maximum Funding Funding of approved change orders for the following categories is limited to:

CATEGORY	MAXIMUM FUNDING
Utility Services, Off-Site Development, Fire Code Requirements, Service-Site Development or Demolition	Amount justified.
General Site Development	Balance of Allowance established prior to bid (see Section 3, <i>General Site Development</i> , page 3-18).
New Construction (Building)	Project's bid savings (difference between bid allowance and approved contract).
Multi-Story Construction	Allowance established prior to bid (see Section 3, <i>Additional Funding for Multi-Story Construction</i> , page 3-20).

Architect Fees Architect fees will be calculated for all approved additive contract change order items with the exception of items resulting from errors and omissions on the part of the architect. Architect fees for change orders will be calculated based on the fees negotiated by the district but not to exceed the maximum SAB Fee schedule. ☺

Close-out Audit of Expenditures

Introduction

A close-out audit is initiated when project expenditures have been reported by the district. A report is due within 90 days of the contract completion date and the final report is due within 90 days of the last expenditure. Failure to report could result in all project costs being declared ineligible.

Form SAB 184A

All project expenditures incurred must be reported in detail on the *Detailed Listing of Warrants issued by the District* (Form SAB 184A). The Description/Purpose column is used to explain the purpose of the expenditures in order to expedite the close-out process. This form is available through OPSC's Home Page on the Internet and can be sent to us via Internet e-mail.

Form SAB 184

The totals obtained from the Forms SAB 184A are summarized on *Summary of Expenditures and Construction Progress* (Form SAB 184). This form is also available through OPSC's Home Page on the Internet www.dgs.ca.gov/opsc/ and can be sent to us via Internet e-mail.

Required Documentation

The following documents, when applicable, are to be submitted with Forms SAB 184 and SAB 184A:

- *Notice to Proceed* from the architect to each contractor.
- Recorded copy of *Notice of Completion* for each contract.
- Final billing(s) from all contractors.
- Executed *Self-Certification of Interim Housing* (Form SAB 282) (*Modernization projects only*).
- Architect's final billing and any architect billings showing reimbursable costs
- Final Escrow Statement for each site parcel acquired (if site was purchased with state funds).
- Copies of invoices for any expenditures reported under the Construction Category on the SAB 184A which have not been authorized for a fund release on the *Standard Fund Release* (Form SAB 521). These invoices may be for deferred construction items such as utility costs or general site.
- Copies of DSA approved Change orders if they were not previously submitted to OPSC.

Exhibit "A"

When a close-out audit of project expenditures reported by the district has been completed by the OPSC, a Review of Project Financing and Expenditures (Exhibit A) report, will be issued. This report summarizes total eligible State-funded project costs.

The district is required to review the Exhibit A and respond to any inquiries made by the OPSC within 30 days.

Assistance

For assistance in preparing expenditure reports, contact the OPSC Fiscal Services Section, Lease-Purchase Audit Unit, Carolyn Harmon at (916) 322-0315 or via charmon@dgs.ca.gov.

Closing Action

When the close-out audit process is complete, the OPSC performs a closing action consisting of one of the following:

IF...	THEN...
...the final eligible State funded costs are within the eligible costs authorized by the SAB	...the closing action will be executed administratively.
...the final eligible costs are in excess of the eligible costs authorized by the SAB	...the closing action will require SAB approval.

Once the final closing action has been completed, no additional expenditures will be recognized.

**Release of Funds/
Refund**

Any funds due to the district as a result of the closing action will be disbursed.

If the closing action determines that a refund is due to the State, a request will be made to the district for the refund.

Field Audit

Some projects will be subject to a field audit prior to the issuance of an Exhibit A. Once a district receives a closing journal or a closing SAB agenda item, the project is considered closed by the OPSC and the district should refer to its own record retention policy for guidance in how long to retain the project records. ☺

Appendix 1 - 50/50 Program



Introduction A school district contributing at least 50 percent of the eligible project cost may file a 50/50 program application.

Determining Eligibility The district may use either the three /four year projection of ADA or the accelerated five /six year projection of ADA to determine the eligibility for a 50/50 application.

The SAB requires that the district self-certify the eligibility for these applications. All self-certified applications are subject to audit and the Lease-Purchase Law provisions on material inaccuracy.

District Contribution The district must contribute at least 50 percent of the entire project cost. The district's share may not be generated from funds administered by the SAB or the California School Finance Authority. For example, funds collected from the sale or lease of surplus property which are considered "available rent" under the law, may not be used as the district's source of funds.

Questions regarding funding source concerns should be directed to the Fiscal Services Section.

Calculation of District Contribution The district's share of a 50/50 project application include:

- 50 percent of all the eligible project costs including site acquisition;
- 100 percent of all project costs that exceed the SAB cost standards;
- 100 percent of all project costs incurred to construct unapproved building areas; including costs for planning, construction, testing and inspection.

Deposit of District Contribution At the time of each apportionment and prior to a subsequent fund release, the district will be required to deposit into the districts' lease-purchase fund an amount equal to the State's apportionment.

The *Application for Apportionment* (Form SAB 506) provides that the district certify that the district currently has access to sufficient funds to fund its share of the entire project cost. Current available funds include bonds authorized but not sold, but do not include developer fees that are not yet collected. ☹

Appendix 2 - Cost Sharing

Introduction

The cost sharing program allows the SAB to share in the costs of certain projects constructed pursuant to the Mello-Roos Community Facilities Act of 1982. Application for the cost sharing program is made after the construction of a project is completed.

The cost to be shared by the SAB is equal to the costs which would have been allowed if the project was approved prior to construction. The shared cost is reduced for depreciation and further limited to a maximum of 75 percent of all eligible project costs, or the principal amount of any outstanding callable bonds and other debts incurred to finance the project.

Establishing Cost Sharing Eligibility

Project eligibility is determined on the *Justification Document - New Construction and Modernization/Reconstruction* (Form SAB 600) utilizing the standard three and four year enrollment projection.

In order to file a cost sharing application, a project must meet all of the following criteria:

- constructed pursuant to the Mello-Roos Community Facilities Act of 1982;
- the Notice of Completion for the project was filed after February 10, 1986;
- meets all State School Building Lease-Purchase Program area entitlements and cost standards;
- constructed pursuant to a low bid in a bidding process acceptable to the SAB;
- met all DSA access handicap compliance, health and State Fire Marshal requirements in effect at the time of construction;
- approved by the CDE, School Facilities Planning Division including the Office of Special Education, if applicable;
- the Mello-Roos funding source must be callable within six months of issuance.

Cost Sharing Limitations

The maximum amount of the State's contribution is limited to one of the following, whichever is less:

- 75 percent of the eligible project costs; or
 - the principal amount of any outstanding callable bonds and other debts incurred to finance the project under the Mello-Roos Community Facilities Act of 1982, as of the date the SAB approves the project. Any claim for "other debts" must be specifically approved by the SAB; or
 - the eligible project costs as determined by the SAB, less five (5) percent depreciation each year (excluding all site acquisition costs). The depreciation period begins on the date the "notice of completion" is filed and ends on the date the application is approved by the SAB. The five percent depreciation rate is calculated on a daily basis; or
 - the amount realized by the district in exercising at least one of the actions as outlined in the "Financial Plan". ☺
-

Financial Plan

As a condition of a cost sharing project approval, the district must submit a financial plan. The plan addresses the cost sharing by the State in one or more of the following actions:

- a reduction in the amount of bonds authorized by the Mello-Roos Community Facilities District;
- a reduction in the amount of any special tax which is levied within the Mello-Roos Community Facilities District;
- a reduction in the amount of outstanding bonds or provision for the retirement of outstanding bonds;
- a reduction in the period of time during which a special tax is levied within the Mello-Roos Community Facilities District.

Lease-Purchase Agreement

Upon SAB approval of a cost sharing project, the district must enter into an Lease-Purchase Agreement.

Appendix 3 - Restricted Maintenance Account

Introduction

Districts are required to establish a restricted account within the district's general fund for the exclusive purpose of providing funding for annual ongoing maintenance and routine repair to ensure that State School Building Lease-Purchase projects are at all times kept in good repair and working order. Districts are required to establish a restricted maintenance account prior to the initial approval of a State School Building Lease-Purchase project. All costs for necessary repairs, renewals, and replacements must be borne by the school district.

Projects Subject to the Requirement

With the exception of the County Superintendent of Schools, a restricted maintenance account must be established for those district's whose average daily attendance exceeds:

ADA	DISTRICT TYPES
900	Elementary School
1200	Unified School
300	High School

Four types of on-going maintenance meet the criteria:

TYPE	DESCRIPTION
Breakdown	The emergency maintenance to equipment necessary to continue normal school functions.
Operating	Work necessary for a component to function and operate properly (i.e., lubrication, belt replacement, tune-up, replacement of lighting ballasts).
Preventative	Regularly scheduled maintenance based on life-cycle projection of various components.
Overhaul	Periodic major repair or replacement of operating parts and components of equipment.

Types of Maintenance Required Action The district must earmark each fiscal year, for the life of the lease agreement, an amount equal to two percent of the district's current year general fund and adult education budget, less amounts budgeted for capital outlay and debt service.

Note: Annual verification of this action must be made no later than September 30, beginning with the fiscal year following the fiscal year that the project is initially approved.

Establishing Restricted Maintenance Account When this restricted account is established it must be used exclusively for this purpose.

Limitation This account *is not* part of the deferred maintenance fund and money deposited in this fund *does not* represent the matching share requirement for any deferred maintenance apportionments. ☹

Appendix 4 - Transfer of Apportionment

Introduction

The SAB policy allows for the transfer of an apportionment from one Lease-Purchase project to another.

The School District shall initiate a request for the transfer of an apportionment on the *School District Appeal Request* (Form SAB 189).

Policy

The following is the policy for transferring an apportionment to another application.

1. A transfer is allowed for a Construction (Phase C) apportionment only.
2. The entire Construction (Phase C) apportionment may be transferred to any other project (i.e., either new construction or modernization) as long as the receiving project has or is obtaining a Construction (Phase C) approval at the same board and has the same or a higher funding priority. If the funds transferred are:
 - insufficient to fund the entire Construction (Phase C) of the receiving project, the district must fund the difference with other funds. The unfunded state share will be included on a "unfunded approval" list for future reimbursement.
 - more than is needed for the project, the excess apportionment will be returned to the State program at bid time.
3. The time limit on the apportionment for the original project will continue on the receiving project; any requests for an extension of the time limit for the receiving project must be made in accordance with the SAB Time Limit on Apportionments policy. Requests for transfer of an apportionment will be processed by the OPSC within 60 days of receipt. If the transfer of apportionment request is not addressed by the SAB within 60 days of receipt, the transfer of apportionment approval when ever addressed will include an additional time extension for any processing time in excess of 60 days.
4. After the transfer of apportionment is approved, the original project may not be reconsidered for a "new" Construction (Phase C) approval for at least the same number of days that the Construction (Phase C) apportionment was in place, less any time for processing in excess of 60 days.
5. The "new" Construction (Phase C) approval on the original project will not be granted until the district has provided evidence that the DSA approval of the plans and specifications for the project are still in effect.
6. Requests for transfer of an apportionment must be made within the original time limit of the original project.
7. The original project may not be downgraded for purposes of funding priority after the transfer of apportionment is made.
8. The original project must be rescinded if that project does not have full eligibility entitlement after the transfer of apportionment is approved by the SAB. ☹

Appendix 5 - Seismic Retrofit

Introduction

A district may qualify for funding to address seismic structural improvements (i.e. seismic retrofit) of a facility that qualifies for modernization funding to avert future earthquake damage.

Filing

All requests for seismic retrofit must be made to the OPSC on the *School District Appeal Request* (Form SAB 189) and include all normal application documents required as a modernization project. If seismic retrofitting of a facility is approved by the SAB, the project will include the seismic work and the modernization work as one project.

Processing

All requests for seismic retrofit shall receive processing priority by the OPSC.

Eligibility Criteria

An eligible facility must meet all of the following criteria:

1. All classrooms in the district or high school attendance area that do not require seismic structural improvements must be fully loaded before any unhoused ADA may be assigned to a project requesting seismic funds.
2. The teaching stations in the structure to be seismically retrofit must be fully loaded with unhoused ADA.
3. The district has submitted a report from a licensed structural engineer that identifies the minimum work necessary to address the seismic structural improvements necessary to avert future earthquake damage.
4. The report must include a statement that the facility is structurally adequate as it meets the structural requirements in existence when the facility was originally constructed. If the facility is structurally inadequate, the district may apply for abandonment and/or rehabilitation of the facility (see *Appendix 9, Abandonment and/or Rehabilitation, Page 9-1*).
5. The district must submit a letter from the DSA that concurs with the findings in the structural report addressed above.
6. The district has submitted, and the OPSC has agreed with, a detailed cost estimate prepared by a licensed structural engineer of the minimum repairs necessary to address the seismic structural improvements outlined in the structural report. The cost estimate shall only include the construction costs (i.e., do not include planning or non-building items such as utilities or general site development) of the structural work identified in the report.

SAB Consideration

If the district meets the eligibility criteria, the SAB will accept one of the following options presented by the district:

1. Seismic retrofitting of the facility if the cost noted in item 6 above is 50 percent or less of the current replacement cost of the facility.
2. Replacement of the facility if the cost noted in item 6 above is greater than 50 percent and the district will accept a replacement allowance limited to 75 percent of the replacement cost and the district is requesting to fund at least 50 percent of the eligible project cost.

The SAB will not accept an application for demolition of the facility since the facility is deemed to be structurally adequate.

Eligible Project Costs

In addition to the normal modernization costs and the seismic work identified in the structural report, the project may include the reasonable cost necessary to prepare the structural report and cost estimates used to justify the seismic project.

Funding

Districts may request funding either as a funding priority one or two for seismic retrofitting or replacement of the facility. All projects approved will be deemed "seismic" and funded with specific funds set aside for this purpose by the SAB. The application for seismic funds must include an accounting of all capital facilities funds as well as federal, state and local funds that may be available to assist to finance the project. The SAB shall review the available funding sources and may require that all or a portion of these funds be used to finance the project. ☺

Appendix 6 - Reimbursement

Introduction

The following policies apply to expenditures or commitments, regardless of funding source, made after April 24, 1994. Expenditures or commitments made prior to that date shall be subject to the reimbursement policy in effect at the time.

Exception

Projects constructed with Mello-Roos Community Facilities District funds that are eligible under the Cost Sharing Policy (Education Code Section 17018.5) are exempt from this policy.

Eligibility

Reimbursement will only be made for eligible costs as determined by the SAB. If there is a question about the eligibility of a particular item, contact the OPSC in writing prior to incurring the obligation.

All expenditures to be reimbursed must meet all SAB eligibility standards and policies.

Planning

Expenditures for planning made up to four years prior to the initial approval of the project are eligible for reimbursement.

Site Acquisition

The value of the site that would be considered for reimbursement will be the lesser of the appraised value at the time of acquisition or the actual cost of the site. Expenditures for site acquisition are eligible for reimbursement under the following conditions:

STATE FUNDING LEVEL	POLICY
Greater than 50%	Only if the project receives a Phase S unfunded approval prior to the expenditure being made.
50% or less	<p>Expenditures made up to four years prior to an initial project approval. If the land cost exceeds 50% of the project cost (including land cost), the amount in excess of 50% will not be eligible for reimbursement unless the district receives a Phase S approval prior to the acquisition of the site.</p> <p>In the case of donated land, the amount included will be the appraised value on the date of acquisition, and the acquisition must be within four years of the initial project approval.</p>

Construction

Expenditures or commitments for construction made:

- Prior to an initial project approval will not be reimbursed.
- After the project receives a Construction (Phase C) unfunded approval are eligible for reimbursement.

Site Development

Site preparation costs incurred up to eight months prior to the Construction (Phase C) approval are eligible for reimbursement. Expenditures incurred within eight months of the time the project could have received a Construction (Phase C) unfunded approval are also eligible.

State or Federal Funded Projects

School facilities built or modernized with any state funding other than SAB program or federal funding sources are not eligible for reimbursement.

Tax-exempt or Taxable Borrowing

Expenditures financed with tax-exempt or taxable borrowing will be reimbursed up to the approved costs of the outstanding principal or SAB approved cost, whichever is less (i.e., lesser of the financed amount principal or approved cost).

The State funds must be used in one of the following manners:

1. Retire the entire debt.
2. Partially retire the debt.
3. Used for capital facility purposes consistent with the provisions of the debt instrument. Until the State funds are used, they cannot be lent or pledged as security for any loan.

Mello-Roos Community Facilities District (CFD)

Reimbursement for expenditures made from Mello-Roos Bonds must either be returned to the Mello-Roos District taxpayers or used for other eligible school construction projects consistent with the provisions of the CFD formation documents.

Unapproved Expenditures

If a district takes action which generates a cost liability in excess of the Board's cost standards, the district shall be responsible for that excess and may be responsible for 15% of the amount within the Board standards. ☹

Appendix 7 - Hardship Status

Introduction

An abandonment and/or replacement project does not necessarily qualify the project for hardship status. On the other hand, a hardship application must be an abandonment and/or replacement project.

District Entitlements

District's that receive an approval by the SAB for a hardship status will be entitled to:

- Priority for processing by the OPSC and the DSA.
- Construction (Phase C) approval when the final plans and specifications have been accepted by DSA for review.
- First priority for portable classrooms under the State Relocatable Program and the SAB's reduced rental payment to \$2,000 per year per structure.
- First priority for funding as either a priority one or two project. The funding priority order would be 1) hardship priority one, 2) priority one, 3) hardship priority two and 4) priority two. If the SAB sets aside specific funds only for "hardship" projects in one or both of the funding priorities, the projects will be funded based on those priorities and in accordance with the earliest date the project receives hardship status for a specific phase.
- Qualify for replacement area utilizing either the standard eligibility process or the Minimum Essential Facilities building area, (*See Minimum Essential Facilities Guidelines, on next page*).

Qualification

The district has unhoued ADA as a result of any of the following:

1. The loss of facilities as a result of a natural disaster such as fire, flood or earthquake.
2. The continued use of the facility poses a life or safety hazard as evidenced by all of the following:
 - The facility qualifies for replacement and/or rehabilitation under the abandonment policy.
 - An appropriate state level health or safety agency, or a local public health or safety agency supported by an appropriate state level agency, has made a finding that a threat to life and safety exists at the facility in question (DSA concurrence letter of the structural report will meet this requirement).
3. A one-school school district as shown in the latest edition of the California Public School Directory and meets all of the following:
 - The district has entitlement for new construction area.
 - The district has a fully funded modernization project that will be completed in concert with the new construction area on the same site; thus, a savings will be realized by both the state and the district.
 - The final plans for both the modernization and new construction area have been approved by DSA.
4. A case-by-case determination by the SAB that a life and safety hazard exists. In these cases, the OPSC will make a recommendation to the SAB based on the merits of the documentation submitted by the district to support the life and safety issue.

Appropriate State or Local Agency Modernization Projects

An appropriate state or local health or safety agency must be one that has expertise in the area in question. For example, if there is a life and safety issue as a result of traffic on an interstate, the state level agency finding should come from the California Highway Patrol or the Department of Transportation, not the Department of Health.

Financial Requirement If a district has a modernization project on a site where the district has met the new construction hardship requirements, that modernization project shall also receive hardship status.

Districts requesting 50/50 funding will be placed on the priority one hardship list and districts requesting 100% state funding will be placed on a priority two hardship list.

Any district that qualifies for hardship status may receive priority one status and be funded at 100% if the district meets all of the following criteria:

- The district has submitted an accounting of all capital facility funding, including any federal, state or local funding that could be used to fund the project. The SAB will review the funding source and may require that some or all of any available funding be used to off-set the state's portion of the project.
- A letter from the CDE that concurs with the financial accounting statement presented by the district.
- The district may be required to demonstrate that there are no other facilities available to house displaced pupils.

Minimum Essential Facilities Guidelines

Once the district has qualified for Hardship status, the district may replace the facility by either utilizing the building area generated by the unhoused ADA or utilizing the SAB Minimum Essential Facilities building area. The district may utilize the total replacement square footage authorized for any purpose as long as the minimum needs of each category is met, as determined by the CDE. The following is the SAB Minimum Essential Facilities allowable building area:

Space	Elementary	Intermediate	High
Gymnasium	N/A	7 sq. ft. per ADA min. 5,828 sq. ft.	8 sq. ft. per ADA min. 7,280 sq. ft.
Shower Locker	N/A	4 sq. ft. per ADA min. 400 sq. ft.	5 sq. ft. per ADA min. 500 sq. ft.
P.E. Office	N/A	50 sq. ft. per coach	50 sq. ft. per coach
P.E Storage	N/A	0.5 sq. ft. per ADA min. 500 sq. ft.	0.5 sq. ft. per ADA min. 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per ADA max.. 1,820 sq. ft.	1.3 sq. ft. per ADA max. 2,600 sq. ft.
P.E. Mech./Elect.	N/A	0.3 sq. ft. per ADA min. 100 sq. ft.	0.3 sq. ft. per ADA min. 100 sq. ft.
Space	Elementary	Intermediate	High
Multi-Purpose Type I	N/A min. 900 sq. ft.	3 sq. ft. per ADA min. 900 sq. ft.	3 sq. ft. per ADA min. 900 sq. ft.
Multi-Purpose Mech./Elect.	0.3 sq. ft. per ADA min. 100 sq. ft.	0.3 sq. ft. per ADA min. 100 sq. ft.	0.3 sq. ft. per ADA min. 100 sq. ft.
Food Service or Kitchen	2 sq. ft. per ADA min. 400 sq. ft. max. 1,480 sq. ft.	2 sq. ft. per ADA min. 400 sq. ft. max. 1,880 sq. ft.	3 sq. ft. per ADA min. 600 sq. ft. max. 3,975 sq. ft.

Continued on next page

**Minimum Essential
Facilities Guidelines
(Cont.)**

Space	Elementary	Intermediate	High
Exercise Room	N/A	3 sq. ft. per ADA min. 3,600 sq. ft.	3 sq. ft. per ADA min. 3,600 sq. ft.
P.E. Storage	N/A	0.5 sq. ft. per ADA min. 500 sq. ft.	0.5 sq. ft. per ADA min. 500 sq. ft.
P.E. Mech./Elect.	N/A	0.3 sq. ft. per ADA min. 100 sq. ft.	0.3 sq. ft. per ADA min. 100 sq. ft.
Space	Elementary	Intermediate	High
Administration	3 sq. ft. per ADA min. 600 sq. ft.	3 sq. ft. per ADA min. 600 sq. ft.	4 sq. ft. per ADA min. 800 sq. ft.
HVAC/ Mech./Elect.	3 sq. ft. per ADA min. 600 sq. ft.	4 sq. ft. per ADA min. 800 sq. ft.	5 sq. ft. per ADA min. 1,000 sq. ft.
Toilet	3 sq. ft. per ADA min. 300 sq. ft.	4 sq. ft. per ADA min. 300 sq. ft.	5 sq. ft. per ADA min. 300 sq. ft.
Library	2 sq. ft. per ADA	3 sq. ft. per ADA	4 sq. ft. per ADA
Exterior Walk and Corridors	6 sq. ft. per ADA	6 sq. ft. per ADA	8 sq. ft. per ADA
Teaching Stations	31 sq. ft. per ADA	37 sq. ft. per ADA	39 sq. ft. per ADA

Note: The allowance for Gymnasium, Multi-Purpose Type I and Exercise Room area mutually exclusive. The district will only receive the area appropriate to the actual education program being conducted at the school as determined by the CDE. ☹

Appendix 8 - Construction Management

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This section is under construction. Please use the following links to refer to existing construction management policies.

- *Revised implementation of Education Code Section 17719.3 Construction Management - November 30, 1994*
- *Amendment to the Construction Management policy - September 25, 1996*

Appendix 9 - Abandonment and/or Rehabilitation

Introduction

At various SAB meetings, policies were developed to address the replacement or rehabilitation of structurally inadequate and adequate facilities. As a result of changes to law and amendments to these policies by the SAB, these policies became very complicated and difficult to administer. The OPSC and the SAB Implementation Committee have revised these policies and they were adopted by the SAB on June 25, 1997.

Filing

All requests for abandonment or rehabilitation must be made to the OPSC on the *School District Appeal Request* (Form SAB 189) and include all normal application documents required for either a new construction or modernization application. Any documentation necessary to support the request should also be included. All requests for either abandonment or rehabilitation of facilities shall receive processing priority by the OPSC.

If the abandonment or rehabilitation eligibility is based on new construction entitlement, the application will be treated as a new construction application. If the eligibility is based on modernization entitlement, the application will be treated as a modernization application.

Funding

Districts may request funding either as priority one or two for the replacement or rehabilitation of facilities. If the district is approved for abandonment of facilities lost as a result of a fire or flood, the State's share of the project will be reduced by all available insurance.

Interim Housing Facilities

The district may qualify for an interim housing allowance for any facility approved for replacement or rehabilitation in accordance with the SAB Interim Housing policy for modernization projects.

Disposition of Abandoned Facilities

It is the intent of the SAB that any facilities that are approved for abandonment cannot be used as a "school building" as defined in Education Code Section 17283. Portable classrooms abandoned under the "20 year rule" must be removed from service within 180 days after the filing the notice of completion for the project that replaced the classrooms. Any facilities approved for abandonment and replacement may be disposed in any of the following methods:

- Destroyed – The demolition cost may be included in the cost of the project.
- Sold – Sales proceeds will be used to reduce the eligible costs of the project.
- Reuse (portable facilities) – Restrict the use to storage on non-school site.
- Other – As specified by the SAB.

Determination of Reduced Allowance

When determining the reduced percentage allowance (i.e., 75 percent, etc.), the SAB will include in the eligible cost of the project the approved percentage (i.e., 75 percent, etc.) of what would have normally been allowed as eligible cost if a 100 percent allowance was provided. This percentage will apply to all cost categories including site acquisition.

Reduced Allowance Example

The district has abandoned 10,000 square feet and requests replacement under the 75 percent rule. If the district's replacement area is 9,600 square feet (or anything under 10,001 square feet) and the total eligible cost for this area is \$1.2 million, the eligible cost of the Lease-Purchase project to be split 50/50 is 75 percent of \$1.2 million or \$900,000. If the district's replacement area is 11,500 square feet (even though the district has entitlement for only 10,000 square feet) and the total eligible cost is \$1.6 million, the eligible cost of the Lease-Purchase project to be split 50/50 is $(10,000/11,500) \times 75 \text{ percent} \times \1.6 million or \$1,043,478.

Structurally Inadequate Facilities

Criteria	<p>The SAB will consider the abandonment and replacement, or rehabilitation of structurally inadequate facilities provided all of the following criteria have been met:</p> <ol style="list-style-type: none"> 1. The district has submitted a report from a licensed structural engineer that identifies the structural deficiencies of the building and the minimum work necessary to bring the building into structural compliance based on the structural requirements in effect when the building was originally constructed. The report must include a statement that the building is unsafe for occupancy when compared with the structural requirements in existence when the building was originally constructed unless the repairs noted in the structural report are implemented. 2. The district has submitted a letter from the DSA that concurs with the findings in the structural report addressed above. 3. The district has submitted and the OPSC has agreed with a detailed cost estimate prepared by the licensed structural engineer of the repairs necessary for continued use as a school building. The cost estimate shall only include the construction cost (note: do not include planning or non-building items such as utilities or general site development) of the structural repairs necessary to bring the building back to the structural requirements in existence when the building was originally constructed.
New Construction Replacement Qualification	<p>If the cost of repairs necessary for continued use as a school building exceeds 50% of the current replacement cost of the building, the SAB will consider the replacement of the building. Use current SAB building cost allowances to determine replacement cost. All replacement area is limited to new building area entitlement.</p> <p>The current replacement cost for portable structures is based upon \$35 per square foot and may be adjusted for the appropriate indices.</p>
New Construction Rehabilitation Qualification	<p>If the structure does not qualify for replacement, the SAB will consider the rehabilitation of the building based on the minimum work necessary to bring the building into structural compliance based on the structural requirements in effect when the building was originally constructed. The rehabilitation cost of the project may be increased for the cost to modernize the building if it qualifies for modernization.</p>
Multiple Building Rehabilitation	<p>If the structurally inadequate area contains more than one building, the area that may be included in the project for rehabilitation shall be limited, as much as possible by:</p> <ul style="list-style-type: none"> • The area of the buildings being proposed for rehabilitation; • The building configuration on the site; • The eligible area entitlement based on the capacity of the school where the inadequate facilities are located; • Any necessary requirement by the CDE.

**Modernization
Replacement
Qualification**

When the district does not have new construction building area entitlement and the cost of repairs necessary for continued use as a school building exceeds 50 percent of the current replacement cost of the building, it may still qualify for replacement. Use current SAB building cost allowances to determine replacement cost. All of the following conditions must be met:

- The building being abandoned qualifies for modernization.
- The district agrees that the eligible replacement area is limited to the eligible modernization area entitlement.
- The ADA capacity of the constructed facility must be at least equal to the ADA capacity of the original facility.
- The district agrees to fund at least 50 percent of the total eligible project cost.
- The district accepts an eligible replacement cost allowance limited to 75 percent of the permanent replacement cost (*see Determination of Reduced Allowance, page 9-1*).

**Modernization
Rehabilitation
Qualification**

When the district does not have new construction building area entitlement and the cost of repairs necessary for continued use as a school building does not exceed 50 percent of the current replacement cost of the building, it may still qualify for rehabilitation. Use current SAB building cost allowances to determine replacement cost. All of the conditions noted in the Modernization Replacement Qualifications must be met.

**Rehabilitation
Alternative**

In lieu of rehabilitation of the facility under either the new construction or modernization process, a district may request, on a case-by-case basis, a reduced cost allowance, based on the rehabilitation costs and replace the area with new construction.

Structural Report Cost

If the structural report required to justify replacement or rehabilitation results in an approved project, the reasonable cost to prepare the structural report and cost estimate may be included as an eligible project cost as "other planning cost".

Demolition

If the structural reports support abandonment and DSA concurs with the report, but the district has no entitlement for either replacement or rehabilitation, the district is not eligible for replacement or rehabilitation. However, the district may file a separate application for only the demolition costs of the inadequate facility. The project may include necessary planning and asbestos removal costs and funded as either a priority one or two project.

If the district has entitlement for either replacement or rehabilitation, the demolition costs may be included as an eligible project cost. ☺

Structurally Adequate Facilities

Introduction

Under certain conditions, the SAB will consider the abandonment of structurally adequate facilities pursuant to the provisions of Education Code Section 17042(c). This section permits the SAB to exclude certain area from the "area of adequate school construction" if it is determined that the exclusion is for the benefit of the pupils affected. Each request for abandonment will be addressed on a case-by-case basis.

Criteria

General criteria that may support the district's request for abandonment are as follows:

1. The safety of the pupils is at risk as a result of the location of the building or school relative to a major freeway, airport, electrical facility, dam, pipeline or industrial facility.
2. The health of the pupils is at risk as a result of air quality and location of the school to industrial facilities.
3. The facility was lost or destroyed as a result of a natural disaster such as fire, flood or earthquake. District may only apply for the lost facility that is not recoverable by insurance. It is generally understood that all districts are required to have adequate insurance and, therefore, replacement of facilities lost would be unusual.

A cost benefit analysis of the total cost to remain in the facility and mitigate the problems outlined in items 1, 2 and 3 above versus the cost to acquire new replacement facilities. The analysis may include the proceeds from the sale of the abandoned school or building, or any other costs savings/expenses that may be germane to the specific request. The cost comparisons are only for purposes of this analysis and in no way obligate the SAB to fund any of the mitigation cost claimed by the district.

The documentation to support the above criteria may be in any form and will be weighed independently based on the specific circumstances of the request. Examples of acceptable documentation could include reports from other governmental agencies, private companies or qualified individuals.

SAB Consideration

The SAB will consider abandonment if the mitigation costs exceed 50 percent of new replacement area. Replacement area will be limited to new area entitlement after the facility in question has been deemed non-chargeable.

As an alternative, the district may meet the new area entitlement if the building/school qualifies for modernization and the district meets all of the following conditions:

- The district is requesting 50/50 funding for the project.
- The district agrees that the eligible replacement area is limited to the eligible modernization area entitlement.
- The ADA capacity of the constructed facility must be at least equal to the ADA capacity of the original facility.
- The district accepts an eligible replacement cost allowance limited to 75 percent of the permanent replacement cost (*see Determination of Reduced Allowance, page 9-1*).

The SAB will consider funding all or a portion of the mitigation measures on a case-by-case basis if the mitigation costs does not exceed 50 percent of new replacement area. ☺

Portable Facilities

Non-Classroom Facilities	Portable non-classrooms facilities must meet either the structurally inadequate or structurally adequate guidelines for abandonment and/or replacement. For purposes of computing the current replacement value of the portable facility, the building cost allowance is \$35 per square foot, adjusted for the appropriate indices. The area entitlement generated from the abandonment of these facilities shall be replaced at the \$35 per square foot building cost allowance and may not be used to construct permanent building area.
20 Year Rule for Classroom Facilities	If the district has owned and/or leased a portable classroom for 20 years or more and the structure has not been previously modernized or used to generate modernization eligibility, the district may request to have the portable classroom abandoned. The portable classroom must be replaced as part of a lease-purchase application.
Alternative for Classroom Facilities	If the district is unable to abandon the portable classroom facility under the "20 year rule", the facility must meet either the structurally inadequate or structurally adequate guidelines for abandonment and/or replacement. For purposes of computing the current replacement value of the portable facility, the base building cost allowance is \$35 per square foot, adjusted for the appropriate indices.
Replacement as Relocatable Classroom	The abandoned portable classroom must be replaced with a portable classroom. The building replacement allowance for the replacement shall be limited to \$35 per square foot, adjusted for the appropriate indices. Area generated by the abandoned portable must first be used to replace the portable classroom. The remaining area may be included in the lease-purchase application at the full allowance for permanent facilities.
Replacement as Permanent Classroom	The district may request to replace an abandoned portable classroom with a permanent classroom. The district must agree to finance the added building cost allowance of the replacement classroom that exceeds the \$35 per square foot, adjusted for the appropriate indices, with either general obligation bonds or Mello-Roos Community Facilities Act bonds. Area generated by the abandoned portable must first be used to replace the portable classroom. The remaining area may be included in the lease-purchase application at the full allowance for permanent facilities.
Replacing Portable Classroom in Multiple Applications	<p>Each project approved for a district, where the district's eligibility included the abandonment of portable classrooms, must include a portion of the portable replacement area. This area must be in addition to the 30% relocatable requirement. To determine the minimum number of replacement portable classrooms to be included in the project, determine the ratio of all portables excluded to the number of new classrooms needed in the district. Apply this same ratio to the number of classrooms in the project. The result is the number of replacement portables to be included in each project.</p> <p>The district may elect to replace more portable classrooms within the first project to be constructed and, thereby, reduce the number of replacement portable classrooms in a lower priority project. ☺</p>

Appendix 10- Environmental Impact Documents (EID)

Introduction

Prior to the release of the planning and site acquisition funds, a set of environmental impact documents (EID) must be prepared. The district has sole responsibility for meeting all California Environmental Quality Act (CEQA) requirements as administered by the State of California, Office of Planning and Research (OPR)/State Clearinghouse. The OPSC verifies that the CEQA requirements have been addressed.

Every application requires either a:

- categorical exemption,
- negative declaration, or
- environmental impact report (EIR).

California Environmental Quality Act (CEQA) Publications

Title 14 of the California Administrative Code (CAC), incorporates the *CEQA: Statutes and Guidelines (Stock No. 7540-931-1022-0)* of the Office of Planning and Research/State Clearinghouse. This publication may be obtained at a nominal cost from:

Department of General Services
Publications Section
P.O. Box 1015
North Highlands, CA 95660
(916)574-2200

Additional information maybe found on the State Clearinghouse Web page at <http://ceres.ca.gov/planning/sch/index.html>

Categorical Exemption

Introduction

The *CEQA: Statutes and Guidelines* of the OPR provide certain categorical exemptions from the preparation of an EIR:

- replacement of existing facilities;
- minor additions to existing facilities;
- addition to existing facilities.

Replacement (Class 2)

The Class 2 exemption applies to the replacement of an existing structure where the new structure will be located on the same site as the structure replaced. The replacement structure will have the same purpose and capacity, including but not limited to:

- replacement of existing schools to provide earthquake resistant structures which do not increase the capacity by more than 50 percent; and/or
- replacement of existing utility systems and/or facilities involving negligible or no expansion of capacity.

Minor Additions to Schools (Class 14)

The Class 14 exemption applies to additions to existing schools when the addition does not increase the original student capacity by more than 25 percent or ten classrooms, whichever is less. The addition of relocatable classrooms is included in this exemption.

Existing Facilities (Class 1)

The Class 1 exemption applies to minor alterations to existing public structures involving negligible expansion of use beyond that which previously existed. The addition may not result in an increase of more than:

- 50 percent of the floor area of the structure before the addition, or 2,500 square feet, whichever is less; or
- 10,000 square feet if the following conditions exist:
 - 1) the project is located in an area where all public services and facilities are available to allow for maximum development permissible in the general plan; and
 - 2) the area in which the project is located is not environmentally sensitive.

Notice of Exemption

When claiming a categorical exemption, the Notice of Exemption must cite the appropriate subsection of the CEQA: *Statutes and Guidelines*. The "notice" must include evidence of filing with the district's county clerk. ☞

Negative Declaration

Introduction

A negative declaration is a document describing the project and contains a finding that the project has no significant environmental effect. The steps for preparing a negative declaration are similar to the initial procedures used for preparing an environmental impact report (EIR).

District CEQA Officer's Responsibilities

The district's CEQA officer is responsible for preparing the following documents:

ITEM	DOCUMENT
A	Initial environmental study to include responses.
B	District certification of persons/organizations consulted for comment prior to the district's adoption of the negative declaration.
C	Evidence that the site has been investigated for previous or current use as a hazardous or solid waste disposal site, hazardous substance release site or site which contains pipelines which carry hazardous substances, materials, or hazardous wastes.
D	<ul style="list-style-type: none"> • District certification of availability of the negative declaration for public comment; and • District's statement of responses to public comments.
E	Certification of negative declaration submittal to the OPR/State Clearinghouse (including date). This can be evidenced by either the district's letter of certification or OPR/State Clearinghouse environmental document transmittal form complete with clearinghouse number.
F	Closing letter from the OPR/State Clearinghouse acknowledging compliance with OPR review requirements.
G	Notice of Determination stamped by the county clerk.

Environmental Impact Report

Introduction

The purpose of an environmental impact report is to identify the significant effects of a project on the environment, and alternatives to the project. In addition, the manner in which those significant effects can be mitigated or avoided is addressed. This report provides public agencies and the general public with detailed information about the effect a proposed project is likely to have on the environment.

District CEQA Officer's Responsibilities

The district's CEQA officer is responsible for preparing the following documents:

ITEM	DOCUMENT
A	Initial Environmental Study to include responses.
B	District certification of persons/organizations consulted prior to the district filing the notice of completion.
C	Evidence that the site has been investigated for previous or current use as a hazardous or solid waste disposal site, hazardous substance release site or site which contains pipelines which carry hazardous substances, materials, or hazardous wastes.
D	Evidence that the State Clearinghouse has received a notice of completion of the draft EIR.
E	<ul style="list-style-type: none"> • District certification of availability of EIR for public comment; and • Record of public comments; and • District's statement of responses to public comment. • If no public comments, district statement that no comments were received.
F	Closing letter from the State Clearinghouse.
G	When necessary, district's statement of overriding consideration warranting the project's approval.
H	District certification of completion of final EIR
I	Notice of Determination certified by the county clerk and State Clearinghouse.

**Multiple Projects
Addressed in a Single**

Provided a series of projects are essentially similar in their environmental impact, a single environmental impact report may be sufficient. One report may suffice in the following instances:

- the development of a school is ultimately planned; or
- the phased construction of a school is planned; or
- several schools are planned at various locations.

Projects within the scope of the original environmental impact report which are filed within one year of the original EIR, as accepted by the county clerk, may be exempt from the preparation of additional environmental impact documents.

**Time Lapse of
Approval of Original
EIR**

When more than one year has elapsed since the approval of the EIR as accepted by the county clerk, significant changes may have occurred either in the CEQA guidelines or the environmental setting. Therefore, the district's CEQA officer must review the proposed project for the following conditions and take the appropriate action:

- Environmental conditions have not changed since the preparation of the original EIR.
 - Environmental conditions have substantially changed since the preparation of the original EIR or a significant environmental impact has arisen which was not considered in the original EIR. ☹
-

Appendix 11 Geographic Adjustment Factors

Apply the following geographic adjustment factors to the base schedule of unit costs.

COUNTY	FACTOR	DESCRIPTION
Alameda	1.05	The entire county.
Alpine	1.10	The entire county.
Amador, Western Part	1.05	That portion of Amador County lying west of a line drawn five (5) miles east of, and paralleling State Highway 49.
Amador, Eastern Part	1.10	All of Amador County except the Western Part described above.
Butte, Western Part	1.05	That portion of Butte County lying west of a line drawn ten (10) miles east of, and paralleling State Highway 99.
Butte, Eastern Part	1.10	All of Butte County except the Western Part described above.
Calaveras, Western Part	1.05	That Portion of Calaveras County lying west of State Highway 49.
Calaveras, Eastern Part	1.10	All of Calaveras County except the Western Part described above.
Colusa	1.05	The entire county.
Contra Costa	1.05	The entire county.
Del Norte	1.10	The entire county.
El Dorado, Western Part	1.05	Those portions of El Dorado County lying within any of the following areas: <ul style="list-style-type: none"> • west of a line drawn six (6) miles east of and paralleling State Highway 49. • within five (5) miles of either side of U.S. Highway 50 from the western county line to a point on the eastern limit of the community of Pollock Pines. • west of a line drawn three (3) miles easterly from and paralleling a certain county road described as the Pleasant Valley Road which connects the community of Aukum with Diamond Springs and with the city of Plymouth.
El Dorado, Eastern Part	1.10	All of El Dorado County except the Western Part described above.

Continued on the next page

COUNTY	FACTOR	DESCRIPTION
Fresno, Western Part and Eastern Foothill Part	1.05	That portion of Fresno County lying: <ul style="list-style-type: none"> • west of a line drawn ten (10) miles west of, and parallel to State Highway 99; and • between a line drawn ten (10) miles west of, and paralleling the west boundary of the Sierra National Forest and a line drawn ten (10) miles east of, and paralleling the west boundary of the Sierra National Forest.
Fresno, Eastern Part	1.10	All of Fresno County lying east of a line drawn ten (10) miles east of, and paralleling the west boundary of the Sierra National Forest.
Fresno, Central Part	1.00	All of Fresno County except the portions described above.
Glenn, Eastern Part	1.05	That portion of Glenn County lying east of a line drawn ten (10) miles west of, and paralleling Interstate Highway 5.
Glenn, Western Part	1.10	All of Glenn County except the Eastern part described above.
Humboldt, Eureka Area	1.05	That portion of Humboldt County situated within ten (10) miles of the Redwood Highway (U.S. 101) from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Humboldt, Redwood Highway	1.10	That portion of Humboldt County situated within five (5) miles of the Redwood Highway (U.S. 101) except for that portion of the Redwood Highway which is within the Eureka area described above.
Humboldt, State Highway 299 and Vicinity	1.10	That portion of Humboldt County situated within five (5) miles of State Highway 299 and State Route 96, except for those portions which are within the Eureka area described above.
Humboldt, Southeastern Part	1.20	That portion of Humboldt county adjacent to, or east of, the road between Harris to Blocksburg to a point ten (10) miles north of Blocksburg.
Humboldt, Residual Area	1.15	All areas of Humboldt County not classified in other cost groups.
Imperial	1.10	The entire county.
Inyo, Southeastern Part	1.25	That portion of Inyo County situated east of the western boundary of the Death Valley National Monument from the northern boundary of said national monument to the southern boundary of the county.
Inyo, except Southeastern Part	1.10	All of Inyo County except the southeastern part described above.
Kern, Eastern Part	1.10	That portion of Kern County lying east of a north-south line drawn through the eastern boundary of the town of Tehachapi.

Continued on the next page

COUNTY	FACTOR	DESCRIPTION
Kern, Central Valley Part	1.00	That portion of Kern County lying west of a north-south line drawn through the east boundary of Glennville, north of an east-west line drawn five (5) miles north of Wheeler Ridge, and east of a line drawn five (5) miles west of, and parallel to, Interstate Highway 5.
Kern, Western, Southern, and Central Foothill Part	1.05	All of Kern County except the eastern and central valley parts described above.
Kings, Western Part	1.05	That portion of Kings county lying west of a line drawn five (5) miles west of and parallel to Interstate Highway 5.
Kings, Eastern Part	1.00	All of Kings County except the western part described above.
Lake	1.10	The entire county.
Lassen, Southern Part	1.15	That portion of Lassen County lying south of an east-west line drawn through a point ten (10) miles north of Susanville.
Lassen, Northern Part	1.20	All of Lassen County except the southern part described above.
Los Angeles, Northeastern Part	1.05	That portion of Los Angeles County lying north and east of the following described line: <ul style="list-style-type: none"> • An east-west line drawn three (3) miles south of Scheideck from the western county line east to its intersection with a north-south line drawn four (4) miles west of Acton; thence south along said north-south line to its intersection with an east-west line drawn five (5) miles south of Acton; thence along said east-west line to its intersection with the eastern county line.
Los Angeles, Southwestern Part	1.00	Includes all of Los Angeles County except the northeastern part described above.
Madera, Western Part	1.00	That portion of Madera County lying west of a line drawn ten (10) miles west of, and paralleling the western boundary of the Sierra National Forest.
Madera, Central Part	1.10	That portion of Madera County lying between a line drawn ten (10) miles west of, and paralleling the western boundary of the Sierra National Forest and a line drawn ten (10) miles east of and paralleling the western boundary of the Sierra National Forest.
Madera, Eastern Part	1.10	All of Madera County except the western part and the central part described above.
Marin	1.05	The entire county.

CVBE

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COUNTY	FACTOR	DESCRIPTION
Mariposa, Western Part	1.05	That portion of Mariposa County lying west of: <ul style="list-style-type: none"> • a line drawn five (5) miles east of, and paralleling State Highway 49 from the northern county line to Mormon's Bar; and • a line drawn ten (10) miles west of, and paralleling the western boundary of the Sierra National Forest from a point due east of Mormon's Bar to the southern county line.
Mariposa, Eastern Part	1.10	All of Mariposa County except the western part described above.
Mendocino, Southern Redwood Highway Area	1.05	That portion of Medocino County situated within ten (10) airline miles of the Redwood Highway (U.S 101) from a point ten (10) miles north of the Willits City Hall to the south boundary of the county.
Mendocino, Northern Redwood Highway Area	1.10	That portion of Mendocino County situated within five (5) airline miles of the Redwood Highway (U.S 101) from a point ten (10) miles north of the Willits City Hall to the northern boundary of the county.
Mendocino, Fort Bragg Area	1.15	That portions of Mendocino County lying west of the Southern Redwood Highway Area, and south of the Ten Mile River.
Mendocino, Residual Area	1.15	Those portions of Mendocino County not otherwise classified. (Comprises the northeastern part of the county and the coastal strip in the northwestern part).
Merced	1.00	The entire county.
Modoc	1.20	The entire county.
Mono	1.25	The entire county.
Monterey, Northern Part	1.05	That portion of Monterey County lying north of an east-west line beginning on the coast two (2) miles south of the City of Carmel and extending due east to the eastern boundary of the county.
Monterey, Southern Part	1.10	All of Monterey County except the northern part described above.
Napa	1.05	The entire county.
Nevada	1.10	The entire county.
Orange	1.00	The entire county.

Continued on the next page

COUNTY	FACTOR	DESCRIPTION
Placer, Southwestern Part	1.00	That portion of Placer County which is either: <ul style="list-style-type: none"> • within five (5) miles of either side of State Highway 65 from the southern boundary of the county and the northern limit of the community of Lincoln; or • five (5) miles of either side of Interstate Highway 80 from the southern boundary of the county and the northern limit of the community of Penryn.
Placer, Central Part	1.05	That portion of Placer County which is either: <ul style="list-style-type: none"> • west of a line drawn five (5) miles east of, and paralleling state Highway 49; or • within five (5) miles of either side of Interstate Highway 80 between the northern limit of the community of Penryn and the northern limit of the community of Colfax; • except the southwestern part described above.
Placer, Northeastern Part	1.10	All of Placer County except the southwestern part and central part described above.
Plumas	1.10	The entire county.
Riverside, Northwestern Part	1.00	City of Riverside and vicinity. Includes that portion of Riverside County lying north of an east-west line drawn ten (10) miles south of the city of Riverside from the western county line to the intersection of a southerly extension of a north-south line drawn through the eastern city limits of Redlands.
Riverside, Eastern Part	1.10	That portion of Riverside County lying east of a north-south line drawn through the intersection of Interstate 10 and Fields Road extending from the southern county line of Riverside County, north to the southern county line of San Bernardino County.
Riverside, except Northwestern and Eastern Parts	1.05	All of Riverside County except the northwestern and eastern parts as described above.
Sacramento	1.00	The entire county.
San Benito, Northern Parts	1.05	That portion of San Benito County lying north of an east-west line drawn across the county from a point two (2) miles south of the community of Paicines.
San Benito, Southern Parts	1.10	All of San Benito County except the northern part described above.

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COUNTY	FACTOR	DESCRIPTION
San Bernardino, Northeastern Part	1.10	That portion of San Bernardino County lying north and east of an east-west line drawn two (2) miles north of Oro Grande, extending from the western boundary of the county to its intersection with the northerly extension of, and thence along a line drawn through the following points: A point five (5) miles east of Victorville, the eastern edge of the communities of Running Springs and Camp Angelus then due south to the San Bernardino County line.
San Bernardino, Southwestern Part	1.00	San Bernardino metropolitan area. That portion of San Bernardino County lying south of the San Bernardino National Forest and west of a north-south line drawn through the eastern city limits of Redlands.
San Bernardino, except above	1.05	All of San Bernardino County except the northeastern part and the southwestern part described above.
San Diego, Western Part	1.00	That portion of San Diego County lying generally west of a line beginning at a point on the north boundary line of San Diego County where the range line between ranges 1E and 2E intersect said boundary line, southerly along aforesaid range line 24 miles, more or less, to northwest corner of Township 13S, thence easterly six (6) miles to the northeast corner of same Township, thence southerly along the range line between ranges 2F and 3E to the intersection of this line with the United States-Mexico boundary line.
San Diego, Northeastern Part	1.15	That portion of San Diego County lying east of a north-south line drawn ten (10) miles east of the community of Julian, said line extending from the northern boundary of the county to its intersection with an east-west line extending from the eastern boundary of the county to its intersection with the aforesaid north-south line, said east-west line being at its closest point, three (3) miles due north of the community of Mount Laguna.
San Diego, Central Part	1.05	All of San Diego County except the western part and the northeastern part described above.
San Francisco	1.05	The entire county.
San Joaquin	1.00	The entire county.
San Luis Obispo	1.05	The entire county.
San Mateo, Southwestern Part	1.10	That portion of San Mateo County lying more than two (2) miles westerly from the nearest point on Skyline Boulevard and south of an east-west line drawn through a point two (2) miles north of the community of Montara.
San Mateo, Metropolitan Area	1.05	All of San Mateo County except the southwestern part described above.

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COUNTY	FACTOR	DESCRIPTION
Santa Barbara, Southern Part	1.00	That portion of Santa Barbara County lying south of the southern boundary of the San Rafael Primitive Area from Gaviota Pass to the eastern boundary of Santa Barbara County.
Santa Barbara, Northern Part	1.05	All of Santa Barbara County except the southern part described above.
Santa Clara	1.05	The entire county.
Santa Cruz, Northwestern Part	1.10	That portion of Santa Cruz County lying northerly and westerly from a line drawn from a point one (1) mile north of Swanton on the coast through a point one (1) mile north of Brookdale and situated more than two (2) miles from the nearest point on the eastern boundary of the county.
Santa Cruz, Southeastern Part	1.05	All of Santa Cruz County except the northwestern part described above.
Shasta, Valley Area	1.05	That portion of Shasta County lying south of Shasta Lake and situated within ten (10) miles of Interstate Highway 5.
Shasta, except Valley Area	1.10	All of Shasta County except the Valley Area described above.
Sierra	1.10	The entire county.
Siskiyou, Somes Bar Area	1.25	Those portions of the drainage areas of the Salmon and Klamath Rivers located within the boundaries of the Junction School District.
Siskiyou, Salmon River Area	1.30	All of the drainage area of the Salmon River (including the North and South Forks) except that portion situated within the Somes Bar Area described above.
Siskiyou, Western Part	1.20	That portion of Siskiyou County lying westerly from a line drawn ten (10) miles west of and parallel to Interstate Highway 5, except the Somes Bar and Salmon River areas described above.
Siskiyou, Central Part	1.20	That portion of Siskiyou County situated within ten (10) miles of U.S. Highway 97 from Grass Lake to the Oregon State Line.
Siskiyou, Yreka and Residual Portions	1.10	All of Siskiyou County except the Somes Bar, Salmon River, and western part described above.
Solano	1.05	The entire county.
Sonoma, Northwestern Part	1.10	That portion of Sonoma County enclosed by a line following the northern boundary of the county from the Pacific Ocean to a point fifteen (15) miles inland, thence southerly to a point two (2) miles west of the community of Los Lomas, thence southerly to a point on the coast two (2) miles south of the community of Fort Ross, thence northerly along the coast line to the northern boundary of the county.
Sonoma, except Northwestern Part	1.05	All of Sonoma County except the northwestern part described above.

Continued on the next page

COUNTY	FACTOR	DESCRIPTION
Stanislaus	1.00	The entire county.
Sutter	1.05	The entire county.
Tehama, Valley Area	1.05	Those portions of Tehama County situated within ten (10) miles west of Interstate Highway 5 from the north county line to the southern county line; within ten (10) miles east of Interstate Highway 5 from the north county line southward to a point east of the city of Red Bluff, thence within ten (10) miles east of and paralleling State Highway 99 southward to the county line.
Tehama, except Valley Area	1.10	All of Tehama County except the Valley Area described above.
Trinity, State Highway 299	1.15	That portion of Trinity County situated within five (5) miles of State Highway 299.
Trinity, Residual Area	1.20	All of Trinity County except the State Highway 299 area described above.
Tulare, Central Part	1.05	That portion of Tulare County lying east of a line drawn ten (10) miles west of, and paralleling the boundaries of the Kings Canyon and Sequoia National Parks and Sequoia National Forest and lying west of a north-south line drawn through the western limits of the community of Silver City.
Tulare, Eastern Part	1.10	That portion of Tulare County lying east of a north-south line drawn through the western limits of the community of Silver City.
Tulare, Western Part	1.00	All of Tulare County except the central and eastern parts described above.
Tuolumne, Western Part	1.05	That portion of Tuolumne County lying west of State Highway 49.
Tuolumne, Eastern Part	1.10	All of Tuolumne County except the western part described above.
Ventura, Northern Part	1.05	That portion of Ventura County lying north of an east-west line drawn three (3) miles south of Schiedeck from the western county line to the eastern county line.
Ventura, Southern Part	1.00	All of Ventura County except the northern part described above.
Yolo, Eastern Part	1.00	That portion of Yolo County lying south of Cache Creek and east of a north-south line drawn through the western city limits of Woodland.
Yolo, Western Part	1.05	All of Yolo County except the eastern part described above.

Continued on the next page

COUNTY	FACTOR	DESCRIPTION
Yuba, Southwestern Part	1.05	That portion of Yuba County lying west of a line drawn ten (10) miles east of, and paralleling State Highway 65 and that portion of Yuba County lying south of a line drawn three (3) miles north of, and paralleling State Highway 20.
Yuba, Northeastern Part	1.10	All of Yuba County except the southwestern part described above.

Appendix 12

Disabled Veteran Business Enterprise (DVBE) Contract Participation Goal

Introduction	State Allocation Board (SAB) policy requires a participation goal of not less than three percent disabled veteran business enterprise(s).
Lease-Purchase Projects Subject to DVBE Contract Participation Goal	<p>All State School Building Lease-Purchase projects funded <i>in whole or in part</i> must comply with the disabled veteran business enterprise (DVBE) contract participation goal. Subject projects also include:</p> <ul style="list-style-type: none"> • 50/50 program, • cost sharing, • district-funded projects where State reimbursement will be pursued.
Contracts Subject to DVBE Contract Participation Goal	<p>All contracts in a State School Building Lease-Purchase project are subject to DVBE contract participation goals. Subject contracts contained in an application include, but are not limited to:</p> <ul style="list-style-type: none"> • surveys • appraisals • tests • architectural services • consultant services • construction • inspection • furniture and equipment
Contracts Not Subject to DVBE Contract Participation Goal	Contracts that have an estimated cost of \$10,000.00 or less need <i>not</i> comply with DVBE contract participation goal provision.
Compliance with DVBE Contract Participation Goal	<p>A bidder is deemed responsive if at least one of the following DVBE contract participation goals is met:</p> <ul style="list-style-type: none"> • The bidder is a disabled veteran business enterprise and committed to performing not less than three percent of the dollar amount of the contract with his or her own forces. • The bidder is committed to using disabled veteran enterprise(s) for not less than three percent of the dollar amount of the contract. • The bidder demonstrates an effort to identify, solicit and potentially utilize DVBE subcontractors or suppliers.
District Responsibilities	<p>Prior to the award of any contract subject to the DVBE contract participation goal the district must include the following in all bids:</p> <ul style="list-style-type: none"> • Prime Bidder Certification of Disabled Veteran Business Enterprise Participation • Prime Bidder Good Faith Effort Work Sheet
DVBE Contract Review	<p>The DVBE documents must be reviewed by the school district for compliance with DVBE contract participation goal.</p> <p>Districts are required to determine compliance with the DVBE contract participation goal. The district is required to certify the contract amount and DVBE participation on <i>School District Summary of Bids/Proposals (Form SAB 515)</i>. ☒</p>

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, November 30, 1994

REVISED IMPLEMENTATION OF EDUCATION CODE
SECTION 17719.3 Construction Management

PURPOSE OF REPORT

To present a revised policy to implement Education Code Section 17719.3, (Construction Management).

DESCRIPTION

At the June 28, 1989 State Allocation Board (SAB) meeting, a policy regarding the use of construction management services was approved and subsequently implemented by the Office of Local Assistance. This policy was ambiguous, difficult to administer and did not address certain provisions of the Lease Purchase Law. As a result, a revised policy has been developed which addresses these concerns.

The State Allocation Board Implementation Committee and the Office of Local Assistance (OLA) staff support this revision to proposed policy.

BOARD POLICY

The original June 28, 1989 SAB policy did not specifically address the issues contained in the attached policy modification.

RECOMMENDATION

- 1.) Adopt the attached revised policy for all types of contracts for construction management services not yet approved by the Office of Local Assistance.
- 2.) Provide that the Qualifications Section of this policy shall apply to construction management services provided by internal district staff. A policy on the use of internal district staff for construction management services is also being presented to the Board as a separate item in this agenda.

BOARD ACTION

In considering this Item, the Board approved staff's recommendations, with the understanding that it be an "interim policy". This policy will be accepted as the final Construction Management (External) Policy in March 1995, if no new information or alteration is required at that time.

Implementation of Education Code
Section 17719.3 Construction Management

GENERAL

To revise the SAB policy regarding Education Code Section 17719.3 which authorizes school districts to contract, as specified, for Construction Management Services to assist in the development and/or implementation of a project under the Leroy F. Greene State School Building Lease-Purchase Law of 1976

CONSTRUCTION MANAGEMENT

This policy recognizes the two levels of services available to assist a school district in the development and/or implementation of the construction of new school facilities or modernization projects constructed under the authority of the Leroy F. Greene State School Building Lease Purchase Law of 1976.

The definition of services contained herein follow the general outline of recommended services as described in the Construction Management Association of America (CMAA) Manual titled Standards of Practice and as copyrighted in 1988. The use of copyright phrases or descriptions as outlined below and as contained in the CMAA Manual have been granted by the National CMAA Headquarters.

The following list of services, with a clear delineation of pre-construction versus construction phase services, is more specific to California Public Schools and California Bidding Laws than the referenced CMAA documents. This clearer separation should make the OLA review and District requirements easier for all involved.

- I. CONSTRUCTION MANAGEMENT (PRE-CONSTRUCTION PHASE) - Services provided in association with Pre-construction activities that relate to organization and development of the project prior to the start of construction by either Multi-Prime (trade contractors) or a General Contractor.**

Construction Management consists of providing responsible reporting, documentation, recommendations and supervision of the following services: pre-construction scheduling, review and recommendations during the design development stages from the schematic phase to the completion of working drawings, conceptual and periodic estimates, budget assessment and cost containment advice, value engineering studies and recommendations, and Construction Manager reviews. **(Refer to detailed list of services provided.)**

- II. CONSTRUCTION MANAGEMENT (CM) (CONSTRUCTION PHASE) - Services provided in association with Construction Management activities that relate to projects constructed by either Multi-Prime, (trade contractors), or a General Contractor and commence between bid preparation and bid opening and continues thirty five (35) calendar days beyond the final filing of the notice or notices of completion. It continues through any warranty periods.**

Construction Management consists of the supervision of all activities that are connected with the construction of the project. Construction Management provides responsible reporting and documentation that starts prior to the contractors' pre-construction conference and includes responsibility for performance of the site construction services provisions (general conditions items including supervision and administration of the project), conducting construction progress meetings, providing progress reports, processing contractors requests for information (RFI's), reviewing and recommending the approval or disapproval of change orders and payments to the contractor, maintaining record keeping to assist the District in negotiations, mediation or arbitration of claims or disputes **(Refer to detailed list of services provided.)**

CONSTRUCTION MANAGEMENT SERVICES PROVIDED

A. PRE-CONSTRUCTION PHASE

1. Construction Management Plan. The Construction Manager will prepare a Management Plan for the Project which will establish the general basis for the sequence of contracting for construction of the Project and the attendant design effort required. In preparation for the Construction Management Plan, the Construction Manager will evaluate the local construction market, the District's resources, the District's schedule and budget goals of the Project, develop various alternative approaches, and make recommendations to the District. Upon approval by the District of the Construction Management Plan, the Construction Manager will prepare the Construction Management Plan in final form. This document will indicate the project rationale and recommend the strategy for purchasing construction, the various bid packages for the Project and a Master Project Schedule.
2. Master Project Schedule. The Construction Manager will develop a Master Project Schedule which will contain key milestones to be accomplished by the Project participants, including a schedule of the Architect's and Consultant's design activities.
3. Project Budget. To assist the project architect during the design phase, the Construction Manager will provide a plan and budget for all items that will be required for the project. These include such things as reproduction of the drawings and specifications for bidding, various other office and administrative costs and the cost for required services at the site. The Construction Manager will review the Program of Requirements, the District's schedule goals, and existing budget data. The Construction Manager will make a report of the budget to the District indicating: (1) shortfalls or surpluses in the budget, and (2) recommendations for cost reductions, value engineering, or revisions to the Program of Requirements.
4. Cost Management Procedures. The Construction Manager will implement and maintain cost management procedures throughout the design phase. When design or programmatic changes are made and approved by the District, these changes will be recorded and the cost effect will be documented.
5. Construction Management Review. The Construction Manager will provide input to the District and Architect(s) relative to value, sequencing of construction (phases), means and methods, duration of construction of various building methods, and constructability.
6. Coordination Review. The Construction Manager will review the Architect(s) 50%, and 90% contract document submissions and provide written comments on the coordination of the various disciplines, including civil, structural, architectural, mechanical, electrical, HVAC, plumbing, and landscape.
7. Coordinate Design Comments. The Construction Manager will provide coordination between the Architect(s) and the District in an effort to obtain the proper flow of information. The Construction Manager will coordinate the design reviews during the Construction Document phase and will compile and expedite the District's comments to the design team.
8. 50% Construction Document (CD) Estimate. The Construction Manager will provide a 50% CD Estimate in Cost Model format at completion of 50% of the CD phase. This 50% CD Estimate will be accompanied by a report to the District and Architect(s) identifying variances with the original budget.
9. 90% Construction Document (CD) Estimate. The Construction Manager will arrange for a 90% CD Estimate in Cost Model format at the conclusion of the 90% CD phase. The 90% CD Estimate will be accompanied by a report to the District and Architect(s) identifying variances.
10. Cost Adjustment Sessions. Should significant variance be detected in the 50% or 90% Construction Document Estimates, the Construction Manager will conduct cost adjustment sessions with the Architect(s) and the District. At the conclusion of these sessions, the Construction Manager, in conjunction with the District, will request commitments from the Architect(s) for design adjustments to the documents in an effort to maintain the project budget.

11. Conditions of Construction. The Construction Manager in a General Contractor project will advise the District as to the form and content of the Invitation to Bid, the form of Proposal, the General Conditions, the Supplementary Conditions and the Special Conditions for the contract for construction. The Construction Manager will submit to the Architect his or her General Recommendations and make suggestions for their inclusion into the Construction Documents.
12. Bidding Procedures. In cooperation with the Architect(s) and the District's Purchasing Office, the Construction Manager will develop and expedite bidding procedures for bid document issuance, bidder tracking and receipt of proposals.
13. Public Relations Activities. The Construction Manager will assist the District and Architect(s) in public relations activities including preparation of the Project information, and attending internal and public meetings as required, including site meetings and quarterly District Bond Committee meetings as required by the district.
14. Generate Bidder Interest. The Construction Manager should maintain contact with potential bidders on a regular basis throughout the bid period. This includes bonded major subcontractors and suppliers as well as General Contractors, if applicable. A telephone campaign will be conducted to stimulate and maintain interest in bidding on the project.
15. Bid Advertisements. The Construction Manager will assist the District and the Architect in preparing and placing notices and advertisements to solicit bids on the Project.
16. Prepare and Expedite Bid Document Delivery. In conjunction with the District and Architect(s), the Construction Manager will coordinate and expedite the preparation and delivery of Bid Documents and addenda to the bidders which may include:
 - a. Prepare summaries of work Bid Packages;
 - b. Arranging to secure documents from Architect(s);
 - c. Arranging for printing, binding and wrapping;
 - d. Arranging for delivery; and
 - e. Follow-up calls to the bidders
17. Pre-Bid Conference(s). In conjunction with the District and Architect, the Construction Manager will assist with pre-bid conference(s). These conferences will be a forum for the District, the Construction Manager, and Architect(s) to present the project requirements to the bidders, including prequalification requirements as appropriate.
18. Coordination and Inquiries The Construction Manager will coordinate communications related to Bidder inquiries and seek resolution for the appropriate party and provide timely forwarding of such information to the bidders.
19. Addenda Review. The Construction Manager will provide a review of each addendum during the Bid Phase for time, cost, or constructability impact, and make appropriate comments or recommendations.
20. Bid Evaluation. The Construction Manager will assist the District in prequalification, the bid opening, evaluation of the bids for completeness, full responsiveness and price, including alternate prices and unit prices, and will make a formal report to the District regard to the potential award of a contract.
21. Construction Contract(s). The Construction Manager will assist the District in the preparation of the construction contract(s).

B. CONSTRUCTION PHASE SERVICES

1. Pre-Construction Conference(s) The Construction Manager will conduct, in conjunction with the District and the Architect(s), pre-construction orientation conference(s) for the benefit of the successful Contractor(s) and will serve to orient the Contractor(s) to the various reporting procedures and site rules prior to the commencement of actual construction.
2. Contract Administration. The Construction Manager will administer the construction contract as provided in the General Conditions of the contract for construction.

3. Submittal Procedures. The Construction Manager will establish and implement procedures for submittals, change orders, payment requests and other procedures; and maintain logs, files, and other necessary documentation.
4. Job Site Meetings. The Construction Manager will coordinate regular job-site progress meetings with the (multiple) prime Contractor(s)/Subcontractor(s), and will work with the architect to ensure that the Architect(s) record, transcribe and distribute minutes to all attendees, the District, and all other appropriate parties.
5. Coordination of Technical Inspection and Testing. The Construction Manager will coordinate with the District's certified inspector all testing required by the Architect(s) or other third parties. All inspection reports will be provided to the Construction Manager on a regular basis.
6. Construction Observation. The Construction Manager will observe the progress of the work and advise the District of any deviations, defects or deficiencies the Construction Manager observes in the work. The Construction Manager's observation duties shall include reasonable diligence to discover work that is not in compliance with the Contract Documents. These observations will not, however, cause the Construction Manager to be responsible for those duties and responsibilities which belong to the Architect(s), the district inspector or the Contractor(s). These include, but are not limited to, the Architect(s)'s obligation to produce clear, accurate drawings and specifications and the Contractor(s) responsibilities for the techniques and sequences of construction and safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents.
7. Non-Conforming Work. The Construction Manager will, in conjunction with the Architect(s) and inspector, review contractor's recommendations for corrective action on observed nonconforming work. The Construction Manager will make recommendations to the District, the Architect(s), and inspector in instances where the Construction Manager observes work that, in his opinion, is defective or not in conformance with the Contract Documents.
8. Exercise of Contract Prerogatives. When appropriate, the Construction Manager will advise the District and make recommendations to the District for exercising the District's contract prerogatives, such as giving the Contractor notice to accelerate the progress when the schedule goals are in jeopardy due to Contractor failings, withholding payment for cause and other prerogatives when required in an effort to achieve contract compliance.
9. Master Construction Schedule. The Construction Manager will continue to update and maintain the Master Construction Schedule and distribute the updated Master Schedule to the District, Architect(s) and other appropriate parties.
10. Construction Progress Review. The Construction Manager will review the progress of construction with the Contractor, observe work in place and that materials are properly stored on a monthly basis, and evaluate the percentage complete of each construction activity as indicated in the construction schedule.
11. Monthly Contractor Payment. The Construction Manager will review and make recommendations pertaining to monthly payments to the prime Contractor(s). This activity will be an integral part of the monthly progress report updates. However, if it should later be found that a contractor has failed to comply with the provisions of his contract with the District in any way or detail such failures and subsequent compliance will be the sole responsibility of the Contractor(s).
12. Evaluate Proposal Cost. The Construction Manager will evaluate the Contractor(s) proposal cost and will make a formal recommendation to the District regarding acceptance of the proposal for a Change Order.
13. Negotiation of Change Order Costs and Time Extensions. The Construction Manager will assist the district and the Architect in negotiating Change Order costs and time extensions.
14. Change Order Reports. The Construction Manager shall prepare and distribute Change Order reports on a monthly basis throughout the construction phase. This report will provide information pertaining to proposed and executed change orders and their effect on the contract price as of the date of the report.

5. Contractor Claims. The Construction Manager will be given copies of all notices of claims by Contractors against the District for any alleged cause. The Construction Manager will perform a preliminary evaluation of the contents of the claim, and make recommendations to the District.

16. Project Status Reports. The Construction Manager will prepare and distribute a Project Status Report as requested by the district as well as the Verified Reports required by Title 24.

17. Equipment Instruction Manuals. The Construction Manager will be the recipient of all written material such as operations and maintenance manuals, warranties and guarantees for all equipment installed in the project. All equipment instruction material shall be reviewed and delivered to appropriate District personnel.

18. As-Built Documents. The Construction Manager will perform coordination and expediting functions in connection with the Architect and Contractor's obligation to provide "as-built" documents.

19. Training Sessions. The Construction Manager will coordinate and schedule training sessions for the District's personnel and will assure that the Contractor's obligation in providing this training is fulfilled.

20. Administration of the Project. The Construction Manager will:
 - a. Provide full-time on-site administration of the project.
 - b. Assist the Inspector in observing the materials and equipment being incorporated into the work to assure that they are handled, stored and installed properly and adequately and are in compliance with the Contract Documents for the project. Report to the District regarding these activities.
 - c. Assist the Inspector in observing the Contractor's work to verify that all authorized changes are properly incorporated in the project. Report to the District regarding these activities.
 - d. Identify problems encountered in accomplishing the work and recommend appropriate action to the District to resolve these problems with a minimum effect on the timely completion of the project.
 - e. Not issue instructions contrary to the agreement between District and Contractor, or between the District and Architect. All changes to the agreement between the District and the Contractor shall be by change order executed by the District. Communication between the Construction Manager and the Contractor with regard to inspection shall not in any way be construed as binding the District, or releasing the Contractor from fulfillment of any of the terms of his contract. The Construction Manager's construction administration activities:
 1. Shall not relieve the Contractor of his obligation to perform the work in strict conformity with the agreement between District and Contractor, the Contract Documents in strict conformity with all other applicable laws, rules and regulations; or Construction Manager liable for, or and insurer of, the performance of the Contractor; or
 2. Shall not make the Construction Manager liable for, or an insurer of, the performance of the Contractor; or
 3. Shall not require the Construction Manager to have control or charge of or advise on or issue directions concerning aspects of the construction means, methods, techniques or sequences, in connection with the work; or
 4. Shall not require the Construction Manager to be responsible for the acts or omissions of the Architect(s), the Contractor(s) or Subcontractor(s), or other persons performing the work; or the failure of any of them to carry out the work in accordance with the Contract Documents.
 - f. Assist the Architect and Inspector with monitoring certified payroll for the entire project.

21. The Construction Schedule. The Construction Manager will initialize the detailed Construction Schedule Report utilizing appropriate means. The critical path method should be the preferred method of Analysis. This information will be the basis for all future reports reflecting actual project progress during the construction phase. The contractor(s) shall provide their detailed schedule in accordance with the Contract Documents and this will be used to establish the master schedule.
22. Monthly Construction Schedule Updates. The Construction Manager will prepare and distribute construction schedule updates as appropriate. After an evaluation of the actual progress as observed by the Construction Manager, scheduled activities will be assigned percentage-complete values in conjunction with the Contractor. The report will reflect actual progress as compared to schedule progress noting variances (if any) as negative float. This report will also be the basis for determining implementation of certain District prerogatives concerning progress of the project, when required.
 - a. Recovery Schedule. If requested by the District, the Construction Manager shall assist the Contractor(s) in preparing a Recovery Schedule. This Recovery Schedule will reflect the corrective action and extraordinary efforts to be undertaken by the Contractor(s) to recapture lost time. This Recovery Schedule will be distributed to the Contractor(s), the District, Architect(s) and other appropriate parties.
 - b. Claims Analysis. If requested by the District, the Construction Manager will analyze the claims for extension of time and will prepare an impact evaluation report which will reflect the actual impact to the schedule. The report will also provide a narrative including a recommendation for action to the district.
 - c. Evaluate Claim Cost. If requested by the District, the Construction Manager will prepare estimates based on the alleged cause of claims submitted by the Contractor(s) and will prepare alternate estimates based on varying scenarios of the claim cause. These estimates will be transmitted to the District and will be used in claim rulings and negotiations.
 - d. Contractor Claims Negotiations. If requested by the District, the Construction Manager will negotiate claims with the contractor on behalf of the District. The Construction Manager will make a recommendation to the District concerning settlement or other appropriate action.
 - e. Construction Schedule. Upon the District's transmission of a Notice of Award to the successful Contractor(s), the Construction Manager will review the Contractor's development of its detailed construction schedule within the framework of the submitted Preliminary Provisional Schedule. The Construction Manager will distribute the Construction Schedule to the Contractor(s), the District, the Architect(s) and other appropriate parties.
 - f. Schedule of Values. The Construction Manager will review and reconcile each Contractor's Schedule of Values for each of the activities included in the Construction Schedule.
 - g. Final Completion. The Construction Manager, in conjunction with the Architect(s) and the inspector will at the conclusion of all corrective action of all punch list items, make a final comprehensive review of the project, make a report to the District which will indicate whether the Construction Manager and the Architect(s) find the work performed acceptable under the Contract Documents and the relevant project data, and make recommendations as to final payment and the notice of completion to the Contractor(s).

C. POST-CONSTRUCTION SERVICES

1. Occupancy Permit. The Construction Manager will assist the District in obtaining the occupancy permit. This task may encompass accompanying governmental officials (Fire Marshal, DSA, Health Department, etc.) during inspections of the facility, assisting in preparing and submitting proper documentation to the appropriate approving agencies, assisting in final testing and other necessary and reasonable activities.
2. Final Project Report. At the conclusion of the project, the Construction Manager will prepare final project accounting and closeout reports of all above indicated report systems. These reports will summarize, for historical purposes, any items which are not self-explanatory .

QUALIFICATIONS

Candidates providing pre-construction and construction phase Construction Management (CM) services must meet all the following criteria:

1. Must be an individual or firm or partnership or corporation or association or other legal entity licensed or registered under California law or employing licensed or registered Architect, Engineer, or General Contractor licensed under California Law that will have responsibility for projects.
2. Must provide evidence to the school district that the entity, and its personnel carrying out on-site responsibilities, have expertise and experience in project design review and evaluation, construction supervision, bid evaluation, project scheduling, cost benefit analysis, claims review and negotiation, and general management and administration of a construction project.
3. All construction contractors shall be required to post a 100% performance bond for their contract.
4. Each construction contractor shall post a labor and material bond in the amount of 100% their contract.
5. The CM firm shall not be a bidder on any individual construction contract in the project.
6. All construction work shall be bid and awarded in no more than two bid phases, in accordance with normal requirements for General Contractors for site and construction phases. For new construction projects, all construction contracts representing the lowest responsible bidder, shall be submitted to Office of Local Assistance as one package. The Form SAB 515 (Summary of all bids) and the required Minority/Women and Disabled Veteran Business Enterprise (M/W/DVBE) documentation, shall be attached to each successful contract listing the three lowest bidders and the bid amounts for each construction contract. A bid phase summary shall be submitted with each bid phase package listing only the low bidders, their contract amounts, the CM fee and General and Special Conditions assigned to each bid phase, summed as a total committed cost.
7. The CM firm shall certify in writing that all of the contracts contained in the submittal represent all the work in the plans and specifications for the total project or that some of the work has been deferred for the future. In the event the contracts and the work deferred for future does not represent 100% of the work and/or exceed the Board's Cost Standards, the additional necessary work must be offset by reduction in the CM fees.

SELECTION OF CM

During the selection process of a CM, the district should solicit proposals from several firms known by reputation, as well qualified and experienced in the management of the design and construction of public schools. Emphasis should be placed on selection of the firm with the best possible qualifications.

The school district is expected to negotiate an agreement with the firm which is most favorable in regards to compensation for the professional service, within the maximum fees allowed. Agreement by the district to pay the maximum allowable fee without meaningful negotiations is not in keeping with the district's obligation to minimize the cost of the project.

When the district selects a CM firm, it must assure that the firm meets the M/W/DVBE provisions in accordance with SAB policy prior to execution of the contract. The owner, to whom the CM is responsive, is the school district. In all transactions between the districts and the selected firm, the district shall act on its own behalf (see contract section). Additionally, contracting for CM services must be executed prior to specific phase of the Project as follows:

PRE-CONSTRUCTION SERVICES - Prior to Phase P, previously Phase I, approval or the completion of the preliminary phase or prior to the initial development of the final plans.

POST CONSTRUCTION SERVICES - Prior Phase C, previously Phase I, approval.

MAXIMUM ALLOWABLE FEES

The school district, as Owner, is expected to negotiate an agreement with the CM firm which is most favorable to the owner with regard to compensation for their professional service, within the maximum fee allowed. The fee must be commensurate with the service provided after execution of the CM contract. Agreement by the district to pay the minimize the cost of the project. The amount of the maximum allowable fees is dependent upon scope, type, and duration of services but cannot exceed the maximum allowable fees without meaningful negotiations is not in keeping with the district's obligation to following schedules:

Maximum Schedule for Construction Management Fees (Combined Pre-Construction and Construction Phases)

1. Eight percent of any portion of the first five hundred thousand dollars of the computed building cost of the project.
2. Seven and one-half percent of any portion of the next five hundred thousand dollars of the computed building cost of the project.
3. Seven percent of any portion of the next one million dollars of the computed building cost of the project.
4. Six percent of any portion of the next four million dollars of the computed building cost of the project.
5. Five percent of any portion of the next four million dollars of the computed building cost of the project.
6. Four percent of any portion of the computed building cost of the project in excess of ten million dollars.

The computed building cost shall be the final building allowance less savings determined at bid approval. No additional fees will be allowed for change orders.

In no event may the calculated fee determined in the schedule above exceed the following:

- 50 percent for pre-construction services that include the bidding phase.
- 37 and 1/2 percent for pre-construction services that do not include the bidding phase.
- 50 percent for the construction phase, that does not include the bidding phase.
- 62 and 1/2 percent for the construction phase that includes the bidding phase.

The calculation of the estimated fee may be made utilizing estimates of the building cost prior to the development of the final allowance by the OLA. The fee is a reduction in the Building Allowance for the project. The final adjustment in the estimated fee will be made at bid time to reflect the actual maximum allowable Building Cost.

Pre-Construction fees will be released at Phase P approval. Construction phase fees will be released at Bid approval.

COST ALLOWANCES NEW CONSTRUCTION) AND MODERNIZATION

This Policy shall not cause the cost of a new construction Lease/Purchase project to exceed the cost standards established by the SAB.

The final building cost will include CM fees and costs of general conditions.

To obtain project savings the following will be required:

1. Require all bids in all bid package categories (all trades) to be opened at the same date and time thereby prohibiting the staggering of bids. (Growth only)

2. Allow two deductive alternates with no more than 10 building items each for the entire project. (Growth only)
3. Do not allow individual bid package category rebids except under one or more of the following circumstances AND ONLY IF FIRST APPROVED BY THE OLA:
 - a. If, through no fault or lack of concerted effort of the District, CM or Architect, no bid is received in a category.
 - b. If no bidder is responsive to the Minority/Women/Disabled Veterans Business Enterprise (M/W/DVBE) bid requirements.
 - c. If the project, after bids are received, is within the SAB allowable budget and it is apparent that inadequate coverage has resulted in an exorbitantly high bid in a category.

Should the aforementioned circumstance occur, and provided that OLA concurs that it is in the State's best interest to do so, then a category may be rebid USING THE EXACT SAME BID DOCUMENTS AND WORK SCOPE AS PER THE ORIGINAL BID.

Except as noted above, the District must reject all bids and require ALL packages for the entire project to be rebid.

4. If the project, when bid, exceeds SAB cost standards but does not exceed 110% of the allowable building costs and if the District chooses not to rebid the project but proceeds with the project, then the project would be subject to the same SAB policies in effect at that time under conventional general contract bid projects which exceed State cost standards.

GENERAL AND SPECIAL CONDITIONS

Broad categories of General and Special conditions may be allowed on multi-prime projects as follows:

- Mobilization
- Temporary utilities, structures, fences
- Material handling equipment
- Trucks, safety, small tools, fuel, scaffolding
- Insurance, comprehensive, builders risk
- On site project administration

No general conditions will be allowed for the CM for a General Construction Contract. The district will be required to submit a specific list of all General and Special Conditions which must be approved by the OLA prior to inclusion in the project. The approvable General Conditions are a reduction in the Building Cost for the project. The General and Special Conditions shall not exceed the following fee schedule based on the building cost (see fee schedule): Special or extenuating circumstances which exceed the allowance may be appealed to the SAB as appropriate on a case by case basis.

<u>Building Cost</u>	<u>Non-Graduating Fee</u>
From \$1 TO \$200 THOUSAND	15.0%
over \$200 THOUSAND TO \$500 THOUSAND	10.0%
over \$500 THOUSAND TO \$1 MILLION (M)	8.0%
over \$1M TO \$2M	6.5%
over \$2M TO \$5M	5.5%
over \$5M TO \$50M	5.0%
over \$50M TO \$100M	4.5%

These maximums shall be negotiated downward for services provided by the district.

CALCULATION OF ARCHITECT FEES

The approvable construction management fees and the general and special condition costs shall be deemed "construction contracts" for purposes of determining the appropriate architect fee for the project. For those projects with multi-prime contracts, the architect fee shall be based on each contract separately.

PROJECTS WHICH EXCEED THE SAB COST ALLOWANCE

If the aggregate of all acceptable bids exceed the Board's cost allowance as adjusted for CM fees and general conditions, the project is subject to existing board policies relating to bids which exceed the SAB cost standards. If the project is required to be rebid as a result of high bids, the Construction Manager will be required to assist the district and architect in reducing the scope of the project with no additional compensation.

CONTRACTS FOR CM

The district may utilize standard forms of agreements available from the Construction Management Association of America or the American Institute of Architects in either case, the district should rely on its legal counsel to insure that proper language is included in the agreement to meet the needs of the district. In addition, the district may utilize a model contract developed by the SAB.

In order for the SAB to approve funding for the contract, it must include, at a minimum the following:

1. The fee does not exceed that which is approvable by the SAB.
2. A provision for the assessment of adequate liquidated damages in the event the construction time requirement in the CM contract is exceeded and it is further determined that the delay is caused by the Construction Manager.
3. A provision for a 10% retention of CM fees.
4. The Construction Manager shall purchase and maintain insurance for protection from claims under workers' or workmen's compensation acts; claims for damages, because of bodily injury, including personal injury, sickness, disease or death from claims arising out of the performance of this Agreement and caused by negligent acts of omission for which the Construction Manager are legally liable.
5. The CM firm must provide evidence that it meets the minimum level of errors and omissions insurance or other bonding requirements as may be required by the SAB.

Once the district has selected a CM firm, the district will be required to submit a copy of the proposed contract, including MNV/DVBE documentation, and a certification that the terms and conditions of the contract are in accordance with the SAB guidelines.

The OLA shall review the CM contract and submittals within 15 business days of receipt. If a written response with an approval, rejection for modifications or clarification is not issued within that time period, the contract for the services shall be deemed acceptable. The OLA review of this contract for funding should not be construed as an agreement to the terms and conditions found in the contract.

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, September 25, 1996

AMENDMENT TO THE CONSTRUCTION MANAGEMENT POLICY

PURPOSE OF REPORT

Amend the existing construction management policy.

DESCRIPTION

Several school districts have indicated they have received Proposition 203 funds for a number of projects and will be unable to meet the 365 day time limit on apportionment without the assistance of construction management services.

The existing construction management policy provides that construction management contracts for post construction services must be executed prior to the Phase C approval of the project. No time line was addressed in that policy for the "construction phase" services.

It is proposed that the time be adjusted to permit the district to enter into a construction management contract for construction phase services and post construction services to just prior to the bid opening date. The other provisions of the construction management policy would still apply.

STAFF COMMENTS

At the direction of the State Allocation Board, the Legislative Implementation Committee is currently reviewing the construction management policy and is in the process of preparing an issue paper for the board.

RECOMMENDATION

Approve multi-prime construction management contracts for construction phase services and the post construction phase services provided they are executed prior to opening of bids and the Phase C was funded by Proposition 203 or later bond measures.

BOARD ACTION

In considering this Item, the Board adopted staff recommendation but advised that districts could request an extension of the 365 day time limit policy through the appeal process.

EXHIBIT 6
LEGISLATIVE INDEX

	Code Section	Pre-1975	As of Apr 30, 1977	Jan 1, 1981	As of Jan 1, 1987	As of Jan 1, 1991	As of Jan 1, 1995	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of Jan 1, 2000	As of Jan 1, 2001	As of Jan 1, 2002	As of Jan 1, 2003
Part 10														
Chapter 1.5														
Article 1.														
	15264											(A) 44/00/3		
	15266											(A) 44/00/3	132/01/1	
	15268											(A) 44/00/3		
	15270											580/00/2		
	15271											(A) 44/00/3	132/01/2	
	15272											580/00/3		
	15274											(A) 44/00/3		
	15276											(A) 44/00/3		
Article 2.														
	15278											(A) 44/00/3		
	15280											(A) 44/00/3		
	15282											(A) 44/00/3		
100 Article 3.														
101	15284											(A) 44/00/3		
	15288											(A) 44/00/3		
Chapter 2.														
Article 1.														
	15300						F. 15300 (A) 1005/94/1		1072/96/1	(R) 893/97/5 (A) 893/97/6				
	15301						(A) 1005/94/1		1072/96/2	17/97/20 940/97/1				
	15302						F. 15302 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15303						F. 15303 (A) 1005/94/1		1072/96/3	(R) 893/97/9 (A) 893/97/10				
Article 2.														
	15320						F. 15320 (A) 1005/94/1		124/96/18 1072/96/4	17/97/21 (R) 893/97/11 (A) 893/97/12				
	15321						F. 15321 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				

	Code Section	Pre-1975	As of Apr 30, 1977	Jan 1, 1981	As of Jan 1, 1987	As of Jan 1, 1991	As of Jan 1, 1995	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of Jan 1, 2000	As of Jan 1, 2001	As of Jan 1, 2002	As of Jan 1, 2003
	15322						F. 15322 (A) 1005/94/1		1072/96/5	(R) 893/97/13 (A) 893/97/14				
	15323						F. 15323 (A) 1005/94/1		1072/96/6	(R) 893/97/15 (A) 893/97/16				
	15324						F. 15324 (A) 1005/94/1		1072/96/7	(R) 893/97/17 (A) 893/97/18				
	15325						F. 15325 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15326						F. 15326 (A) 1005/94/1		1072/96/8	(R) 893/97/19 (A) 893/97/20				
	15327						F. 15327 (A) 1005/94/1		1072/96/9	17/97/22 (R) 893/97/21 (A) 893/97/22				
Article 3.														
	15330						F. 15330 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15331						F. 15331 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15332						F. 15332 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15333						F. 15333 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15334						F. 15334 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15334.5						F. 15334.5 (A) 1072/96/10		F. 15334.5 (A) 1072/96/10	(R) 893/97/23 (A) 893/97/24				

	Code Section	Pre-1975	As of Apr 30, 1977	Jan 1, 1981	As of Jan 1, 1987	As of Jan 1, 1991	As of Jan 1, 1995	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of Jan 1, 2000	As of Jan 1, 2001	As of Jan 1, 2002	As of Jan 1, 2003
	15335						(A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15336						F. 15336 (A) 1005/94/1		1072/96/11	(R) 893/97/25 (A) 893/97/26				
	Article 4.													
	15340						F. 15340 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2	858/99/1		132/01/4	199/02/2
	15341													199/02/3
	15342						F. 15342 (A) 1005/94/1		1032/96/12	(R) 893/97/27 (A) 893/97/28				
	15343						F. 15343 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
1803	15344						F. 15344 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15345						F. 15345 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15346						F. 15346 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15347						F. 15347 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15348						F. 15348 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2			132/01/5	
	15349						F. 15349 (A) 1005/94/1		1072/96/13	(R) 893/97/29 (A) 893/97/30				
	15349.1						F. 15349.1 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15349.2						F. 15349.2 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	Article 5.													

	Code Section	Pre-1975	As of Apr 30, 1977	Jan 1, 1981	As of Jan 1, 1987	As of Jan 1, 1991	As of Jan 1, 1995	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of Jan 1, 2000	As of Jan 1, 2001	As of Jan 1, 2002	As of Jan 1, 2003
	15350						F. 15350 (A) 1005/94/1		1072/96/14	(R) 893/97/31 (A) 893/97/32				
	15351						F. 15351 (A) 1005/94/1		1072/96/15	(R) 893/97/33 (A) 893/97/34				
	15352						F. 15352 (A) 1005/94/1		1072/96/16	(R) 893/97/35 (A) 893/97/36				
	15353						F. 15353 (A) 1005/94/1		1072/96/17	(R) 893/97/37 (A) 893/97/38				
	15354						F. 15354 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15355						F. 15355 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15356						F. 15356 (A) 1005/94/1		1072/96/18	17/97/24 (R) 893/97/39 (A) 893/97/40				
	15357						F. 15357 (A) 1005/94/1		1072/96/19	17/97/24 (R) 893/97/41 (A) 893/97/42				
	15358						F. 15358 (A) 1005/94/1		1072/96/20	(R) 893/97/43 (A) 893/97/44				
	15359						F. 15359 (A) 1005/94/1		1072/96/21	17/97/25 (R) 893/97/45 (A) 893/97/46				
	15359.1						F. 15359.1 (A) 1005/94/1		1072/96/22	(R) 893/97/47 (A) 893/97/48				221/02/11

	Code Section	Pre-1975	As of Apr 30, 1977	Jan 1, 1981	As of Jan 1, 1987	As of Jan 1, 1991	As of Jan 1, 1995	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of Jan 1, 2000	As of Jan 1, 2001	As of Jan 1, 2002	As of Jan 1, 2003
	15359.2						F. 15359.2 (A) 1005/94/1		1072/96/23	17/97/26 (R) 893/97/49 (A) 893/97/50				
	15359.3												(A) 132/01/6	
Article 6.							F. 15360 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15360						F. 15361 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15361						F. 15362 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15362									(R) 277/96/1 (A) 277/96/2				
Article 8.														
1805							F. 15380 (A) 1005/94/1		1072/96/24	(R) 893/97/51 (A) 893/97/52				
	15380						F. 15381 (A) 1005/94/1		1072/96/25	(R) 893/97/53 (A) 893/97/54				
	15381						F. 15382 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15382						F. 15383 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15383						F. 15384 (A) 1005/94/1		1072/96/26	(R) 893/97/55 (A) 893/97/56				
	15384													
Article 9.														
	15390						F. 15390 (A) 1005/94/1		1072/96/27	(R) 893/97/57 (A) 893/97/58				
	15391						F. 15391 (A) 1005/94/1		1072/96/28	(R) 893/97/59 (A) 893/97/60				

	Code Section	Pre-1975	As of Apr 30, 1977	Jan 1, 1981	As of Jan 1, 1987	As of Jan 1, 1991	As of Jan 1, 1995	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of Jan 1, 2000	As of Jan 1, 2001	As of Jan 1, 2002	As of Jan 1, 2003
Article 10.														
	15400						F. 15400 (A) 1005/94/1		1072/96/29	(R) 893/97/61 (A) 893/97/62				
	15401						F. 15401 (A) 1005/94/1		1072/96/30	(R) 893/97/63 (A) 893/97/64				
	15402						F. 15402 (A) 1005/94/1			(R) 277/96/1 (A) 277/96/2				
	15403						F. 15403 (A) 1005/94/1		1072/96/31	(R) 893/97/65 (A) 893/97/66				
	15404						F. 15404 (A) 1005/94/1		1072/96/32	(R) 893/97/67 (A) 893/97/68				
	15405						F. 15405 (A) 1005/94/1		1072/96/33	(R) 893/97/69 (A) 893/97/70				
Article 13.														
	15425						F. 15425 (A) 1005/94/1	520/95/1	1072/96/38	(R) 893/97/79 (A) 893/97/80				

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Chapter 12.	Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
Article 1.											
	17000		F. 19350 (A) 1009/75/1	F. 17700 (A) 1010/76/2							
	17001		F. 19351 (A) 1009/75/1	F. 17701 (A) 1010/76/2	1035/79/3.1						
	17002		F. 19352 (A) 1009/75/1	F. 17702 (A) 1010/76/2	381/77/3						
	17002.1						(A) 899/80/1				
	17005.1						(A) 899/80/2				
	17005.3										
	17005.5										
	17006		F. 19356 (A) 1009/75/1	F. 17706 (A) 1010/76/2							
	17008		F. 19358 (A) 1009/75/1	F. 17708 (A) 1010/76/2							
	17008.3										F. 17708.5 (A) 1749/84/1
	17008.5										
	17009										
	17009.3										
	17009.5										
Article 2.											
	17010		F. 19359 (A) 1009/75/1	F. 17710 (A) 1010/76/2							
	17011		F. 19360 (A) 1009/75/1	F. 17711 (A) 1010/76/2							
	17012		F. 19361 (A) 1009/75/2	F. 17712 (A) 1010/76/2							
	17013		F. 19362 (A) 1009/75/2	F. 17713 (A) 1010/76/2							
	17014		F. 19363 (A) 1009/75/3	F. 17714 (A) 1010/76/2							
	17015		F. 19364 (A) 1009/75/3	F. 17715 (A) 1010/76/2							

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
Chapter 12.											
Article 1.											
	17000										
	17001			(A) 1146/87/2					758/92/1		
	17002								758/92/2		
	17002.1					1209/89/4 1439/89/1					
	17005.1										
	17005.3									F. 17705.11 (A) 1048/93/1	194/94/1
	17005.5										F. 17705.15 (A) 1111/94/1
	17006		1050/86/1					846/91/2			
	17008		886/86/2								
	17008.3		F. 17708.3 (A) 886/86/3								
	17008.5										
	17009									f.17709 (A) 388/93/1	
	17009.3										
	17009.5										
Article 2.											
	17010										1228/94/2
	17011										
	17012										
	17013										
	17014		886/86/4			1209/88/6					
	17015										

School Facility Funding Requirement

Chapter 12. Article 1.	Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of July 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 10, 2000	As of Sep 14, 2000
	17000			(R) 277/96/1 (A) 277/96/2							
	17001			(R) 277/96/1 (A) 277/96/2							
	17002			(R) 277/96/1 (A) 277/96/2							
	17002.1			(R) 277/96/1 (A) 277/96/2							
	17005.1			(R) 277/96/1 (A) 277/96/2							
	17005.3			(R) 277/96/1 (A) 277/96/2							
	17005.5			(R) 277/96/1 (A) 277/96/2							
	17006			(R) 277/96/1 (A) 277/96/2							
	17008			(R) 277/96/1 (A) 277/96/2							
	17008.3			(R) 277/96/1 (A) 277/96/2							
	17008.5			(R) 277/96/1 (A) 277/96/2							
	17009			(R) 277/96/1 (A) 277/96/2							
	17009.3			(A) 277/96/2			(A) 407/98/2				
	17009.5						(A) 407/98/3		858/99/3		
Article 2.											
	17010			(R) 277/96/1 (A) 277/96/2							
	17011			(R) 277/96/1 (A) 277/96/2							
	17012			(R) 277/96/1 (A) 277/96/2							
	17013			(R) 277/96/1 (A) 277/96/2							
	17014			(R) 277/96/1 (A) 277/96/2 513/97/1							
	17015			(R) 277/96/1 (A) 277/96/2							

School Facility Funding Requirement

	Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct. 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
Chapter 12.								
Article 1.								
	17000							
	17001							
	17002							
	17002.1							
	17005.1							
	17005.3							
	17005.5							
	17006							
	17008							
	17008.3							
	17008.5							
	17009							
	17009.3							
	17009.5		753/00/1					
Article 2.								
	17010							
	17011							
	17012							
	17013							
	17014							
	17015							

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Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
17016		F. 19365 (A) 1009/75/4	F. 17716 (A) 1010/76/2							
17017		F. 19366 (A) 1009/75/4	F. 17717 (A) 1010/76/2							
17017.2										
17017.5						f. 17717.5 (A) 1354/80/8.5			498/83/9	
17017.6										
17017.7										
17017.9										
17018		F. 19366.1 (A) 1009/75/1	F. 17718 (A) 1010/76/2							
17018.5										
17018.7										
17019		F. 19367 (A) 1009/75/1	F. 17719 (A) 1010/76/2							
17019.3										
17019.5										
17020		F. 19368 (A) 1009/75/1	F. 17720 (A) 1010/76/2							
17021		F. 19369 (A) 1009/75/1	F. 17721 (A) 1010/76/2							
17021.3										
17021.4										
17022					f. 17722 (A) 1035/79/3.3		649/81/1		498/83/11 1254/83/2	
17022.7										
17023		F. 19371 (A) 1009/75/1	F. 17723 (A) 1010/76/2							
17024		F. 19372 (A) 1009/75/1	F. 17724 (A) 1010/76/2							

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Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
17016										
17017										
17017.2										
17017.5	544/85/1		1246/87/2			1261/90/1	846/91/3			
17017.6							F. 17717.6 (A) 588/91/1	759/92/4		
17017.7								759/92/5	1296/93/2	
17017.9						F. 17717.7 (A) 1261/90/2	846/91/4	F. 17717.9 (A) 771/92/1		
17018										
17018.5		f.17718.5 (A) 1170/86/1		29/88/1	1209/89/7					
17018.7										
17019								758/92/3		
17019.3				f. 17719.3 (A) 1499/88/2						
17019.5		F. 17719.5 (A) 886/86/7			1209/89/8					
17020	493/85/1									
17021			1223/87/1							
17021.3		F. 17721.3 (A) 886/86/8					809/91/3			
17021.4								f.17721.4 (A) 341/92/1		
17022	544/85/2						846/91/5			
17022.7		f.17722.7 (A) 886/86/9								
17023										
17024							846/91/6			

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Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of July 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 10, 2000	As of Sep 14, 2000
17016		1059/96/2	(R) 893/97/99 (A) 893/97/83			485/98/45				
17017			(R) 277/96/1 (A) 277/96/2							
17017.2		F. 17717.2 (A) 1059/96/3	(R) 893/97/100 (A) 893/97/84							
17017.5			(R) 277/96/1 (A) 277/96/2							
17017.6			(R) 277/96/1 (A) 277/96/2							
17017.7			(R) 277/96/1 (A) 277/96/2							
17017.9			(R) 277/96/1 (A) 277/96/2			957/98/1				
17018			(R) 277/96/1 (A) 277/96/2							
17018.5	552/95/26		(R) 277/96/1 (A) 277/96/2							
17018.7			(R) 277/96/1 (A) 277/96/2			(A) 941/98/1				
17019			(R) 277/96/1 (A) 277/96/2							
17019.3			(R) 277/96/1 (A) 277/96/2							
17019.5			(R) 277/96/1 (A) 277/96/2							
17020			(R) 277/96/1 (A) 277/96/2							
17021			(R) 277/96/1 (A) 277/96/2							
17021.3			(R) 277/96/1 (A) 277/96/2							
17021.4			(R) 277/96/1 (A) 277/96/2							
17022			(R) 277/96/1 (A) 277/96/2							
17022.7			(R) 277/96/1 (A) 277/96/2							
17023			(R) 277/96/1 (A) 277/96/2							
17024			(R) 277/96/1 (A) 277/96/2							

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Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct. 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
17016							
17017							
17017.2							
17017.5							
17017.6							
17017.7							
17017.9							
17018							
17018.5							
17018.7							
17019							
17019.3							
17019.5							
17020							
17021							
17021.3							
17021.4							
17022							
17022.7							
17023							
17024							

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Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
17024.5						F. 17724.5 (A) 1354/80/8.7				
17025		F. 19372.5 (A) 1009/75/1	F. 17725 (A) 1010/76/2							
17029		F. 19376 (A) 1009/75/1	F. 17729 (A) 1010/76/2							
17029.5										
17030		F. 19377 (A) 1009/75/1	F. 17730 (A) 1010/76/2							
17030.2						f.17730.2 (A) 1354/80/8.8				
17030.3										
17030.5				f.17730.5 (A) 381/77/4	1035/79/3.7					
17030.6					f.17730.6 (A) 1035/79/3.8	40/80/1				
17031		F. 19377.7 (A) 1009/75/1	F. 17731 (A) 1010/76/2							
17032		F. 19378 (A) 1009/75/1	F. 17732 (A) 1010/76/2	381/77/5	1035/79/3.9	676/80/75	1109/81/1			
17032.3										
17032.5										
17033		F. 19379 (A) 1009/75/1	F. 17733 (A) 1010/76/2							
17034		F. 19380 (A) 1009/75/1	F. 17734 (A) 1010/76/2							
17035		F. 19381 (A) 1009/75/1	F. 17735 (A) 1010/76/2							
17036		F. 19382 (A) 1009/75/1	F. 17736 (A) 1010/76/2				1113/81/1			
17038		F. 19384 (A) 1009/75/1	F. 17738 (A) 1010/76/2							
17039								F. 17739 (A) 410/82/2	698/83/1	
17039.1										F. 17739.1 (A) 375/84/2

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Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
17024.5										
17025							846/91/7			
17029							846/91/8			f.17729.5 (A) 693/94/1
17029.5										
17030					(A) 1408/89/1					
17030.2										
17030.3					f. 17730.3 (A) 1408/89/1					
17030.5										
17030.6										
17031										
17032		888/86/1	668/87/2							
17032.3			f. 17732.3 (A) 668/87/3			216/90/12				
17032.5										
17033										
17034										
17035										
17036		886/86/10								
17038										
17039										
17039.1										

School Facility Funding Requirement

Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 10, 2000	As of Sep 14, 2000
17024.5			(R) 277/96/1 (A) 277/96/2						
17025			(R) 277/96/1 (A) 277/96/2						
17029			(R) 277/96/1 (A) 277/96/2						
17029.5			(R) 277/96/1 (A) 277/96/2						
17030			(R) 277/96/1 (A) 277/96/2						
17030.2			(R) 277/96/1 (A) 277/96/2						
17030.3			(R) 277/96/1 (A) 277/96/2						
17030.5			(R) 277/96/1 (A) 277/96/2						
17030.6			(R) 277/96/1 (A) 277/96/2						
17031			(R) 277/96/1 (A) 277/96/2						
17032	552/95/27		(R) 277/96/1 (A) 277/96/2						
17032.3			(R) 277/96/1 (A) 277/96/2						
17032.5		F. 17732.5 (A) 1059/96/4	(R) 893/97/101 (A) 893/97/85						
17033			(R) 277/96/1 (A) 277/96/2						
17034			(R) 277/96/1 (A) 277/96/2						
17035			(R) 277/96/1 (A) 277/96/2						
17036			(R) 277/96/1 (A) 277/96/2						
17038			(R) 277/96/1 (A) 277/96/2						
17039			(R) 277/96/1 (A) 277/96/2						
17039.1			(R) 277/96/1 (A) 277/96/2						

School Facility Funding Requirement

Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct. 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
17024.5							
17025							
17029							
17029.5							
17030							
17030.2							
17030.3							
17030.5							
17030.6							
17031							
17032							
17032.3							
17032.5							
17033							
17034							
17035							
17036							
17038							
17039							
17039.1							

School Facility Funding Requirement

	Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
Article 3.	17039.2										F. 17739.2 (A) 1749/84/2
	17040		F. 19391 (A) 1009/75/1	F. 17740 (A) 1010/76/2				1113/81/1	1022/82/1	1053/83/1	
	17040.1										
	17040.2										
	17040.3										
	17040.4										
	17040.5									F.17740.5 (A) 1053/83/2	
	17040.6										
	17040.7										
	17040.8										
	17040.9										
	17041		F. 19392 (A) 1009/75/1	F. 17741 (A) 1010/76/2					1113/81/3		
	17041.1										
	17041.2										
	17041.3										
17041.5								F.17741.5 (A) 1113/81/4			
17041.6								F.17741.6 (A) 1113/81/5			
17041.8											
17042		F. 19393 (A) 1009/75/1	F. 17742 (A) 1010/76/2	381/77/7							
17042.5											

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
	17039.2		887/86/3								
Article 3.											
	17040		886/86/11								
	17040.1		f.17740.1 (A) 886/86/12			286/89/1					
	17040.2					f. 17740.2 (A) 1209/89/11		846/91/9			
	17040.3		F. 17740.3 (A) 886/86/13			1404/89/1					F.17740.4 (A) 1184/94/1
	17040.4										
	17040.5										
	17040.6			F.17740.6 (A) 1154/87/2							
	17040.7			F. 17740.7 (A) 1154/87/3							
	17040.8			F. 17740.8 (A) 1154/87/4							
	17040.9			F. 17740.9 (A) 1154/87/5							
	17041										
	17041.1							F. 17741.1 (A) 846/91/10			
	17041.2							F.17741.2 (A) 846/91/10.5			
	17041.3				F.17741.3 (A) 552/88/1						
	17041.5										
	17041.6										
	17041.8			F.17741.8 (A) 1154/87/6							
	17042		886/86/14 888/86/2			1209/89/12			1224/92/2		
	17042.5	f.17742.5 (A) 1466/85/1	886/86/17 888/86/3 889/86/1	1223/87/2					341/92/4		

School Facility Funding Requirement

Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of July 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 10, 2000	As of Sep 14, 2000
17039.2			(R) 277/96/1 (A) 277/96/2							
Article 3.										
17040			(R) 277/96/1 (A) 277/96/2							
17040.1	552/95/28		(R) 277/96/1 (A) 277/96/2							
17040.2	552/95/29		(R) 277/96/1 (A) 277/96/2							
17040.3	552/95/30		(R) 277/96/1 (A) 277/96/2							
17040.4			(R) 277/96/1 (A) 277/96/2							
17040.5			(R) 277/96/1 (A) 277/96/2							
17040.6			(R) 277/96/1 (A) 277/96/2							
17040.7			(R) 277/96/1 (A) 277/96/2							
17040.8			(R) 277/96/1 (A) 277/96/2							
17040.9			(R) 277/96/1 (A) 277/96/2							
17041			(R) 277/96/1 (A) 277/96/2							
17041.1			(R) 277/96/1 (A) 277/96/2							
17041.2			(R) 277/96/1 (A) 277/96/2							
17041.3			(R) 277/96/1 (A) 277/96/2							
17041.5			(R) 277/96/1 (A) 277/96/2							
17041.6			(R) 277/96/1 (A) 277/96/2							
17041.8	552/95/31		(R) 277/96/1 (A) 277/96/2							
17042	552/95/31.5	164/96/1 1059/96/5	(R) 893/97/102 (A) 893/97/86							
17042.5			(R) 277/96/1 (A) 277/96/2							

School Facility Funding Requirement

	Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct. 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
	17039.2							
Article 3.								
	17040							
	17040.1							
	17040.2							
	17040.3							
	17040.4							
	17040.5							
	17040.6							
	17040.7							
	17040.8							
	17040.9							
	17041							
	17041.1							
	17041.2							
	17041.3							
	17041.5							
	17041.6							
	17041.8							
	17042							
	17042.5							

School Facility Funding Requirements

Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
17042.7										
17042.9										
17043		F. 19394 (A) 1009/75/1	F. 17743 (A) 1010/76/2							
17044		F. 19395 (A) 1009/75/1	F. 17744 (A) 1010/76/2							
17045		F. 19396 (A) 1009/75/1	F. 17745 (A) 1010/76/2							
17046		F. 19397 (A) 1009/75/1	F. 17746 (A) 1010/76/2							
17046.7										
17046.8										
17047		F. 19397.5 (A) 1009/75/1	F. 17747 (A) 1010/76/2							
17047.5										
17047.6										
17048		F. 19398 (A) 1009/75/1	F. 17748 (A) 1010/76/2							
17049										
17050							F. 17750 (A) 649/81/2			
17051									F. 17751 (A) 498/83/13	
17052										
Article 4.										
17055										
17056										
17058										
Article 4.1										

School Facility Funding Requirement

Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
17042.7		F. 17742.7 (A) 886/86/18	56/87/37		1209/89/13			341/92/6		
17042.9										
17043										
17044										
17045										
17046										
17046.7		F. 17746.7 (A) 886/86/19			1209/89/14					
17046.8						F. 17746.8 (A) 1261/90/3				
17047		886/86/20						759/92/6		
17047.5		F. 17747.5 (A) 1050/86/2								
17047.6										
17048										
17049		F. 17749 (A) 886/86/22 888/86/4								
17050					1209/89/15	1221/90/1				
17051										
17052									388/93/2	
Article 4.										
17055				F. 17755 (A) 1542/88/2	918/89/1					
17056				F. 17756 (A) 1542/88/2						
17058				F. 17758 (A) 1542/88/2						
Article 4.1										

School Facility Funding Requirement

	Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
	17059										
	17059.1										
	17059.2										
Article 5											
	17060										
	17061										
	17062										
	17063										
	17064										
	17065										
	17066										

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
	17059									F.17759 (A) 833/93/1	
	17059.1									F.17759.1 (A) 833/93/1	
	17059.2									F.17759.2 (A) 833/93/1	
	Article 5										
	17060										
	17061										
	17062										
	17063										
	17064										
	17065										
	17066										

School Facility Funding Requirement

Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of July 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 10, 2000	As of Sep 14, 2000
			(R) 277/96/6 (A) 277/96/2							
17059			(R) 277/96/6 (A) 277/96/2							
17059.1			(R) 277/96/6 (A) 277/96/2							
17059.2			(R) 277/96/6 (A) 277/96/2							
Article 5										
17060	F.17760 (A) 956/95/1		(R) 277/96/1 (A) 277/96/2							
17061	F.17761 (A) 956/95/1		(R) 277/96/1 (A) 277/96/2							
17062	F.17762 (A) 956/95/1		(R) 277/96/1 (A) 277/96/2							
17063	F.17763 (A) 956/95/1		(R) 277/96/1 (A) 277/96/2							
17064	F.17764 (A) 956/95/1		(R) 277/96/1 (A) 277/96/2							
17065	F.17765 (A) 956/95/1		(R) 277/96/1 (A) 277/96/2							
17066	F.17766 (A) 956/95/1		(R) 277/96/1 (A) 277/96/2							

School Facility Funding Requirement

	Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct. 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
	17059							
	17059.1							
	17059.2							
	Article 5							
	17060							
	17061							
	17062							
	17063							
	17064							
	17065							
	17066							

School Facility Funding Requirement

Chapter 12.5 Article 1.	Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
	17070.10										
	17070.15										
	17070.33										
	17070.40										
	17070.50										
	17070.51										
	17070.55										
	17070.60										
	17070.63										
	17070.70										
	17070.71										
	17070.75										
	17070.77										
	17070.80										
	17070.90										
	17070.95										
	17070.97										
	17070.98										
Article 2.											
	17071.10										
	17071.25										
	17071.30										
	17071.33										
	17071.35										
	17071.40										
	17071.46										
Article 3.											
	17071.75										
	17071.76										
Article 4.											
	17072.10										
	17072.12										
	17072.13										
	17072.18										

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
Chapter 12.5											
Article 1.											
	17070.10										
	17070.15										
	17070.33										
	17070.40										
	17070.50										
	17070.51										
	17070.55										
	17070.60										
	17070.63										
	17070.70										
	17070.71										
	17070.75										
	17070.77										
	17070.80										
	17070.90										
	17070.95										
	17070.97										
	17070.98										
Article 2.											
	17071.10										
	17071.25										
	17071.30										
	17071.33										
	17071.35										
	17071.40										
	17071.46										
Article 3.											
	17071.75										
	17071.76										
Article 4.											
	17072.10										
	17072.12										
	17072.13										
	17072.18										

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of July 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 10, 2000	As of Sep 14, 2000
Chapter 12.5											
Article 1.											
	17070.10					(A) 407/98/4					
	17070.15					(A) 407/98/4			858/99/4		
	17070.33					(A) 407/98/4					
	17070.40					(A) 407/98/4					
	17070.50					(A) 407/98/4			992/99/1		
	17070.51										
	17070.55					(A) 407/98/4					
	17070.60					(A) 407/98/4					
	17070.63					(A) 407/98/4					
	17070.70									127/00/7	
	17070.71										
	17070.75					(A) 407/98/4			858/99/5		
	17070.77										
	17070.80					(A) 407/98/4					
	17070.90					(A) 407/98/4					
	17070.95										
	17070.97					(A) 407/98/4					
	17070.98					(A) 407/98/4					
Article 2.											
	17071.10					(A) 407/98/4			857/99/1 858/99/6		
	17071.25						(A) 407/98/4		858/99/7		
	17071.30					(A) 407/98/4					
	17071.33					(A) 407/98/4					
	17071.35					(A) 407/98/4					
	17071.40					(A) 407/98/4					
	17071.46										
Article 3.											
	17071.75					(A) 407/98/4			858/99/8		
	17071.76					(A) 407/98/4					
Article 4.											
	17072.10					(A) 407/98/4			858/99/9		
	17072.12					(A) 407/98/4					
	17072.13								(A) 992/99/2		
	17072.18										(A) 443/00/1

School Facility Funding Requirement

	Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
Chapter 12.5								
Article 1.								
	17070.10							
	17070.15					33/02/1		
	17070.33							
	17070.40					33/02/3		
	17070.50							
	17070.51		(A) 590/00/1			33/02/5		
	17070.55							
	17070.60							
	17070.63							
	17070.70					33/02/7		
	17070.71	(A) 530/00/1						
	17070.75			734/01/10	(A) 194/01/1			
	17070.77							
	17070.80							
	17070.90							
	17070.95							
	17070.97					(A) 33/02/8		
	17070.98							
Article 2.								
	17071.10							
	17071.25							
	17071.30							
	17071.33							
	17071.35					33/02/9		
	17071.40							
	17071.46		(A) 458/00/1		159/01/55			
Article 3.								
	17071.75					33/02/10		935/02/3
	17071.76							
Article 4.								
	17072.10							
	17072.12					33/02/11		
	17072.13				647/01/1			935/02/4
	17072.18		725/00/1					935/02/5

School Facility Funding Requirement

	Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
Article 5.											
	17072.20										
	17072.30										
	17072.32										
	17072.33										
	17072.35										
Article 6.											
	17073.10										
	17073.15										
	17073.20										
Article 7.											
	17074.10										
	17074.15										
	17074.16										
	17074.20										
	17074.25										
	17074.26										
	17074.27										
	17074.30										
Article 7.5											
	17074.50										
	17074.52										
	17074.54										
	17074.56										
Article 8.											
	17075.10										
	17075.15										
Article 9.											
	17076.10										
	17076.11										
Article 10.											
	17077.10										
Article 10.5											
	17077.30										
	17077.35										

School Facility Funding Requirement

Article	Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
Article 5.	17072.20										
	17072.30										
	17072.32										
	17072.33										
	17072.35										
Article 6.	17073.10										
	17073.15										
	17073.20										
Article 7.	17074.10										
	17074.15										
	17074.16										
	17074.20										
	17074.25										
Article 7.5	17074.26										
	17074.27										
	17074.30										
	17074.50										
	17074.52										
Article 8.	17074.54										
	17074.56										
	17075.10										
Article 9.	17075.15										
	17076.10										
Article 10.	17076.11										
	17077.10										
Article 10.5											
	17077.30										
	17077.35										

School Facility Funding Requirements

Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of July 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 1, 2000	As of Sep 14, 2000
Article 5.										
17072.20				(A) 407/98/4				858/99/11		
17072.30				(A) 407/98/4						
17072.32				(A) 407/98/4						
17072.33				(A) 407/98/4						
17072.35				(A) 407/98/4						
Article 6.										
17073.10				(A) 407/98/4						
17073.15				(A) 407/98/4						
17073.20				(A) 407/98/4						
Article 7.										
17074.10				(A) 407/98/4				858/99/12		
17074.15				(A) 407/98/4						
17074.16										
17074.20				(A) 407/98/4						
17074.25				(A) 407/98/4						
17074.26										
17074.27										
17074.30										
Article 7.5										
17074.50										
17074.52										
17074.54										
17074.56										
Article 8.										
17075.10				(A) 407/98/4						
17075.15				(A) 407/98/4						
Article 9.										
17076.10				(A) 407/98/4				858/99/13		
17076.11								(A) 133/99/1		
Article 10.										
17077.10								(A) 709/99/1		
Article 10.5										
17077.30								F. 17077.10		
17077.35								(A) 981/99/1		

School Facility Funding Requirement

	Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct. 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
Article 5.								
	17072.20							935/02/6
	17072.30							
	17072.32							
	17072.33							
	17072.35							935/02/7
Article 6.								
	17073.10							
	17073.15							
	17073.20							
Article 7.								
	17074.10					33/02/13		
	17074.15					33/02/14		935/02/9
	17074.16					(A) 33/02/15		935/02/10
	17074.20							
	17074.25							
	17074.26					(A) 33/02/16		
	17074.27							(A) 1075/02/2
	17074.30							(A) 1075/02/3
Article 7.5								
	17074.50				(A) 725/01/2			
	17074.52				(A) 725/01/2			
	17074.54				(A) 725/01/2			
	17074.56				(A) 725/01/2			
Article 8.								
	17075.10					33/02/17		
	17075.15					33/02/18		
Article 9.								
	17076.10					33/02/19		
	17076.11							
Article 10.								
	17077.10							
Article 10.5								
	17077.30					re#177077.30 33/02/21		
	17077.35					(A) 33/02/22		

School Facility Funding Requirement

	Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
Article 10.6											
	17077.40										
	17077.42										
	17077.45										
Article 11.											
	17078.10										
	17078.15										
	17078.18										
	17078.20										
	17078.22										
	17078.24										
	17078.25										
	17078.27										
	17078.30										

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
Article 10.6											
	17077.40										
	17077.42										
	17077.45										
Article 11.											
	17078.10										
	17078.15										
	17078.18										
	17078.20										
	17078.22										
	17078.24										
	17078.25										
	17078.27										
	17078.30										

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of July 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 10, 2000	As of Sep 14, 2000
Article 10.6											
	17077.40										
	17077.42										
	17077.45										
Article 11.											
	17078.10										
	17078.15										
	17078.18										
	17078.20										
	17078.22										
	17078.24										
	17078.25										
	17078.27										
	17078.30										

School Facility Funding Requirement

	Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct. 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
Article 10.6	17077.40					(A) 33/02/23		
	17077.42					(A) 33/02/23		
	17077.45					(A) 33/02/23		935/02/11
Article 11.	17078.10					(A) 33/02/24		
	17078.15					(A) 33/02/24		
	17078.18					(A) 33/02/24		
	17078.20					(A) 33/02/24		935/02/12
	17078.22					(A) 33/02/24		
	17078.24					(A) 33/02/24		
	17078.25					(A) 33/02/24		
	17078.27					(A) 33/02/24		
	17078.30					(A) 33/02/24		935/02/13

School Facility Funding Requirement

	Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
Chapter 13.											
	17080					F. 17780 (A) 282/79/8				498/83/14	
Chapter 14											
Article 1.											
	17085					F. 17785 (A) 282/79/9					
	17086					F. 17786 (A) 282/79/9					
	17087					F. 17787 (A) 282/79/9					
	17088					F. 17788 (A) 282/79/9					
	17088.3										
	17088.5										
	17088.7										
	17089					F. 17789 (A) 282/79/9					
	17089.2										
	17089.5										
	17090					F. 17790 (A) 282/79/9					
	17091					F. 17791 (A) 282/79/9					
	17092					F. 17792 (A) 282/79/9					
	17092.3										
	17093					F. 17793 (A) 282/79/9					
	17094					F. 17794 (A) 282/79/9					
	17095					F. 17795 (A) 282/79/9					
	17096										

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
Chapter 13.											
Chapter 14	17080										1111/94/2
Article 1.											
	17085										1228/94/3
	17086										
	17087										
	17088		887/86/4	1299/87/2							
	17088.3			F. 17788.3 (A) 1246/87/3							1183/94/1
	17088.5		F. 17788.5 (A) 886/86/24	108/87/2							
	17088.7					F. 17788.7 (A) 667/89/1	961/90/1				
	17089							333/91/1			
	17089.2							F. 17789.2 (A) 333/91/2			
	17089.5		F. 17789.5 (A) 576/86/1								
	17090										
	17091	1466/85/2									1183/94/2
	17092	1466/85/3									1183/94/3
	17092.3										F. 17792.3 (A) 1183/94/4
	17093	1466/85/4									
	17094										
	17095										
	17096										

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 10, 2000	As of Sep 14, 2000
Chapter 13.										
	17080			(R) 277/96/1 (A) 277/96/2						
Chapter 14										
Article 1.										
	17085			(R) 277/96/1 (A) 277/96/2						
	17086			(R) 277/96/1 (A) 277/96/2						
	17087			(R) 277/96/1 (A) 277/96/2						
	17088			(R) 277/96/1 (A) 277/96/2						
	17088.3			(R) 277/96/1 (A) 277/96/2						
	17088.5			(R) 277/96/1 (A) 277/96/2						
	17088.7	552/95/33		(R) 277/96/1 (A) 277/96/2						
	17089			(R) 277/96/1 (A) 277/96/2						
	17089.2			(R) 277/96/1 (A) 277/96/2		848/98/1				
	17089.5			(R) 277/96/1 (A) 277/96/2						
	17090			(R) 277/96/1 (A) 277/96/2						
	17091			(R) 277/96/1 (A) 277/96/2						
	17092			(R) 277/96/1 (A) 277/96/2						
	17092.3			(R) 277/96/1 (A) 277/96/2						
	17093			(R) 277/96/1 (A) 277/96/2						
	17094			(R) 277/96/1 (A) 277/96/2						
	17095			(R) 277/96/1 (A) 277/96/2						
	17096							(A) 709/99/2		

School Facility Funding Requirement

	Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct. 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
Chapter 13.								
	17080							
Chapter 14								
Article 1.								
	17085							
	17086							
	17087							
	17088							
	17088.3							
	17088.5							
	17088.7							
	17089							
	17089.2							
	17089.5							
	17090							
	17091							
	17092		590/00/3					
	17092.3							
	17093							
	17094							
	17095							
	17096							

School Facility Funding Requirement

	Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
Chapter 15.											
Article 1.											
	17100								F. 17800 (A) 774/82/1		
Article 2.											
	17110								F. 17810 (A) 774/82/1		
	17111								F. 17811 (A) 774/82/1		
	17112								F. 17812 (A) 774/82/1		
Chapter 16.											
	17150										
Chapter 18.											
	17170										
	17171										
	17173										
	17180										
	17181										
	17183										
	17183.5										
	17184										
	17185										
	17186										
	17187										
	17193										
	17193.5										

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
Chapter 15.											
Article 1.											
Article 2.	17100										
	17110	1410/85/1									
	17111										
	17112	1410/85/2									
Chapter 16.											
	17150										F. 17850 (A) 650/94/4
Chapter 18.											
	17170	F. 17870 (A) 1438/85/1									
	17171	F. 17871 (A) 1438/85/1		598/87/1							
	17173	F. 17873 (A) 1438/85/1	829/86/1	598/87/2							
	17180	F. 17880 (A) 1438/85/1	829/86/2	598/87/3							
	17181	F. 17881 (A) 1438/85/1									
	17183	F. 17883 (A) 1438/85/1	829/86/3	598/87/4							
	17183.5	F. 17883.5 (A) 1438/85/1		598/87/5							
	17184	F. 17884 (A) 1438/85/1		598/87/6							
	17185	F. 17885 (A) 1438/85/1	829/86/4								
	17186	F. 17886 (A) 1438/85/1									
	17187	F. 17887 (A) 1438/85/1									
	17193	F. 17893 (A) 1438/85/1	829/86/6	598/87/7							
	17193.5										

School Facility Funding Requirement

	Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of July 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 10, 2000	As of Sep 14, 2000
Chapter 15.											
Article 1.											
	17100			(R) 277/96/1 (A) 277/96/2							
Article 2.											
	17110			(R) 277/96/1 (A) 277/96/2							
	17111			(R) 277/96/1 (A) 277/96/2							
	17112			(R) 277/96/1 (A) 277/96/2							
Chapter 16.											
	17150	872/96/25 1071/96/1.5		(R) 893/97/105 (A) 893/97/91				646/99/9			
Chapter 18.											
	17170			(R) 277/96/1 (A) 277/96/2							
	17171			(R) 277/96/1 (A) 277/96/2							
	17173			(R) 277/96/1 (A) 277/96/2							
	17180			(R) 277/96/1 (A) 277/96/2				718/99/1			
	17181			(R) 277/96/1 (A) 277/96/2							
	17183	1071/96/3		(R) 893/97/107 (A) 893/97/93			re#17183 485/98/48				
	17183.5			(R) 277/96/1 (A) 277/96/2							
	17184			(R) 277/96/1 (A) 277/96/2							
	17185			(R) 277/96/1 (A) 277/96/2							
	17186			(R) 277/96/1 (A) 277/96/2							
	17187			(R) 277/96/1 (A) 277/96/2							
	17193			(R) 277/96/1 (A) 277/96/2							
	17193.5			(R) 277/96/1 (A) 277/96/2			(A) 1076/98/1				

School Facility Funding Requirement

	Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
Chapter 15.								
Article 1.								
17100	17100							
Article 2.								
17110	17110							
17111	17111							
17112	17112							
Chapter 16.								
17150	17150				734/01/11		1168/02/4	
Chapter 18.								
17170	17170							
17171	17171							
17173	17173							
17180	17180		193/00/1					
17181	17181							
17183	17183							
17183.5	17183.5							
17184	17184							
17185	17185							
17186	17186							
17187	17187							
17193	17193							
17193.5	17193.5							

School Facility Funding Requirement

	Education Code Section	Pre-1975	As of Jan 1, 1976	As of Apr. 30, 1977	As of Jan 1, 1978	As of Jan 1, 1980	As of Jan 1, 1981	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1984	As of Jan 1, 1985
	17194										
	17195										
	17196										
	17197										
	17199.1										
	17199.3										
	17199.4										
	17199.5										

School Facility Funding Requirement

Education Code Section	As of Jan 1, 1986	As of Jan 1, 1987	As of Jan 1, 1988	As of Jan 1, 1989	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1992	As of Jan 1, 1993	As of Jan 1, 1994	As of Jan 1, 1995
	F. 17894 (A) 1438/85/1		598/87/8							
17194	F. 17895 (A) 1438/85/1		598/87/9							
17195	F. 17896 (A) 1438/85/1									
17196	F. 17897 (A) 1438/85/1									
17197	F. 17899.1 (A) 1438/85/1									
17199.1	F. 17899.3 (A) 1438/85/1	829/86/7	598/87/10							
17199.3		829/86/9	598/87/11							
17199.4										
17199.5										

School Facility Funding Requirement

Education Code Section	As of Jan 1, 1996	As of Jan 1, 1997	As of Jan 1, 1998	As of July 1, 1998	As of Aug 27, 1998	As of Jan 1, 1999	As of Oct 10, 1999	As of Jan 1, 2000	As of July 10, 2000	As of Sep 14, 2000
17194			(R) 277/96/1 (A) 277/96/2							
17195			(R) 277/96/1 (A) 277/96/2							
17196			(R) 277/96/1 (A) 277/96/2							
17197			(R) 277/96/1 (A) 277/96/2							
17199.1			(R) 277/96/1 (A) 277/96/2				718/99/2			
17199.3		1071/96/4	(R) 893/97/108 (A) 893/97/94			741/98/1				
17199.4		F. 17899.4 (A) 1071/96/5	(R) 893/97/109 (A) 893/97/95			741/98/2				
17199.5						(A) 1076/98/2				

School Facility Funding Requirement

Education Code Section	As of Sep 19, 2000	As of Jan 1, 2001	As of Oct. 11, 2001	As of Jan 1, 2002	As of Apr 29, 2002	As of Sep 30, 2002	As of Jan 1, 2003
17194							
17195							
17196							
17197							
17199.1		193/00/2					
17199.3							
17199.4							
17199.5							

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	Education Code Section	Pre - 1975	As of Jan 1, 1975	As of Apr 30, 1976	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1985	As of Jan 1, 1987	As of Jan 1, 1989
Chapter 14.3									
Article 1.									
	67330								(A) 44/88/1
	67331								(A) 44/88/1
	67332								(A) 44/88/1
Article 2.									
	67333								(A) 44/88/1
	67334								(A) 44/88/1
Article 3.									
	67335								(A) 44/88/1
	67337								(A) 44/88/1
	67342								(A) 44/88/1
Chapter 14.4									
Article 1.									
	67345								
	67345.1								
Article 2.									
	67346								
	67346.5								
Article 3.									
	67347								
	67347.2								
	67347.7								
Chapter 14.5									
	67350							(A) 424/86/2	
	67352							(A) 424/86/2	
	67353							(A) 424/86/2	
	67354							(A) 424/86/2	
	67354.5							(A) 424/86/2	
Chapter 14.6									
Article 1.									
	67358								
	67358.1								
	67358.2								

	Education Code Section	Pre - 1975	As of Jan 1, 1975	As of Apr 30, 1976	As of Jan 1, 1982	As of Jan 1, 1983	As of Jan 1, 1985	As of Jan 1, 1987	As of Jan 1, 1989
Article 2.									
	67358.3								
	67358.4								
Article 3.									
	67358.5								
	67358.5								
	67358.7								
	67359								
	67359.2								
Chapter 14.9									
	67359.20								

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	Education Code Section	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1993	As of Jan 1, 1996	As of Jan 1, 1997	As of Oct 12, 2001
Chapter 14.3							
Article 1.							
	67330						
	67331						
	67332						
Article 2.							
	67333						
	67334						
Article 3.							
	67335						
	67337						
	67342						
Chapter 14.4							
Article 1.							
	67345		(A) 6/90/1				
	67345.1		(A) 6/90/1				
Article 2.							
	67346		(A) 6/90/1				
	67346.5		(A) 6/90/1				
Article 3.							
	67347		(A) 6/90/1				
	67347.2		(A) 6/90/1				
	67347.7		(A) 6/90/1				
Chapter 14.5							
	67350						
	67352						
	67353						
	67354						
	67354.5						
Chapter 14.6							
Article 1.							
	67358			(A) 13/92/1			
	67358.1			(A) 13/92/1			
	67358.2			(A) 13/92/1			

	Education Code Section	As of Jan 1, 1990	As of Jan 1, 1991	As of Jan 1, 1993	As of Jan 1, 1996	As of Jan 1, 1997	As of Oct 12, 2001
Article 2.							
	67358.3			(A) 13/92/1			
	67358.4			(A) 13/92/1			
Article 3.							
	67358.5			(A) 13/92/1			
	67358.5			(A) 13/92/1			
	67358.7			(A) 13/92/1			
	67359			(A) 13/92/1			
	67359.2			(A) 13/92/1			
Chapter 14.9							
	67359.20					(A) 896/96/1	745/01/34

Student Facilities Funding Requirement

	Education Code Section	As of Jan 8, 1996	As of Aug. 27, 1998	As of Jan 1, 2000	As of Jan 1, 2003	If approved by 2004
Part 66						
Chapter 1.						
Article 1.						
	100000	(A) 1/96/1				
Article 2.						
	100010	(A) 1/96/1				
	100015	(A) 1/96/1				
	100020	(A) 1/96/1				
	100025	(A) 1/96/1				
	100030	(A) 1/96/1				
	100035	(A) 1/96/1				
Article 3.						
	100110	(A) 1/96/1				
	100115	(A) 1/96/1				
	100120	(A) 1/96/1				
	100121	(A) 1/96/1				
Article 4.						
	100125	(A) 1/96/1				
	100130	(A) 1/96/1				
	100135	(A) 1/96/1				
	100140	(A) 1/96/1				
	100145	(A) 1/96/1				
	100150	(A) 1/96/1				
	100155	(A) 1/96/1				
	100160	(A) 1/96/1				
	100165	(A) 1/96/1				
	100170	(A) 1/96/1				
	100175	(A) 1/96/1				
	100180	(A) 1/96/1				
Article 5.						
	100185	(A) 1/96/1				
Part 68						
Chapter 1.						
	100400		(A) 407/98/16			
	100401		(A) 407/98/16			
	100403		(A) 407/98/16			
Chapter 2.						
Article 1.						
	100410		(A) 407/98/16			
	100415		(A) 407/98/16			
	100420		(A) 407/98/16	858/99/14		
Article 2.						
	100425		(A) 407/98/16			

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	100427	(A) 407/98/16		
	100430	(A) 407/98/16		
	100432	(A) 407/98/16		
	100434	(A) 407/98/16		
	100435	(A) 407/98/16		
	100436	(A) 407/98/16		
	100438	(A) 407/98/16		
	100440	(A) 407/98/16		
	100442	(A) 407/98/16		
	100444	(A) 407/98/16		
	100446	(A) 407/98/16		
Chapter 3.				
Article 1.				
	100450	(A) 407/98/16		
	100455	(A) 407/98/16		
	100457	(A) 407/98/16		
	100460	(A) 407/98/16		
Article 2.				
	100500	(A) 407/98/16		
	100510	(A) 407/98/16		
	100520	(A) 407/98/16		
	100525	(A) 407/98/16		
	100530	(A) 407/98/16		
	100535	(A) 407/98/16		
	100540	(A) 407/98/16		
	100545	(A) 407/98/16		
	100550	(A) 407/98/16		
	100555	(A) 407/98/16		
	100560	(A) 407/98/16		
Part 68.1				
Chapter 1.				
	100600		(A) 33/02/30	
	100601		(A) 33/02/30	
	100603		(A) 33/02/30	
Chapter 2.				
Article 1.				
	100610		(A) 33/02/30	
	100615		(A) 33/02/30	
	100620		(A) 33/02/30	
Article 2.				
	100625		(A) 33/02/30	
	100627		(A) 33/02/30	
	100630		(A) 33/02/30	
	100632		(A) 33/02/30	
	100634		(A) 33/02/30	
	100635		(A) 33/02/30	

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	100636				(A) 33/02/30
	100638				(A) 33/02/30
	100640				(A) 33/02/30
	100642				(A) 33/02/30
	100644				(A) 33/02/30
	100646				(A) 33/02/30
Chapter 3.					
Article 1.					
	100650				(A) 33/02/30
Article 2.					
	100652				(A) 33/02/30
Article 3.					
	100653				(A) 33/02/30
Article 4.					
	100654				(A) 33/02/30
Article 5.					
	100700				(A) 33/02/30
	100710				(A) 33/02/30
	100720				(A) 33/02/30
	100725				(A) 33/02/30
	100730				(A) 33/02/30
	100735				(A) 33/02/30
	100740				(A) 33/02/30
	100745				(A) 33/02/30
	100750				(A) 33/02/30
	100755				(A) 33/02/30
	100760				(A) 33/02/30
Part 68.2					
Chapter 1.					
	100800				(A) 33/02/31
	100801				(A) 33/02/31
	100803				(A) 33/02/31
Chapter 2.					
Article 1.					
	100810				(A) 33/02/31
	100815				(A) 33/02/31
	100820				(A) 33/02/31
Article 2.					
	100825				(A) 33/02/31
	100827				(A) 33/02/31
	100830				(A) 33/02/31
	100832				(A) 33/02/31
	100834				(A) 33/02/31
	100835				(A) 33/02/31
	100836				(A) 33/02/31
	100838				(A) 33/02/31

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	100840				(A) 33/02/31
	100842				(A) 33/02/31
	100844				(A) 33/02/31
	100846				(A) 33/02/31
Chapter 3.					
Article 1.					
	100850				(A) 33/02/31
Article 2.					
	100852				(A) 33/02/31
Article 3.					
	100853				(A) 33/02/31
Article 4.					
	100854				(A) 33/02/31
Article 5.					
	100900				(A) 33/02/31
	100910				(A) 33/02/31
	100920				(A) 33/02/31
	100925				(A) 33/02/31
	100930				(A) 33/02/31
	100935				(A) 33/02/31
	100940				(A) 33/02/31
	100945				(A) 33/02/31
	100950				(A) 33/02/31
	100955				(A) 33/02/31
	100960				(A) 33/02/31

School Facility Funding Requirement

	Section Number	1998	1999	2000	2001	2002
Subgroup 5.5						
Article 1.						
	1859		7/29/1999			
	1859.1			6/26/2000		
	1859.2					6/1/2002
Article 2.						
	1859.10		7/29/1999			
	1859.11		7/29/1999			
	1859.12		7/29/1999			
	1859.13			6/26/2000		
	1859.14			6/26/2000		
	1859.15		7/29/1999			
	1859.15.1		6/14/1999			
	1859.16			6/26/2000		
Article 3.						
	1859.20					4/10/2002
	1859.21					6/1/2002
	1859.22				7/25/2001	
Article 4.						
	1859.30					4/10/2002
	1859.31		7/29/1999			
	1859.32			6/26/2000		
	1859.33					4/10/2002
	1859.35			6/26/2000		
Article 5.						
	1859.40					4/10/2002
	1859.41					4/10/2002
	1859.42					4/10/2002
	1859.43					4/10/2002
Article 6.						
	1859.50					6/1/2002
	1859.51					6/1/2002
Article 7.						
	1859.60					4/10/2002
	1859.61					6/1/2002
Article 8.						
	1859.70					6/1/2002
	1859.71		7/29/1999			
	1859.71.1				1/2/2001	
	1859.72				1/2/2001	
	1859.73		7/29/1999			
	1859.73.1					6/1/2002
	1859.73.2					6/1/2002
	1859.74			6/26/2000		

School Facility Funding Requirement

	Section Number	1998	1999	2000	2001	2002
	1859.74.1					6/1/2002
	1859.74.2			6/26/2000		
	1859.74.3				7/25/2001	
	1859.74.4					4/10/2002
	1859.75		7/29/1999			
	1859.75.1					6/1/2002
	1859.76					6/1/2002
	1859.77		7/29/1999			
	1859.77.1			6/26/2000		
	1859.77.2				8/13/2001	
	1859.78		7/29/1999			
	1859.78.1			(R) 7/17/2000		
	1859.78.2					6/1/2002
	1859.78.3				1/2/2001	
	1859.79			6/26/2000		
	1859.79.1				1/2/2001	
	1859.79.2		7/29/1999			
	1859.79.3					6/1/2002
Article 9.						
	1859.80		7/29/1999			
	1859.81					6/1/2002
	1859.81.1					6/1/2002
	1859.82					6/1/2002
	1859.83				4/5/2001	
Article 10.						
	1859.90				1/2/2001	
	1859.91					6/1/2002
	1859.92					4/10/2002
	1859.93				1/2/2001	
	1859.94				8/13/2001	
	1859.95					6/1/2002
Article 11.						
	1859.100					6/1/2002
	1859.101					6/1/2002
	1859.102					6/1/2002
	1859.103			6/26/2000		
	1859.104			6/26/2000		
	1859.104.1					6/1/2002
	1859.104.2					6/1/2002
	1859.104.3					6/1/2002
	1859.105				1/2/2001	
	1859.105.1			6/26/2000		
	1859.106					4/10/2002
	1859.107					6/1/2002

School Facility Funding Requirement

	Section Number	1979	1986	1996
Subgroup 8.5				
Article 1.				
	1862.50	9/23/79		
Article 2.				
	1862.51		9/7/86	
Article 2.5				
	1862.51.1			(R) 3/13/1996
	1862.51.2			(R) 3/13/1996
Article 3.				
	1862.52		11/31/86	
Article 4.				
	1862.53		11/31/86	
Article 5.				
	1862.54		9/7/86	
Article 6.				
	1862.55	9/23/79		
	1862.56	9/23/79		

School Facility Funding Requirement

	Section Number	1978	1980	1981	1982	1984	1985	1986	1990	1996
Article 1.										
	1865.1			6/4/1981						
Article 2.										
	1865.2	3/3/1978								
	1865.3		3/17/1980							
	1865.4		3/17/1980							
	1865.5		3/17/1980							
	1865.6	3/3/1978								
	1865.7		3/17/1980							
	1865.8	3/3/1978								
	1865.9							4/24/1986		
	1865.10		3/17/1980							
	1865.11				8/28/1982					(R) 3/13/1996
	1865.12									(R) 3/13/1996
	1865.12.5									(R) 3/13/1996
	1865.13									(R) 3/13/1996
	1865.14									(R) 3/13/1996
	1865.15									(R) 3/13/1996
	1865.16									(R) 3/13/1996
	1865.17									(R) 3/13/1996
	1865.18									(R) 3/13/1996
	1865.19									(R) 3/13/1996
	1865.20									(R) 3/13/1996
	1865.22						1/21/1985			
	1865.23	3/3/1978								
Article 4.										
	1865.30	3/3/1978								

School Facility Funding Requirement

Section Number	1978	1980	1981	1982	1984	1985	1986	1990	1996
1865.31	3/3/1978								
1865.32	3/3/1978								
1865.32.5						1/21/1985			
1865.33			6/4/1981						
1865.34			6/1/1981						
1865.35	3/3/1978							4/4/1990	
1865.36									
1865.37	3/3/1978								
1865.38	3/3/1978								
1865.39	3/3/1978								
1865.40					11/10/1984				
1865.41					11/10/1984				
1865.42	3/3/1978								
1865.43		3/17/1980							
Article 5.									
1865.50		3/17/1980							
1865.51		3/17/1980							
1865.52		3/17/1980							
Article 6.									
1865.60			6/4/1981						
1865.61	3/3/1978								
Article 7.									
1865.70		3/17/1980							
1865.70.5				8/28/1982					
1865.71		3/17/1980							
Article 8.									
1865.75	3/3/1978								
Article 9.									
1865.80							12/14/1986		
1865.81							(R) 12/14/86		
1865.82							(R) 12/14/86		

School Facility Funding Requirement

Section Number	1978	1980	1981	1982	1984	1985	1986	1990	1996
1865.83							(R) 12/14/86		
1865.84							(R) 12/14/86		
1865.85							(R) 12/14/86		
1865.86							(R) 12/14/86		
1865.87							(R) 12/14/86		
1865.88							(R) 12/14/86		
1865.89							(R) 12/14/86		
1865.90							(R) 12/14/86		
1865.91							(R) 12/14/86		
1865.92							(R) 12/14/86		
1865.93							(R) 12/14/86		
1865.94							(R) 12/14/86		
1865.95							(R) 12/14/86		

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January 17, 2008


Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: No. CSM. 02-TC -30
School Facilities Funding Requirements

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 2, CCR, sections included in the test claim.

Sincerely,



Keith B. Petersen

C: Michael Johnston, Assistant Superintendent
Clovis Unified School District
1450 Herndon Avenue
Clovis, CA 93611-0599

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2 SixTen and Associates
3 3841 North Freeway Blvd, Suite 170
4 Sacramento, CA 95834
5 Voice: (916) 565-6104
6 Fax: (916) 564-6103
7 kbsixten@aol.com

8 BEFORE THE
9 COMMISSION ON STATE MANDATES
10 STATE OF CALIFORNIA

11	Supplement to the:	)	No. CSM. 02-TC-30
12)	
13	Test Claim Filed June 18, 2003	)	<u>School Facilities Funding Requirements</u>
14)	
15		)	History Index for
16		)	Title 2, California Code of Regulations
17	by Clovis Unified School District)	
18)	
19		)	Section 1859.20
20		)	Section 1859.21
21		)	Section 1859.22
22		)	Section 1859.30
23		)	Section 1859.31
24		)	Section 1859.32
25		)	Section 1859.33
26		)	Section 1859.35
27		)	Section 1859.40
28		)	Section 1859.41
29		)	Section 1859.50
30		)	Section 1859.60
31		)	Section 1859.70
32		)	Section 1859.72
33		)	Section 1859.74.1
34		)	Section 1859.75
35		)	Section 1859.75.1
36		)	Section 1859.79
37		)	Section 1859.79.2
38		)	Section 1859.79.3
39		)	Section 1859.81
40		)	Section 1859.81.1
41		)	Section 1859.82
?		)	Section 1859.90

1	)	Section 1859.100
2	)	Section 1859.102
3	)	Section 1859.104
4	)	Section 1859.104.1
5	)	Section 1859.104.2
6	)	Section 1859.104.3
7	)	Section 1859.105
8	)	Section 1859.105.1
9	)	Section 1859.106
10	)	Section 1859.107
11	)	Section 1862.52
12	)	Section 1862.53
13	)	Section 1865.3
14	)	Section 1865.8
15	)	Section 1865.32.5
16	)	Section 1865.33
17	)	Section 1865.39
18	)	Section 1865.42
19	)	Section 1865.43
20	)	Section 1865.50
	)	Section 1865.70
22)	

SUPPLEMENTAL INFORMATION

This supplement to the test claim provides an index and copy of each change to the Title 2, CCR, sections included in the test claim. The Registers cited are attached as Exhibit A. Amended language is underlined (new language) or stricken out (deleted language).

HISTORY OF TITLE 2, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

- Register 78-05** § 1865.3: New Subgroup 11 (Sections 1865.1-1865.95, not consecutive).
- Register 79-34** § 1862.52: New Subgroup 8.5 (Sections 1862.50-1862.56).
- Register 80-12** § 1865.3: Amendment of section and new note as an emergency.

- 1 § 1865.32.5: New section filed as an emergency.
- 2 § 1865.43: Repealer and new section filed as an emergency.
- 3 § 1865.50: Amendment filed as an emergency.
- 4 § 1865.70: Repealer and new section filed as an emergency.
- 5 **Register 80-26** § 1865.3: Certificate of compliance filed.
- 6 § 1865.33: New subsection (c)(3).
- 7 § 1865.43: Certificate of compliance filed.
- 8 § 1865.50: Certificate of compliance, including amendment, filed.
- 9 § 1865.70: Certificate of compliance filed.
- 10 **Register 81-19** § 1865.32.5: Amendment of subsection (b).
- 11 § 1865.33: Amendment of subsections (b) and (c).
- 12 **Register 84-51** § 1865.32.5: Amendment of section.
- 13 **Register 86-44** § 1862.52: Amendment of section.
- 14 § 1862.53: Amendment of section.
- 15 **Register 98-49** § 1859.20: New Article 3 (Sections 1859.20-1859.21) filed as an
- 16 emergency.
- 17 § 1859.30: New Article 4 (Sections 1859.30-1859.35) filed as an
- 18 emergency.
- 19 § 1859.40: New Article 5 (Sections 1859.40-1859.43) filed as an
- 20 emergency.
- 21 § 1859.50: New Article 6 (Sections 1859.50-1859.51) filed as an
- 22 emergency.

1 § 1859.60: New Article 7 (Sections 1859.60-1859.61) filed as an
2 emergency.

3 § 1859.70: New Article 8 (Sections 1859.70-1859.79.2) filed as an
4 emergency.

5 § 1859.81: New Article 9 (Sections 1859.80-1859.83) filed as an
6 emergency.

7 § 1859.90: New Article 10 (Sections 1859.90-1859.95) filed as an
8 emergency.

9 § 1859.100: New Article 11 (Sections 1859.100-1859.106) filed as
10 an emergency.

Register 98-52 § 1859.20: Change without regulatory effect amending subsection
12 (a).

13 § 1859.50: Change without regulatory effect amending section.

14 § 1859.60: Change without regulatory effect amending first and last
15 paragraphs.

16 **Register 99-11** § 1859.35: Change without regulatory effect amending subsection
17 (b).

18 **Register 99-14** § 1859.20: New Article 3 (Sections 1859.20-1859.21) refiled as an
19 emergency.

20 § 1859.30: New Article 4 (Sections 1859.30-1859.35) refiled as an
21 emergency.

§ 1859.40: New Article 5 (Sections 1859.40-1859.43) refiled as an

- 1 emergency.
- 2 § 1859.50: New Article 6 (Sections 1859.50-1859.51) refiled as an
- 3 emergency.
- 4 § 1859.60: New Article 7 (Sections 1859.60-1859.61) refiled as an
- 5 emergency.
- 6 § 1859.70: New Article 8 (Sections 1859.70-1859.79.2) refiled as
- 7 an emergency.
- 8 § 1859.81: New Article 9 (Sections 1859.80-1859.83) refiled as an
- 9 emergency.
- 10 § 1859.90: New Article 10 (Sections 1859.90-1859.95) refiled as an
- 11 emergency.
- 12 § 1859.100: New Article 11 (Sections 1859.100-1859.106) refiled
- 13 as an emergency.
- 14 **Register 99-29** § 1859.21: Amendment filed as an emergency.
- 15 § 1859.50: Amendment of second paragraph filed as an
- 16 emergency.
- 17 § 1859.70: Amendment filed as an emergency.
- 18 § 1859.74.1: Amendment of first paragraph filed as an emergency.
- 19 § 1859.81.1: Amendment of last paragraph filed as an emergency.
- 20 § 1859.100: Amendment filed as an emergency.
- 21 § 1859.102: Amendment of first paragraph filed as an emergency.
- 2 **Register 99-31** § 1859.20: New Article 3 (Sections 1859.20-1859.21) refiled as an

1 emergency.

2 § 1859.30: New Article 4 (Sections 1859.30-1859.35) refiled as an
3 emergency.

4 § 1859.40: New Article 5 (Sections 1859.40-1859.43) refiled as an
5 emergency.

6 § 1859.50: New Article 6 (Sections 1859.50-1859.51) refiled as an
7 emergency.

8 § 1859.60: New Article 7 (Sections 1859.60-1859.61) refiled as an
9 emergency.

10 § 1859.70: New Article 8 (Sections 1859.70-1859.79.2) refiled as
an emergency.

12 § 1859.81: New Article 9 (Sections 1859.80-1859.83) refiled as an
13 emergency.

14 § 1859.90: New Article 10 (Sections 1859.90-1859.95) refiled as an
15 emergency.

16 § 1859.100: New Article 11 (Sections 1859.100-1859.106) refiled
17 as an emergency.

18 **Register 99-41** § 1859.20: Certificate of compliance filed including amendment of
19 section.

20 § 1859.21: Certificate of compliance filed including amendment of
21 section.

§ 1859.30: Certificate of compliance filed including amendment of

1 section.

2 § 1859.31: Certificate of compliance filed.

3 § 1859.32: Certificate of compliance filed including amendment of
4 section.

5 § 1859.33: Certificate of compliance filed including amendment of
6 section.

7 § 1859.35: Certificate of compliance filed including amendment of
8 section.

9 § 1859.40: Certificate of compliance filed including amendment of
10 section.

11 § 1859.41: Certificate of compliance filed including amendment of
12 section.

13 § 1859.50: Certificate of compliance filed including amendment of
14 section.

15 § 1859.60: Certificate of compliance filed including amendment of
16 section.

17 § 1859.70: Certificate of compliance filed including amendment of
18 section.

19 § 1859.72: Certificate of compliance filed.

20 § 1859.74.1: Certificate of compliance filed including amendment of
21 section and note.

22 § 1859.75: Certificate of compliance filed.

- 1 § 1859.79: Certificate of compliance filed.
- 2 § 1859.79.2: Certificate of compliance filed including amendment of
- 3 section and note.
- 4 § 1859.81: Certificate of compliance filed including amendment of
- 5 section.
- 6 § 1859.81.1: Certificate of compliance filed including amendment of
- 7 section.
- 8 § 1859.82: Certificate of compliance filed including amendment of
- 9 section.
- 10 § 1859.90: Certificate of compliance filed including amendment of
- section.
- 12 § 1859.100: Certificate of compliance filed including amendment of
- 13 section.
- 14 § 1859.102: Certificate of compliance filed including amendment of
- 15 section.
- 16 § 1859.104: Certificate of compliance filed including amendment of
- 17 section.
- 18 § 1859.105: Certificate of compliance filed including amendment of
- 19 section.
- 20 § 1859.106: Certificate of compliance filed including amendment of
- 21 section and note.

Register 99-52 § 1859.21: Certificate of compliance filed including amendment of

1 section.

2 § 1859.50: Certificate of compliance filed including amendment of
3 section.

4 § 1859.70: Certificate of compliance filed including amendment of
5 section.

6 § 1859.74.1: Certificate of compliance filed including amendment of
7 section.

8 § 1859.81.1: Certificate of compliance filed including amendment of
9 section.

10 § 1859.100: Certificate of compliance filed including amendment of
11 section.

12 § 1859.102: Certificate of compliance filed including amendment of
13 section.

14 **Register 2000-02** § 1859.32: New subsection (l).

15 **Register 2000-11** § 1859.81.1: Amendment of subsection (b).

16 § 1859.104: Amendment of subsection (a).

17 § 1859.105: Amendment of third paragraph of subsection (d).

18 § 1859.106: Amendment of third paragraph.

19 § 1859.107: New section.

20 **Register 2000-26** § 1859.20: Amendment of subsections (a)-(c).

21 § 1859.21: Amendment of section.

2 § 1859.30: Amendment of section.

- 1 § 1859.32: Amendment of section heading.
- 2 § 1859.33: Amendment of section.
- 3 § 1859.35: Amendment of subsection (b).
- 4 § 1859.40: Amendment of section.
- 5 § 1859.50: Amendment of section.
- 6 § 1865.60: Amendment of first and last paragraphs.
- 7 § 1865.70: Amendment of section and note.
- 8 § 1859.74.1: Amendment of first paragraph.
- 9 § 1859.75.1: New section.
- 10 § 1859.79: New second paragraph and amendment of note.
- § 1859.81: Amendment of subsection (b)(5).
- 12 § 1859.81.1: Amendment of section and note.
- 13 § 1859.82: Amendment of subsection (a)(2) and new subsections
- 14 (c)-(c)(2).
- 15 § 1859.90: Amendment of section.
- 16 § 1859.100: Amendment of section.
- 17 § 1859.102: Amendment of section.
- 18 § 1859.104: Amendment of subsections (a) and (b), new
- 19 subsection (c) and amendment of note.
- 20 ~~§ 1859.105: Amendment of section and note.~~
- 21 § 1859.105.1: New section.
- § 1859.106: Amendment of section.

- 1 § 1859.105: Certificate of compliance filed.
- 2 § 1859.107: Certificate of compliance filed.
- 3 **Register 2001-01** § 1859.20: Amendment of section filed as an emergency.
- 4 § 1859.21: Amendment of section filed as an emergency.
- 5 § 1859.30: Amendment of section filed as an emergency.
- 6 § 1859.33: Amendment of section filed as an emergency.
- 7 § 1859.40: Amendment of section filed as an emergency.
- 8 § 1859.50: Amendment of second paragraph filed as an
- 9 emergency.
- 10 § 1859.60: Amendment of first and last paragraphs filed as an
- 11 emergency.
- 12 § 1859.70: Amendment of first and second paragraphs filed as an
- 13 emergency.
- 14 § 1859.72: Amendment of section heading and section filed as an
- 15 emergency.
- 16 § 1859.74.1: Amendment of first paragraph filed as an emergency.
- 17 § 1859.75.1: Amendment of last paragraph filed as an emergency.
- 18 § 1859.79.3: Amendment of section filed as an emergency.
- 19 § 1859.81: Amendment of last paragraph filed as an emergency.
- 20 § 1859.81.1: Amendment of last two paragraphs of subsection (c)
- 21 filed as an emergency.
- 2 § 1859.82: Amendment of subsections (a)(2), (b)(3), (c), and (c)(2)

1 filed as an emergency.

2 § 1859.90: Amendment of first paragraph filed as an emergency.

3 § 1859.100: Amendment of section filed as an emergency.

4 § 1859.102: Amendment of section filed as an emergency.

5 § 1859.105: Amendment of section filed as an emergency.

6 § 1859.107: Amendment of section filed as an emergency.

7 **Register 2001-24** § 1859.20: Certificate of compliance filed.

8 § 1859.21: Certificate of compliance filed.

9 § 1859.30: Certificate of compliance filed.

10 § 1859.33: Certificate of compliance filed.

§ 1859.40: Certificate of compliance filed.

12 § 1859.50: Certificate of compliance filed including amendment of
13 first paragraph.

14 § 1859.60: Certificate of compliance filed.

15 § 1859.70: Certificate of compliance filed.

16 § 1859.72: Certificate of compliance filed.

17 § 1859.74.1: Certificate of compliance filed.

18 § 1859.75.1: Certificate of compliance filed.

19 § 1859.79.3: Certificate of compliance filed.

20 § 1859.81: Certificate of compliance filed.

21 § 1859.81.1: Certificate of compliance filed.

§ 1859.82: Certificate of compliance filed.

- 1 § 1859.90: Certificate of compliance filed.
- 2 § 1859.100: Certificate of compliance filed.
- 3 § 1859.102: Certificate of compliance filed.
- 4 § 1859.105: Certificate of compliance filed.
- 5 § 1859.107: Certificate of compliance filed.
- 6 **Register 2001-30** § 1859.21: Amendment of section.
- 7 § 1859.22: New section.
- 8 § 1859.50: Amendment of second paragraph.
- 9 § 1859.70: Amendment of first paragraph.
- 10 § 1859.74.1: Amendment of first paragraph.
- 11 § 1859.75.1: Amendment of last paragraph.
- 12 § 1859.79.3: Amendment of section.
- 13 § 1859.81: Amendment of last paragraph.
- 14 § 1859.81.1: Amendment of last two paragraphs.
- 15 § 1859.82: Amendment of subsection (c).
- 16 § 1859.100: Amendment of section.
- 17 § 1859.102: Amendment of section.
- 18 § 1859.107: Amendment of last four paragraphs.
- 19 **Register 2001-33** § 1859.21: Amendment of Form SAB 50-04 and section.
- 20 § 1859.50: Amendment of second paragraph.
- 21 § 1859.70: Amendment of first paragraph.
- 2 § 1859.74.1: Amendment of first paragraph and subsection (a)(2).

- 1 § 1859.75.1: Amendment of last paragraph.
- 2 § 1859.79.3: Amendment of section.
- 3 § 1859.81: Amendment of last paragraph.
- 4 § 1859.81.1: Amendment of last two paragraphs.
- 5 § 1859.82: Amendment of subsection (c).
- 6 § 1859.100: Amendment of section.
- 7 § 1859.102: Amendment of first paragraph.
- 8 § 1859.107: Amendment of last four paragraphs.
- 9 **Register 2001-51** § 1859.81: Amendment of section.
- 10 **Register 2002-15** § 1859.20: Amendment of section.
- § 1859.21: Amendment of section.
- 12 § 1859.30: Amendment of section.
- 13 § 1859.33: Amendment of section.
- 14 § 1859.40: Amendment of section.
- 15 § 1859.41: Amendment of section.
- 16 § 1859.50: Amendment of section.
- 17 § 1859.60: Amendment of first and last paragraphs.
- 18 § 1859.70: Amendment of section.
- 19 § 1859.74.1: Amendment of first paragraph.
- 20 § 1859.75.1: Amendment of subsection (b)(4).
- 21 § 1859.79.3: Amendment of section.
- § 1859.81: Amendment of subsections (a)(1), (a)(4) and

1 (b)(5)(A)-(B).

2 § 1859.81.1: Amendment of subsection (c).

3 § 1859.82: Amendment of subsection (c).

4 § 1859.100: Amendment of subsection (c).

5 § 1859.102: Amendment of first paragraph.

6 § 1859.106: Amendment of section and note.

7 § 1859.107: Amendment of section.

8 **Register 2002-18** § 1859.21: Amendment of section.

9 § 1859.50: Amendment of penultimate paragraph.

10 § 1859.70: Amendment of first paragraph.

11 § 1859.74.1: Amendment of first paragraph.

12 § 1859.75.1: Amendment of last paragraph.

13 § 1859.79.3: Amendment of section.

14 § 1859.81: Amendment of subsection (b)(5)(A)-(B).

15 § 1859.81.1: Amendment of last two paragraphs.

16 § 1859.82: Amendment of subsection (c).

17 § 1859.100: Amendment of section.

18 § 1859.102: Amendment of section and note.

19 § 1859.104.1: New section.

20 § 1859.104.2: New section.

21 § 1859.104.3: New section.

22 § 1859.107: Amendment of section.

1 penultimate paragraphs.

2 § 1859.107: Amendment of second paragraph.

3 **Register 2002-38** § 1859.79: Amendment of section and note filed as an emergency.

4 § 1859.79.3: Amendment of section and note filed as an
5 emergency.

6 § 1859.81.1: Amendment of section and note filed as an
7 emergency.

8 § 1859.107: Amendment of section and note filed as an
9 emergency.

10 **Register 2002-40** § 1859.81: Amendment of section.

11 **Register 2002-45** § 1859.20: Amendment of section filed as an emergency.

12 § 1859.21: Amendment of section filed as an emergency.

13 § 1859.22: Amendment of first paragraph filed as an emergency.

14 § 1859.30: Amendment of section filed as an emergency.

15 § 1859.31: Amendment of first paragraph filed as an emergency.

16 § 1859.32: New subsection (m) and amendment of note filed as an
17 emergency.

18 § 1859.33: Amendment of section filed as an emergency.

19 § 1859.35: Amendment of subsections (a)-(b) filed as an
20 emergency.

21 § 1859.40: Amendment of section filed as an emergency.

22 § 1859.41: Amendment of section filed as an emergency.

- 1 § 1859.50: Amendment of first and fourth paragraphs filed as an
2 emergency.
- 3 § 1859.60: Amendment of first and last paragraphs filed as an
4 emergency.
- 5 § 1859.70: Amendment of first and second paragraphs filed as an
6 emergency.
- 7 § 1859.72: Amendment of section filed as an emergency.
- 8 § 1859.74.1: Amendment of first paragraph filed as an emergency.
- 9 § 1859.75: Amendment of first paragraph filed as an emergency.
- 10 § 1859.75.1: Amendment of subsection (b)(3) and last paragraph
filed as an emergency.
- 12 § 1859.79: Amendment of section filed as an emergency.
- 13 § 1859.79.2: Amendment of first paragraph filed as an emergency.
- 14 § 1859.79.3: Amendment of section filed as an emergency.
- 15 § 1859.81: Amendment of section and note filed as an emergency.
- 16 § 1859.81.1: Amendment of last five paragraphs filed as an
17 emergency.
- 18 § 1859.82: Amendment of section heading and section filed as an
19 emergency.
- 20 § 1859.90: Amendment of section and note filed as an emergency.
- 21 § 1859.100: Amendment of section and note filed as an
22 emergency.

1 § 1859.102: Amendment of first paragraph and note filed as an
2 emergency.

3 § 1859.104: Amendment of subsection (a) filed as an emergency.

4 § 1859.104.1: Amendment of section and note filed as an
5 emergency.

6 § 1859.104.3: Amendment of section filed as an emergency.

7 § 1859.105: Amendment of subsection (a), penultimate paragraph,
8 and note filed as an emergency.

9 § 1859.106: Amendment of section and note filed as an
10 emergency.

11 § 1859.107: Amendment of section filed as an emergency.

12 **Register 2003-03** § 1859.50: Certificate of compliance filed.

13 § 1859.70: Certificate of compliance filed.

14 § 1859.72: Certificate of compliance filed.

15 § 1859.74.1: Certificate of compliance filed.

16 § 1859.75.1: Certificate of compliance filed.

17 § 1859.79.3: Certificate of compliance filed.

18 § 1859.81: Certificate of compliance filed.

19 § 1859.81.1: Certificate of compliance filed.

20 § 1859.82: Certificate of compliance filed including amendment of
21 table within subsection (b)(3).

2 § 1859.100: Certificate of compliance filed.

1 emergency.

2 § 1859.107: Amendment of subsection (a)(1) filed as an

3 emergency.

4 **Register 2003-18** § 1859.105: Amendment of subsections (c) and (c)(4) filed as an

5 emergency.

6 § 1859.106: Amendment of first paragraph and penultimate

7 paragraph filed as an emergency.

8 **Register 2003-24** § 1859.106: Amendment of section and note refiled as an

9 emergency.

10 **Subsequent Registers:** There may be changes to the regulations after the date the
11 test claim was filed, which are not included.

12 CERTIFICATION

13 By my signature below, I hereby declare, under penalty of perjury under the laws
14 of the State of California, that the information in this document is true and complete to
15 the best of my own knowledge or information or belief, and that the attached regulations
16 are true and correct copies of documents from archives of a recognized law library.

17 EXECUTED this 17 day of January 2008, at Sacramento, California

18 

19 FOR THE TEST CLAIMANT
20 Keith Petersen, President
21 SixTen and Associates

22 ATTACHMENT
3 Exhibit A Title 2, CCR Registers

Title 2, CCR, Register 78-05

§ 1865.3

§ 1865.8

§ 1865.33

§ 1865.39

§ 1865.42

§ 1865.43

§ 1865.50

§ 1865.70

Article 1. Definitions

1865.1. Definitions. For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the act:

- (a) **The Act.** Chapter 22, Part 10, of the Education Code.
- (b) **Board.** The State Allocation Board.
- (c) **Executive Officer.** The executive officer of the State Allocation Board.
- (d) **Application.** A request pursuant to the act to lease a project. Such request shall be on forms prescribed by the board, together with such other information as may be required by the executive officer.
- (e) **District.** The applicant school district.
- (f) **District Representative.** One or more individual members of the district's staff appointed by it as "district representative" to file an application with the board on behalf of the district and to act as liaison between the board and the district.
- (g) **Agent of the Board.** The applicant school district shall be appointed by the board as its agent to perform specifically authorized acts necessary to construct and equip the project.
- (h) **Facility.** All or a portion of any real property, site improvement, utilities, buildings, or furniture and equipment contained in a project.
- (i) **Lease Agreement with Option to Purchase.** An agreement between an applicant school district and the State to lease with an option to purchase a project, as defined in the act, from the State.
- (j) **Lease-Purchase Project.** A project for which the district has or intends to enter into one or more lease agreements with option to purchase on a given site.
- (k) **Reconstruction.** Reconstruction for the purpose of Section 17721 shall be considered the substantial architectural alteration or modification of a building in order to bring it to modern educational standards.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

History: 1. New Subgroup 11 (Sections 1865.1-1865.95, not consecutive) filed 2-3-78; effective thirtieth day thereafter (Register 78, No. 5).

Article 2. General Provisions

1865.2. Purpose. The purpose of these regulations is to prescribe the procedures necessary for the implementation and administration of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (hereinafter referred to as "the act").

1865.3. What May Be Provided. The act provides for the use of the proceeds of State general obligation bonds to finance a project for the construction, reconstruction, or replacement of school facilities by the State Allocation Board under an agreement between a school district and the State.

1865.4. Qualifications. Any school district may qualify to file an application for a lease-purchase project and enter into a lease agreement with option to purchase with the board, providing the following requirements have been met:

(a) That the applicant school district has first held a successful election pursuant to Section 17722 of the act.

(b) That the applicant school district has sufficient building area entitlement as determined pursuant to the provisions of Article 4 of these regulations to justify the application being filed for new building construction or reconstruction.

(c) That the applicant school district has sufficient lease-purchase capacity within the limitations set forth in Education Code Section 17725 for the project.

1865.5. Executive Officer. The executive officer shall perform all acts necessary to carry out the provisions of the act except such functions as are reserved to the board and to other agencies by law or by these regulations and shall provide such staff assistance to the board as may be necessary.

1865.6. Limitation of State Responsibility. In approving an application for a lease-purchase project and making funds available therefor, neither the State nor any department or agency thereof shall assume any responsibility not otherwise imposed on it by statute or these regulations.

1865.7. References to Education Code Prior to Recodification of 1976. Reference in any document, instruction, procedure, or policy action to any part of the Education Code prior to any recodification in 1976 shall be deemed applicable to the corresponding provisions of such recodified code.

1865.8. Insurance. The insurance required by Section 17738 of the act shall be in an amount that will guarantee full replacement or repair of the facilities for which claims are made.

Article 3. Application Procedure

1865.21. Form of Application. A district desiring to obtain a project pursuant to the act shall file documents substantially as follows:

(a) A resolution of the governing board of the applicant district authorizing the application.

(b) An application in proper form.

(c) A statement of the estimated cost of the project certified by a licensed architect or structural engineer.

(d) Layout plans showing the entire construction project.

(e) Such other documentation as may be required by the executive officer.

(Register 78, No. 5-24-78)

1865.22. Filing and Review of Applications. Applications with required accompanying documents shall be filed with the executive officer of the board.

1865.23. Changes in Application After Original Approval. An applicant may, after approval of an application but prior to entering into a lease-purchase agreement, request approval of changes within the application.

Article 4. Eligible Facilities

1865.30. Estimated Average Daily Attendance (ADA). (a) The estimated ADA of a school district or attendance area as required by Section 17740 of the act for determining the allowable building area shall be computed by this section. No estimate will be used unless approved by the executive officer of the board.

(b) For the purpose of estimating ADA, the following definitions shall apply:

(1) "Enrollment" means the graded enrollment of minors of the district as reported to the Department of Education on Form R-30 (or any successor form). Comparable enrollment data for the end of the first or sixth school month may be acceptable if verified by the appropriate county superintendent of schools.

Enrollment shall include only those students who actually reside in the school district and any students who reside in the district but attend school in other than the district of residence. Enrollment shall exclude high school pupils who attend continuation classes.

(2) "Projected enrollment" means graded enrollment as determined by the cohort survival method for a period of two years for the elementary grades and for a period of three years for the high school grades.

(3) "Pupil units attending continuation classes" is computed as follows: First determine the average number of pupil hours of attendance in high school continuation classes per school day in the highest three months of the latest 12 months, then divide the average by six. In making this computation, pupil hours during the regular school day in excess of 15 per week shall be included. Pupil hours for evening or Saturday classes shall be excluded. Multiply the final figure obtained in the preceding calculation by a factor which is computed by dividing the "projected enrollment" by the "current enrollment". The result is the "pupil units attending continuation classes".

In the event the district is applying for a continuation high school facility and has students who have not yet been screened and assigned to continuation classes because of lack of suitable space, the district may submit an identified list of such pupils. The average number of pupil hours of high school attendance in continuation classes per school day as computed above may be augmented by the pupil hours obtained by multiplying the number of names on the list by three, or in the event the district can prove that continuation high school pupils attend classes for an average of more than three hours per day, such larger multiplier may be used. When an identified list of prospective continuation high school pupils is used, the number of pupils on such list shall be excluded from the graded enrollment.

(4) "Exceptional children" means those pupils assigned to special education classes as of the latest enrollment, plus a verified count of such pupils who are not attending classes of the district but will become a part of the attendance of the district when approved facilities for such pupils have been completed.

(5) "Estimated average daily attendance" means the projected enrollment multiplied by .97 plus the exceptional children assigned to special education classes, plus the pupil units attending high school continuation classes.

(6) "Housecount" means an enumeration of new housing units that are under construction, i.e. units that have at least reached the stage of foundations in place, and have not yet been completed and occupied, classified by type of housing unit as the board may prescribe. Such housing units shall not include hotel or motel accommodations or other living quarters generally used as transient or short-term accommodations, but may include spaces under construction for mobile homes which the board determines to be essentially for long-term occupancy. The definition of housecount prescribed herein may be modified from time to time as may be necessary to classify new housing units in the most appropriate manner for the purpose of measuring the pupil yield of such units.

(c) The projected enrollment shall be determined by the cohort survival method in accordance with the following and by the use of such forms and instructions as the board may prescribe.

(1) List either the latest enrollment for the end of the first school month or the subsequent sixth school month and the enrollment for the same period for the three preceding years. All applications approved by the board after April 30 of any given year shall be based on the enrollment as of the end of the sixth school month of the most recent year. Such enrollment shall be listed by level for each grade included in the application. High school applications shall also list the four highest grades of component elementary enrollment.

(2) Determine the numerical change in enrollment between each given grade in one year and the next higher grade in the succeeding year for each period and grade listed in (1) above. With respect to kindergarten enrollment (or first grade enrollment if no kindergarten is maintained), determine the numerical change in kindergarten (or first grade) enrollment between each period listed in (1) above, or alternatively, annual changes in enrollment based on a local census or survey of preschool children conducted according to such procedures as the board may prescribe.

(3) Compute the average annual change in enrollment for each grade maintained at the grade level of the application. The average shall be a weighted average computed by multiplying the most recent annual change in enrollment by three, the next most recent change by two, and the earliest change by one, and dividing the sum of the weighted changes by six.

(Register 78, No. 1-24-78)

(4) Progress the latest reported enrollment through the applicable two or three year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (3) above.

(d) From the projected enrollment, compute the estimated average daily attendance as defined in Subsection (b) (5) above.

(e) In the event that there is good reason to believe the number of pupils being added from construction of new housing units exceeds the number implicit in the cohort survival computation and when the land area of the district is less than 75% developed, the board may, at its discretion, modify the estimated average daily attendance as follows:

(1) Determine the graded enrollment one year from the latest reported enrollment by a one-year grade progression, adjusted for dropouts at the high school level.

(2) Determine the enrollment derived from new homes implicit in the cohort survival computation as follows: (i) Subtract the enrollment computed in (1) above from the one-year projection of enrollment as determined by the cohort survival method; (ii) To the remainder, add two percent of the latest enrollment for the end of the first or sixth school month, whichever is applicable. If the foregoing computations result in a negative number, the number shall be deemed to be zero.

(3) Determine the pupil yield per housing unit of housecount, as established by a survey of occupied housing units in the district, for the current year and the two preceding years. The survey shall take into consideration the different pupil yields of multiple and single family housing units or other significant yield characteristics. The current year yield factor for each type of housing unit shall be modified by the average annual difference of the factor for each type for the two preceding years.

(4) In the event that prior year data referred to in (3) is unavailable, the current yield factor shall be modified as the board shall prescribe.

(5) Establish the pupil yield of the housecount by multiplying the number of housing units in the housecount by the applicable yield per housing unit as determined above. Subtract the enrollment from new homes determined in (2) above from the yield of the housecount; the result of this computation is the amount by which the graded enrollment computed under the cohort survival method shall be changed.

(6) The housecount and surveys described in (3) and (4) shall be conducted by the district in accordance with methods, procedures, and standards which are approved by the Office of Local Assistance with respect to each specific case.

(f) Other provisions of this section notwithstanding, high school enrollment of a district or attendance area for the end of the first school month may be used for estimating ADA.

1865.31. Estimated Average Daily Attendance—High School Attendance Area.

(a) As permitted by Section 17741, a district may file an application based upon a high school attendance area rather than a districtwide basis. A high school district or a unified school district filing on a high school level would base its application on enrollment estimated to attend such high school and upon facilities already existing in such high school attendance area. An elementary school district or unified district filing on an elementary level would base its application on the enrollment and existing facilities of the elementary schools serving the high school attendance area under consideration.

(b) The estimated average daily attendance of a high school attendance area as permitted by Section 17741 of the act for determining the allowable building area, when the district is applying only on a high school attendance area basis as opposed to a districtwide basis, shall be computed in the same manner as that set forth in regulation 1865.30, except that the enrollment used in such computation shall be that of the high school attendance area rather than the entire district and shall be certified by the district.

(c) In those instances where the high school attendance area results in a split in individual attendance areas of the contributing elementary or junior high schools, an assignment of enrolled pupils in such split attendance areas shall be made by the district in a manner satisfactory to the executive officer.

1865.32. Application for Site and/or Plans. In order to expedite a total school facility, a school district may first apply for a project which includes only the advance purchase of the land and preparation of plans and specifications. The acquisition of the site and the plans preparation shall be based on justification documents for the total school facility.

1865.33. Computation of Allowable School Building Area.

(a) No project shall be approved, the building area of which, when added to the area of adequate school construction existing in the applicant school district or the applicable high school attendance area if the application is filed on such basis, will provide a total area of school building construction in excess of that computed pursuant to Education Code Sections 17740 through 17749.

(b) All of the existing building area owned or operated by the district except for central administration or maintenance facilities, regardless of conditions or purpose for which used, shall be reported to the board, by the district as prescribed in this regulation. Where an allowable building area is computed on the basis of an attendance area as provided by Section 17741 of the act, the existing building area shall be considered the building area within such attendance area.

(c) Existing adequate building area shall include all existing building area not otherwise excluded by the act or these regulations, building area for which applications have been approved under any state or federal building program, any building area being acquired by any lease-purchase agreement, proposed building area which has been otherwise financed or any building area which has been used to justify any site and/or plans lease-purchased project under this act. Existing building area shall be excluded as follows:

(Register 78, No. 5—2-4-79)

(1) The area of any building to which Article 3 of Chapter 2, Part 23 of the Education Code would not apply.

(2) The area of any building, the construction or reconstruction of which has occurred more than 30 years prior to the date of the application.

(d) Existing and proposed building area shall be computed in accordance with the following:

(1) All measurements shall be made from exterior rough wall lines.

(2) Totally enclosed space shall be counted as full area. Among the various types of space to be included shall be areas such as:

(A) Basement rooms and basement boiler rooms.

(B) Heater rooms, including those above the normal floor level.

(C) Each floor of multi-story buildings.

(D) The area of completely enclosed stairs for each floor level served.

(3) Certain partially enclosed areas shall be counted as full area and shall include:

(A) Open, covered areas which provide shelter between buildings that are less than 20 feet apart.

(B) Mezzanines open on one or more sides which may easily and readily be used or converted to use as instructional space or passageways.

(C) Each floor of library stacks.

(4) Covered unenclosed space shall be counted as one-half of the actual area. Included in such space are:

(A) Open, covered passages, arcades, shelters, porches, and planting areas.

(B) Open, covered areas which provide shelter between buildings that are 20 feet apart or more.

(C) Overhangs and sun control devices which are so designed and located that they function as, and in lieu of, covered walks or other shelter areas.

(D) Mezzanines for storage purposes.

(5) Areas which shall not be counted include:

(A) Eaves and sun control devices except as specified above.

(B) Unsheltered platforms and steps.

(C) When isolated from building structures, the area of incinerators, pumphouses, transformer vaults, and service yards.

(D) Elevator shafts where constructed in order to comply with Chapter 7 of Division 5 of the Government Code (commencing with Section 4450), relating to facilities for handicapped persons.

(E) That portion of the area below the first floor of a multistory building used exclusively for employee parking, provided the board finds that other means of parking are not economically feasible.

1865.34. Allowable School Building Area for Facilities for Exceptional Children. (a) In conformity with the requirements of Section 17747 of the Education Code, the board establishes allowable building areas for the education of physically handicapped, educationally handicapped, and mentally retarded minors, to be computed as follows:

(1) Divide the number of eligible pupils by the maximum class size established by law for special day classes for the type of pupils to be enrolled and increase the quotient to the next highest integer where a fractional amount is produced.

(2) Multiply the number computed in (1) by the maximum building area allowance shown below when the facility is planned for the following types of exceptional children:

Types of Pupils	Maximum Class Size		Area Allowance—Sq. Ft.		
	Ages 3-8	Ages 9-20	K-8	7-9	9-12
Deaf or Aphasic	6	8	1235	1335	1380
Blind or Severely Hard of Hearing	8	10	1290	1410	1440
Partially Seeing	10	12	1290	1410	1440
Educationally Handicapped	12	12	1080	1080	1080
Educable Mentally Retarded	18	18	1373	1635	1680
Trainable Mentally Retarded	{ See (3)	See (3)			
Orthopedic or Cerebral Palsied	12	12	1980	1980	1980
	{ 12	16	2000	2000	2000
Development Centers for Handicapped Pupils			See (4)	See (4)	See (4)
	{ 10	10	2000	2000	2000
			See (4)	See (4)	See (4)

(3) When the chronological age span of educable mentally retarded minors is greater than four years, the maximum class size shall be 15 pupils.

(4) When facilities are to be constructed for orthopedically handicapped, cerebral palsied minors, or development centers for handicapped pupils, additional building area allowances shall be made for elementary schools to provide adequate space for occupational therapy, physical therapy, and related auxiliary services of up to 5,200 square feet if the facility is designed for one to three classes and up to 7,000 square feet for four to eight classes. Facilities constructed for junior and senior high schools shall be allowed additional building area of up to 600 square feet for auxiliary services.

(5) When facilities are to be constructed for blind or partially seeing minors served in an integrated instructional program which is housed in two or more schools, the building area allowance may be allocated among the schools when approved by the Department of Education. No area of instruction shall be allowed which is less than 200 square feet.

(6) When facilities are to be provided for minors having speech defects or disorders, 200 sq. ft. of additional building area per school is permitted.

1865.35. Allowable Building Area for Small Elementary School Districts. (a) For the purpose of computing the building area allowance for small elementary school districts in accordance with Section 17743 of the Education Code, the following shall apply:

(Register 78, No. 8-24-78)

(1) In an applicant district maintaining any combination of grades kindergarten through 6 with an estimated average daily attendance of less than 300 in such grades:

<i>Estimated ADA in Kindergarten and Grades 1-6</i>	<i>Maximum Total Building Area (Sq. Ft.)</i>
6-25	1,600
26-50	3,800
51-75	5,700
76-100	7,200
101-133	8,415
134-166	10,200
167-199	12,000
200-232	13,360
233-285	15,675
286-299	16,500

(2) In an applicant district maintaining any combination of grades kindergarten through 8 with an estimated average daily attendance of less than 300 in grades kindergarten through 6, there shall be allowed, in addition to the maximum total building area shown above, a maximum area of 75 sq. ft. for each attendance unit in grades 7 and 8.

1865.36. Allowable Building Area for Continuation High Schools.

(a) The estimated average daily attendance for continuation high schools shall be based on those pupil units attending continuation classes (as defined in Section 1865.30(b) (3) of these regulations) which are assigned to the continuation high school.

(b) Building area shall be allowed for the continuation high school in accordance with the following schedule:

<i>Pupil Units of Continuation High School</i>	<i>Square Feet of Building Area</i>
21 to 40	4,800
41 to 60	4,800 + 120 for each pupil unit over 40
61 to 90	7,200 + 115 for each pupil unit over 60
91 to 120	10,650 + 105 for each pupil unit over 90
121 to 150	13,800 + 90 for each pupil unit over 120
Over 150	16,500 + 60 for each pupil unit over 150

(c) For purposes of this section, a continuation high school must be physically and operationally distinguishable from other schools. If the continuation high school shares space with another type of school, it can be considered to be a continuation high school within the meaning of this section only if the district can show conclusively that the continuation facility is in fact a separate institution with its own administration, teaching staff, and course of study, located in a clearly identifiable building area.

1865.37. Minimum Essential Instructional Facilities. In the event the existing area of the district as determined pursuant to Section 17742 of the act results in a district being unable to apply for the minimum amount of essential instructional facilities required, the existing area may be reduced, with the approval of the board, by an amount sufficient to permit such essential instructional facilities to be constructed under the act. Such reduction shall be construed as being for the purpose of alleviating any substantial hardship which might otherwise occur.

1865.38. Building Cost Standards. (a) Pursuant to Section 17717 of the act, the board shall establish allowable school building cost standards which shall be effective until next revised.

(b) No application or bid shall be approved and no funds shall be provided for any construction which exceeds the allowable costs established as provided herein. In the event, however, that it is shown from any studies by the board that actual building costs in an area or portion of an area differ substantially from the allowable costs established for the area, the board may at any time revise the allowable building cost standards for the area or create additional areas and establish appropriate allowable cost standards for such additional areas.

1865.39. Unconventional Sources of Energy. Where a school district requests an increased cost allowance for the design and construction of facilities which will conserve unreplenishable energy resources pursuant to Section 17718 of the act, a life cycle cost comparison must be submitted to the board. Such cost comparison shall be prepared by a competent authority and provide for the amortization of the increased cost allowance over a period not to exceed the lesser of 30 years or the term of the lease.

1865.40. Reconstruction or Replacement. (a) Any building which has not been constructed or reconstructed less than 30 years prior to the date of approval of the project applied for under the act may be eligible for reconstruction or replacement provided the allowable cost for such reconstruction or replacement is reduced to compensate for any work done to the building in the 30 years preceding the application. The amount to be deducted from the allowable cost shall be the actual cost of the work performed depreciated on the basis of 1/30 for each year which has elapsed since the performance of said work.

(1) **Reconstruction.** No project shall be approved for reconstruction, the cost of which will exceed cost standards established by the board for replacement of the amount of area equivalent to the adjusted reconstructed area. The adjusted reconstructed area shall be computed by multiplying the estimated units of average daily attendance to be housed in the reconstructed building times the allowable building area per attendance unit as computed in accordance with the act.

(Register 78, No. 8—2-4-78)

(2) **Replacement.** No building shall be replaced until the board has made a finding that it would not be economical or good practice to reconstruct the school facilities to meet present-day educational and structural standards.

1865.41. Site Development. (a) Site development may be included as a part of the project and classified as follows:

(1) **Utility Services** may include but are not limited to facilities required to bring water, sewer, electricity, telephone, and fuel supply services to such suitable point on the site as may be necessary for the functioning of a project.

(2) **Off-site Development** may include but is not limited to such street improvements as are in line with the approved standards of the board and as are determined by the executive officer to be necessary. However, whenever a school building to be constructed pursuant to an apportionment under the act is situated in a city, city and county, or county which requires the construction of any street or road connected with the school premises on which the building is situated, the board shall review the requirement and recommend to the entity in question a plan of construction adequate to meet the needs of the school district and safety of the public. Thereafter, if any different plan of improvement or improvement to higher standards than so recommended is required by such entity, the additional cost shall be borne by the entity as provided in Section 2117 of the Streets and Highways Code.

(3) **Service Site Development** may include but is not limited to any other development of a site, including such items as grading (except rough grading), walks, curbs, roadways, parking areas, fencing, flagpoles, incinerators, hard-surfaced and turfed play areas, landscaping, and playground equipment.

1865.42. Furniture and Equipment. (a) Furniture and equipment may be included as part of the project.

(b) Cost standards for furniture and equipment shall be established on a quarterly basis by the board based upon the kinds, quality, quantities, and costs of furniture and equipment most commonly acquired by school districts for comparable facilities.

(c) Before requesting funds for furniture and equipment for a project, the district shall give full consideration to all usable furniture and equipment existing in the district. The district may apply for funds to provide such furniture and equipment as needed to complete the project within the standards established by the board. The furniture and equipment allowance for replacement or reconstruction projects cannot exceed 50% of the allowance for comparable new facilities unless specifically approved by the board.

(d) An allowance will be calculated for each construction project in accordance with 1865.42(b) and (c) above. The amount so calculated will be authorized as the cash allowance for the project to be expended by the district in furnishing and equipping the project.

(e) Furniture and equipment shall be purchased by the district by competitive bidding where required to do so by the Education Code or other provisions of law. However, even where the district is not otherwise required to purchase the same through competitive bidding, the board may require the district to do so where it believes that it is likely that such bidding would result in a lower cost than other methods.

1865.43. Repairs, Renewals, and Replacements. (a) The board hereby interprets Section 17705(e) of the Education Code, authorizing it to render services in connection with a project, to permit it to pay the costs of repairs, renewals and replacements thereof, if a district fails to make the same at its own expense as required by Section 17714, Education Code. For this purpose, the board shall charge the district a contingent amount in advance to protect it against any such failure on the part of the district, or an amount which represents the actual cost of the board performing such services in the event of such failure. The board shall in either event incorporate such charges as part of the lease payments, and adjust the latter from time to time as may be necessary for this purpose, to take effect during the fiscal year following that in which such adjustment is made. Said amounts so withheld shall be expended only for the purposes for which withheld and upon specific authorization by the board. Interest earned by the state attributable to such amounts shall be deemed to augment the same.

(b) The board interprets Section 17726, Education Code, to permit the transfer out of the State School Building Lease-Purchase Fund of such amounts as may be necessary to fund such repairs, renewals, or replacements. Suitable adjustment of lease payments shall be made during or at the termination of a lease so that a district will not in any case pay an amount incorporated in the lease payments which exceeds the cost to the board of providing such repairs, renewals, or replacements.

(c) Notwithstanding the foregoing, upon exercising of the district's option to purchase the project, the district shall be entitled to the remaining balance of the funds withheld pursuant to this section solely as a credit against such option price.

Article 5. Project Approvals and Lease-Purchase Agreements

1865.50. Approval of Applications. Upon receipt of the application, the executive officer shall review it for proper form and compliance with statutes and regulations of the board. After such review and any necessary corrections, the executive officer shall present the application to the board with recommendations, whereupon the board shall consider the application. If the application meets with the board's approval, it shall grant its approval and make a reservation of funds for the financing of the project from any sources available for such purposes. This reservation shall be known as an apportionment and shall be conditioned upon the district subsequently entering into a lease-purchase agreement with the state. After such approval and reservation

(Register 78, No. 6—2-4-78)

of the funds, the executive officer of the board shall authorize the district, as the agent of the board, to perform all acts necessary to obtain construction bids for the project. Such authorization shall be specifically set forth in writing to the district and shall be conditioned upon the district having entered into or subsequently entering into a lease-purchase agreement with the board either in the form of (1) the lease-purchase of a site and/or plans, or (2) the lease-purchase of an entire project. Failure on the part of the district to enter into such agreement shall invalidate such authorization, and any obligations incurred as a result thereof shall become the sole responsibility of the district. Upon receipt of bids, the executive officer shall have the authority to amend the project budget within the apportionment so made or to reduce the total apportionment to conform to the project as bid. The executive officer is authorized to enter into a lease-purchase agreement or agreements with the district on behalf of the board.

1865.51. Apportionment. (a) In addition to complying with any other requirements of these regulations or the act, the board, at the time of making an apportionment, shall:

- (1) Approve a total estimated cost and a budget for the project.
- (2) Prescribe the purposes for which an apportionment may be expended.
- (3) Prescribe the manner, terms, and conditions for releasing the apportionment to the district.
- (4) Specify that the rate of interest to be utilized in computing the annual lease payments shall be the rate which has been fixed by the board and is in effect at the time of execution of the lease-purchase agreement.
- (5) Fix the rate of interest to be used in computing annual lease payments immediately following each sale of general obligation bonds.

(b) Notwithstanding anything to the contrary in these regulations, the board shall have power to modify any apportionment or resolution of apportionment where it determines good cause exists therefor.

1865.52. Lease Payment. (a) At the time the lease-purchase agreement is executed with the district, the executive officer shall establish a schedule of annual lease payments to be charged over the life of the agreement. The schedule will also set forth the purchase price, should the district elect to exercise the option to purchase.

(b) The board is empowered to unilaterally adjust the lease payments from time to time in order to insure that revenue from such lease payment is sufficient to cover redemption payments and interest charges on funds used by the board to finance to project, or other costs incurred or incurable pursuant to the act including amounts specified by Section 1865.43 of these regulations.

Article 6. Project Budget

1865.60. Contents of Project Budget. (a) The project budget prescribed by the board shall be set up in such a manner as to contain all costs attributable to the project, categorized as follows: Sites; Plans; Construction; Tests; Inspection; Furniture and Equipment; and Contingencies. Within these major categories the following limitations shall apply:

(1) **Sites:**

(A) The board shall not authorize the expenditure of any funds for real property in excess of the fair market value of such property.

(B) Relocation assistance costs to landowners or persons displaced pursuant to Sections 7260 et seq. of Chapter 16, Division 7, Title I of the Government Code, referred to as the "Relocation Assistance Law", in conjunction with an acquisition of a site for which an application for a lease-purchase project is made, shall be administered by the district affected in accordance with the requirements of said sections.

(2) **Plans:**

(A) Fees for architectural and engineering services, including architectural supervision, shall not exceed the customary amounts.

(B) The board shall require that each architectural contract contain a clause to the effect that the architect shall be responsible for making, without additional cost to the district, any changes or redesigning made necessary as a result of the bids exceeding the cost standards established by the board.

(3) **Construction:** Costs shown for construction shall not exceed the cost standards established by the board.

(4) **Tests:** The amount for tests shall be limited to the actual costs of tests which are required by Title 21 of the California Administrative Code or other applicable provisions of law, or which are in accordance with good or accepted practice.

(5) **Inspection:** The amount for inspection shall be limited to such amounts as is required to insure that the project is completed in accordance with plans and specifications and any other legal requirements.

(6) **Furniture and Equipment:** The amount for furniture and equipment shall be limited to that determined pursuant to Section 1865.42 hereof.

(7) **Contingencies:**

(A) An amount may be included for contingencies which shall not exceed such maximums as the board may prescribe for any class of application or value of facilities in a project budget.

(B) Contingency funds may be used only after specific approval by the executive officer for items of construction or other approved project costs where the cost increase or the item required is necessary for the completion of a facility which has been approved by the board.

(Reglater 78, No. 8-14-78)

1865.61. Revision of a Project Budget. (a) The executive officer may revise any item within a project budget, upward or downward, provided that no such revision results in an increase in the total amount of the project budget approved by the board.

(b) The executive officer may reduce any apportionment as may be necessary to reflect any revision made pursuant to (a) above.

Article 7. Disposition of Property

1865.70. Disposition of Replaced Facilities. (a) Property, real or personal, replaced through an application for a lease-purchase project approved by the board shall be disposed of pursuant to these regulations in a manner approved by the executive officer of the board. The net proceeds received from any such disposition shall be expended, subject to approval by the executive officer of the board, either:

(1) For capital outlay purposes which would otherwise be eligible for a project pursuant to the act; or

(2) For the demolition of any facilities replaced by a project approved pursuant to the act or pursuant to Chapter 8 (commencing with Section 16000), Part 10, Division 1, Title 1 of the Education Code; or

(3) For any other purpose approved by the board.

1865.71. Disposition of Excess Improvements Acquired With Site Purchase. (a) Excess improvements acquired with a site purchase shall be offered for sale prior to the advertising of a project for construction bids, in accordance with the method and manner prescribed for the sale of personal property under Section 39520 et seq. of the Education Code. The net proceeds received from any such disposition shall be expended in the manner prescribed in the preceding Section 1865.70 of these regulations.

(b) When facilities acquired with a site purchase have been offered for sale pursuant to Section 39520 et seq. of the Education Code and no acceptable bids are received prior to the time the construction project is ready to be advertised for construction bids, the district shall adopt a resolution making a finding that the property is of insufficient value to defray the costs of arranging a subsequent sale as provided by Section 39521 (b) of the Education Code and proceed to demolish such property using funds approved in the project for this purpose.

Article 8. Lease-Purchase of Sites and Plans

1865.75. Advance Purchase of Sites and Preparation of Plans.

(a) Except as otherwise provided by the act or these regulations, the provisions of these regulations shall apply to applications for sites and/or plans and specifications made pursuant to Section 17720 of the act.

(b) Nothing contained in the regulations shall be construed to prohibit the executive officer from entering into a lease agreement with option to purchase for a site and/or plans pursuant to Regulation 1865.32 without construction, even though such items may constitute only a part of the project as approved by the board. A lease-purchase agreement or agreements may be subsequently entered into by the executive officer for the balance of the project.

Title 2, CCR, Register 79-34

§ 1862.52

§ 1862.53

SUBGROUP 8. CHILDREN'S CENTER CONSTRUCTION AID

HISTORY:

1 Repealer of Subgroup 8 (Sections 1862-1862.14) filed 12-30-76; effective thirtieth day thereafter (Register 77, No. 1). For prior history see Register 69, Nos. 2, 15, 25, 42, and 50.

SUBGROUP 8.5. EMERGENCY SCHOOL CLASSROOM LAW OF 1979

Article

1. Definitions
2. Acquisition of Portable Classrooms
3. Applications for Lease
4. Lease Agreements
5. Priorities
6. Miscellaneous Provisions

DETAILED ANALYSIS

Article 1. Definitions

Section

1862.50. Definitions

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1862.51. Acquisition of Portable Classrooms by the Board

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Section

1862.55. Maintenance and Repair Costs Not Otherwise Provided by District

1862.56. Exceptions

Article 1. Definitions

1862.50. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

Chapter 25. Chapter 25, Part 10, Education Code.

Board. State Allocation Board.

Executive Officer. Executive Officer of the State Allocation Board.

Eligible District. Any school district or county superintendent of schools which demonstrates a need for additional classroom facilities in accordance with priorities established by the Board.

Portable Classrooms. Single classroom factory-built buildings which are constructed in accordance with performance specifications adopted by the Board.

Authorized Agent. A person authorized to act on behalf of the governing board of the eligible district in matters relating to an application for lease of portable classrooms.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

HISTORY:

1. New Subgroup 8.5 (Sections 1862.50-1862.56) filed 8-23-79; effective thirtieth day thereafter (Register 79, No.34). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 12-21-79.

Article 2. Acquisition of Portable Classrooms

1862.51. Acquisition of Portable Classrooms by the Board.

(a) The board may from time to time as it determines the need in accordance with priorities adopted herein authorize the Office of Procurement of the Department of General Services to acquire portable classrooms for lease to eligible districts. For each portable classroom so acquired a minimum of furniture and equipment necessary to make the classroom functional may be acquired by the Board. The buildings shall be placed on the school site and connected to the nearest electrical energy source at state expense.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

Article 3. Applications for Lease

1862.52. Form of Application.

(a) Applications for lease of portable classrooms pursuant to Chapter 25, shall contain the following:

A resolution on forms provided by the Board, by the governing board of the eligible district authorizing the filing of an application and the signing of a lease agreement or agreements for such numbers of portable classrooms as the Board may approve. The leases shall contain such terms and conditions as are required by existing law and by these regulations.

A completed application on forms provided by the Board.

Layout plans clearly showing the location on the site of the proposed portable classroom buildings as well as the location of existing buildings. Existing buildings shall be identified and shall show the State Architect approval number if constructed pursuant to the Field Act (Sections 39140 to 39156).

A certification by the authorized agent that the district has hired or will hire a teacher for each portable classroom leased to the district for the term of the lease.

A certification or other evidence, satisfactory to the Board, that the district has no available bond proceeds which could be used for the purchase of classroom facilities.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

Article 4. Lease Agreements

1862.53. Lease Agreements.

(a) Lease agreements executed by the authorized agent of the school district shall be subject to such conditions as may be required by the board in addition to the following:

A year to year renewable term beginning September 1 and ending August 31 of each year.

Lease payments of \$2,000 per year for each portable classroom. The first year rental shall be prorated on a 12 month basis from the date of installation to the following August 31. Payments are to be made upon execution or renewal of each lease.

The district shall be required at its own expense to provide a near flat surface, not exceeding 9 inches in grade from the highest to the lowest point, for placement of each portable classroom. Access to the site shall also be provided by the district at its own expense.

The district shall be responsible to the State for any damages occurring to the portable classrooms and shall keep them insured, at its own expense, to the benefit of the State, at all times against fire and lightning, with extended coverage, and vandalism and malicious mischief, for the full insurable value of the property less any deductible amount for which the district is willing to accept such responsibility. The district shall at its own expense undertake all necessary maintenance repairs, renewal and replacement to ensure that the portable classrooms, furniture and equipment are at all times kept in good repair, working order and condition.

The district shall hold the State of California harmless from any claims asserted against the State by virtue of alleged negligence of the district or third parties in the operation or maintenance of portable classrooms.

Facilities leased by the Board for location on a particular site may not be altered, relocated or removed from the site without approval of the Board, nor shall any interest held by the district under this lease be assignable.

Upon expiration of a lease, the district shall allow buildings covered by such lease to remain in place on the site free of cost to the State for a period not to exceed 120 days, pending removal by the State.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

Article 5. Priorities

1862.54. Priorities.

(a) Portable classrooms shall be made available to those districts the pupils of which will benefit most, based upon the following:

A demonstrated need based upon loading all existing classrooms in the district with the average class sizes shown in Board Regulations 1810.1 and 1811 (g) of Title 2, California Administrative Code, using the latest enrollment of the district converted to equivalent average daily attendance by a .97 factor.

A certification from the district that it has hired or will hire for the lease period a teacher for each portable classroom to be leased.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

Article 6. Miscellaneous Provisions**1862.55. Maintenance and Repair Costs Not Otherwise Provided by District.**

(a) Where a district is not obligated to provide for the maintenance and repair of portable buildings, or if obligated and fails to do so, the Executive Officer is authorized to expend such sums as he deems appropriate for that purpose from funds appropriated pursuant to this chapter, provided that nothing herein shall be construed to relieve any district from any obligation arising out of any contract entered into pursuant to this chapter.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

1862.56. Exceptions.

(a) Exceptions may be made to these regulations where the Board finds that the application thereof would be inequitable in practice or would result in an undue hardship on the pupils of the district affected.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

Title 2, CCR, Register 80-12

§ 1865.3

§ 1865.32.5

§ 1865.43

§ 1865.50

§ 1865.70

Article 1. Definitions

1865.1. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the act:

- (a) The Act. Chapter 22, Part 10, of the Education Code.
- (b) Board. The State Allocation Board.
- (c) Executive Officer. The executive officer of the State Allocation Board.
- (d) Application. A request pursuant to the act to lease a project. Such request shall be on forms prescribed by the board, together with such other information as may be required by the executive officer.
- (e) District or Applicant School District. Any school district applying for a project or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.
- (f) District Representative. One or more individual members of the district's staff appointed by it as "district representative" to file an application with the board on behalf of the district and to act as liaison between the board and the district.
- (g) Agent of the Board. The applicant school district appointed by the board as its agent to perform specifically authorized acts necessary to construct and equip the project.
- (h) Facility. All or a portion of any real property, site improvement, utilities, buildings, or furniture and equipment contained in a project.
- (i) Lease Agreement with Option to Purchase. An agreement between an applicant school district and the State to lease with an option to purchase a project, as defined in the act, from the State.
- (j) Lease-Purchase Project. A project for which the district has or intends to enter into one or more lease agreements with option to purchase on a given site.
- (k) Reconstruction. Reconstruction for the purpose of Section 17721 shall be considered the substantial architectural alteration or modification of a building in order to bring it to modern educational standards.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. New Subgroup 11 (Sections 1865.1-1865.95, not consecutive) filed 2-3-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment of subsections (e) and (g) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

Article 2. General Provisions

1865.2. Purpose.

The purpose of these regulations is to prescribe the procedures necessary for the implementation and administration of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (hereinafter referred to as "the act").

1865.3. What May Be Provided.

The act provides for the construction, reconstruction, or replacement of school facilities by the State Allocation Board under an agreement between a school district and the State.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.4. Qualifications.

Any school district may qualify to file an application for a lease-purchase project and enter into a lease agreement with option to purchase with the board, providing such applicant school district has sufficient building area entitlement as determined pursuant to the provisions of Article 4 of these regulations to justify the application being filed for new building construction or reconstruction.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.5. Executive Officer.

The executive officer shall perform all acts necessary to carry out the provisions of the act except such functions as are reserved to the board and to other agencies by law or by these regulations.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.6. Limitation of State Responsibility.

In approving an application for a lease-purchase project and making funds available therefor, neither the State nor any department or agency thereof shall assume any responsibility not otherwise imposed on it by statute or these regulations.

1865.7. References to Education Code Prior to Recodification of 1976.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.8. Insurance.

The insurance required by Section 17738 of the act shall be in an amount that will guarantee full replacement or repair of the facilities for which claims are made.

TITLE 2**OFFICE OF LOCAL ASSISTANCE
(STATE ALLOCATION BOARD)****§ 1865.9
(p. 71.72.48.1)****(Register 82, No. 12—3-12-89)****1865.9. Priority Points.**

(a) Priority points shall be computed and assigned to applications whenever the board determines that there will be insufficient funds to meet the estimated needs for all districts in any given fiscal year. Whenever the assignment of priority points is required, applications that are in order for approval shall be considered by the board in sequence according to the number of priority points credited to each application. The board shall from time to time establish the minimum number of priority points necessary to qualify an application for approval consideration by the board. Such minimum shall be based upon the funds available and the estimated needs for the fiscal year.

(b) Priority points shall be computed on a districtwide basis, except for those districts having four or more high school attendance areas (excluding continuation high schools). In such case, points shall be considered on the basis of the attendance area of the project and all attendance areas adjacent thereto.

(c) For the purposes of computing priority points pursuant to the provisions of Section 17716 of the act, all existing building areas except central administration and maintenance facilities, shall be considered.

(d) Priority points shall be allowed as follows:

(1) Five priority points shall be allowed for each percent of the maximum allowable building area which may be included in an application as new building area (not replacement area).

(2) One priority point shall be allowed for each percent of the maximum allowable building area which may be included in an application as new building area replacing existing inadequate building area.

(3) One priority point shall be allowed for each percent of the maximum allowable building area which may be included in an application as reconstruction of an existing building, originally constructed at least 30 years prior to the date of approval of the reconstruction project.

(4) One priority point shall be allowed for each 5% of increase between the current average daily attendance and the average daily attendance 5 years previously. The average daily attendance will be based on the active enrollment report (R-30) filed with the Department of Education as of the end of the first school month.

(5) One priority point shall be allowed for each month that the application of the district has been in good order and awaiting approval.

(e) If any computation of priority points results in a fraction of a point that is less than one-half, such fraction shall be disregarded and the number of priority points shall be taken as the next lowest whole number. If such computation results in a fraction of a point which is one-half or more, such fraction shall be disregarded and the number of priority points shall be taken as the next highest whole number.

(f) Approvals and lease agreements made in priority order pursuant to this section shall be limited to that portion of a project pertaining to the acquisition of a site and the preparation of construction plans and specifications. Such approvals shall be limited to not more than 25% of the funds made available for the program.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. New section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.10. Priority Points for Construction.

(a) Priority points may be computed and applied in the consideration of approvals for construction funds. Such priority points shall be maintained as a separate series from priority points computed pursuant to Section 1865.9 of these regulations, and shall be identified as "priority points for construction". Any such computation of priority points for construction shall be determined as prescribed by said Section 1865.9, except as follows:

(1) The term "maximum allowable building area" in Section 1865.9(d) (1) shall mean the most recent computation of such area rather than that which applied at the time the application was first approved.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. New section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

Article 3. Application Procedure

1865.21. Form of Application.

A district desiring to obtain a project pursuant to the act shall file documents substantially as follows:

(a) A resolution of the governing board of the applicant district authorizing the application.

(b) An application in proper form.

(c) A statement of the estimated cost of the project certified by a licensed architect or structural engineer.

(d) Layout plans showing the entire construction project.

(e) Such other documentation as may be required by the executive officer.

(Register 62, No. 12—3-23-69)

(4) Progress the latest reported enrollment through the applicable two or three year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (3) above.

(d) From the projected enrollment, compute the estimated average daily attendance as defined in Subsection (b) (5) above.

(e) In the event that there is good reason to believe the number of pupils being added from construction of new housing units exceeds the number implicit in the cohort survival computation and when the land area of the district is less than 75% developed, the board may, at its discretion, modify the estimated average daily attendance as follows:

(1) Determine the graded enrollment one year from the latest reported enrollment by a one-year grade progression, adjusted for dropouts at the high school level.

(2) Determine the enrollment derived from new homes implicit in the cohort survival computation as follows: (i) Subtract the enrollment computed in (1) above from the one-year projection of enrollment as determined by the cohort survival method; (ii) To the remainder, add two percent of the latest enrollment for the end of the first or sixth school month, whichever is applicable. If the foregoing computations result in a negative number, the number shall be deemed to be zero.

(3) Determine the pupil yield per housing unit of housecount, as established by a survey of occupied housing units in the district, for the current year and the two preceding years. The survey shall take into consideration the different pupil yields of multiple and single family housing units or other significant yield characteristics. The current year yield factor for each type of housing unit shall be modified by the average annual difference of the factor for each type for the two preceding years.

(4) In the event that prior year data referred to in (3) is unavailable, the current yield factor shall be modified as the board shall prescribe.

(5) Establish the pupil yield of the housecount by multiplying the number of housing units in the housecount by the applicable yield per housing unit as determined above. Subtract the enrollment from new homes determined in (2) above from the yield of the housecount; the result of this computation is the amount by which the graded enrollment computed under the cohort survival method shall be changed.

(6) The housecount and surveys described in (3) and (4) shall be conducted by the district in accordance with methods, procedures, and standards which are approved by the Office of Local Assistance with respect to each specific case.

(f) Other provisions of this section notwithstanding, high school enrollment of a district or attendance area for the end of the first school month may be used for estimating ADA.

1865.31. Estimated Average Daily Attendance—High School Attendance Area.

(a) As permitted by Section 17741, a district may file an application based upon a high school attendance area rather than a districtwide basis. A high school district or a unified school district filing on a high school level would base its application on enrollment estimated to attend such high school and upon facilities already existing in such high school attendance area. An elementary school district or unified district filing on an elementary level would base its application on the enrollment and existing facilities of the elementary schools serving the high school attendance area under consideration.

(b) The estimated average daily attendance of a high school attendance area as permitted by Section 17741 of the act for determining the allowable building area, when the district is applying only on a high school attendance area basis as opposed to a districtwide basis, shall be computed in the same manner as that set forth in regulation 1865.30, except that the enrollment used in such computation shall be that of the high school attendance area rather than the entire district and shall be certified by the district.

(c) In those instances where the high school attendance area results in a split in individual attendance areas of the contributing elementary or junior high schools, an assignment of enrolled pupils in such split attendance areas shall be made by the district in a manner satisfactory to the executive officer.

1865.32. Application for Site and/or Plans.

In order to expedite a total school facility, a school district may first apply for a project which includes only the advance purchase of the land and preparation of plans and specifications. The acquisition of the site and the plans preparation shall be based on justification documents for the total school facility.

1865.32.5. Utilization of Existing Facilities.

(a) No project shall be approved for any district until the board has first made a determination that the applicant district will utilize all existing facilities to the extent economically and practically feasible. Sufficient justification must be provided by the district to permit the board to make such determination.

(b) If the board determines that it will not be economical or practical to utilize all existing facilities of the district, project approval then will be contingent upon the agreement by the district to sell those facilities that will not be utilized and contribute the net proceeds of the sales to the State School Building Lease-Purchase Fund as rents pursuant to Section 17732 of the act.

(c) Approval of a project applied for pursuant to Section 17741 of the act will be contingent upon the conditions specified in subdivisions (a) and (b) of this section.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. New section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.33. Computation of Allowable School Building Area.

(a) No project shall be approved, the building area of which, when added to the area of adequate school construction existing in the applicant school district or the applicable high school attendance area if the application is filed on such basis, will provide a total area of school building construction in excess of that computed pursuant to Education Code Sections 17740 through 17749.

(b) All of the existing building area owned or operated by the district except for central administration or maintenance facilities, regardless of conditions or purpose for which used, shall be reported to the board by the district as prescribed in this regulation. Where an allowable building area is computed on the basis of an attendance area as provided by Section 17741 of the act, the existing building area shall be considered the building area within such attendance area.

(c) Existing adequate building area shall include all existing building area not otherwise excluded by the act or these regulations, building area for which applications have been approved under any state or federal building program,

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any building area being acquired by any lease-purchase agreement, proposed building area which has been otherwise financed or any building area which has been used to justify any site and/or plans lease-purchased project under this act. Existing building area shall be excluded as follows:

(1) The area of any building to which Article 3 of Chapter 2, Part 23 of the Education Code would not apply.

(2) The area of any building, the construction or reconstruction of which has occurred more than 30 years prior to the date of the application.

(d) Existing and proposed building area shall be computed in accordance with the following:

(1) All measurements shall be made from exterior rough wall lines.

(2) Totally enclosed space shall be counted as full area. Among the various types of space to be included shall be areas such as:

(A) Basement rooms and basement boiler rooms.

(B) Heater rooms, including those above the normal floor level.

(C) Each floor of multi-story buildings.

(D) The area of completely enclosed stairs for each floor level served.

(3) Certain partially enclosed areas shall be counted as full area and shall include:

(A) Open, covered areas which provide shelter between buildings that are less than 20 feet apart.

(B) Mezzanines open on one or more sides which may easily and readily be used or converted to use as instructional space or passageways.

(C) Each floor of library stacks.

(4) Covered unenclosed space shall be counted as one-half of the actual area. Included in such space are:

(A) Open, covered passages, arcades, shelters, porches, and planting areas.

(B) Open, covered areas which provide shelter between buildings that are 20 feet apart or more.

(C) Overhangs and sun control devices which are so designed and located that they function as, and in lieu of, covered walks or other shelter areas.

(D) Mezzanines for storage purposes.

(5) Areas which shall not be counted include:

(A) Eaves and sun control devices except as specified above.

(B) Unsheltered platforms and steps.

(C) When isolated from building structures, the area of incinerators, pump-houses, transformer vaults, and service yards.

(D) Elevator shafts where constructed in order to comply with Chapter 7 of Division 5 of the Government Code (commencing with Section 4450), relating to facilities for handicapped persons.

(E) That portion of the area below the first floor of a multistory building used exclusively for employee parking, provided the board finds that other means of parking are not economically feasible.

1865.34. Allowable School Building Area for Facilities for Exceptional Children.

(a) In conformity with the requirements of Section 17747 of the Education Code, the board establishes allowable building areas for the education of physically handicapped, educationally handicapped, and mentally retarded minors, to be computed as follows:

(1) Divide the number of eligible pupils by the maximum class size established by law for special day classes for the type of pupils to be enrolled and increase the quotient to the next highest integer where a fractional amount is produced.

(2) Multiply the number computed in (1) by the maximum building area allowance shown below when the facility is planned for the following types of exceptional children:

Types of Pupils	Maximum Class Size		Area Allowance—Sq. Ft.		
	Ages 3-8	Ages 9-20	K-8	7-9	9-12
Autistic	6	6	1080	1080	1080
Deaf, Aphasic, Multihandicapped *, or Combination of Deaf & Severely Hard of Hearing	6	8	1235	1335	1360
Blind, Severely Hard of Hearing, or Combination of Blind & Partially Seeing	8	10	1290	1410	1440
Partially Seeing	10	12	1290	1410	1440
Educationally Handicapped	12	12	1080	1080	1080
Trainable Mentally Retarded	12	12	1860	1860	1860
Educable Mentally Retarded	18	18	1373	1635	1680
Orthopedically Handicapped	(See 3) 12	(See 3) 16	2000 (See 4)	2000 (See 4)	2000 (See 4)
Development Centers for Handicapped Pupils	10	10	2000 (See 4)	2000 (See 5)	2000 (See 5)
Deaf-Blind Multihandicapped	3	5	1500 (See 4)	1500 (See 4)	1500 (See 4)

* Other than Deaf-Blind Multihandicapped

(3) When the chronological age span of educable mentally retarded minors is greater than four years, the maximum class size shall be 15 pupils.

(4) When facilities to be constructed will include occupational therapy, physical therapy, and related auxiliary spaces for orthopedically handicapped minors, additional building area allowances for such spaces of up to 5,200 square feet shall be made if the facility is designed for one to three classes and up to 7,000 square feet for four to eight classes.

(5) When facilities are to be constructed for deaf-blind multihandicapped, a one-time additional building area allowance of 500 square feet per school will be made for the initial construction of facilities.

(6) When facilities are to be constructed for blind or partially seeing minors served in an integrated instructional program which is housed in two or more schools, the building area allowance may be allocated among the schools when approved by the Department of Education. No area of instruction shall be allowed which is less than 200 square feet.

(7) When facilities are to be provided for minors having speech defects or disorders, additional building area per school is permitted. This additional area allowance is limited to:

(a) 200 square feet of new building area per school in schools constructed after July 1, 1968, where such schools are designed to permit utilization for remedial and other special services.

(b) 200 square feet of new building area per school in schools constructed between July 1, 1933 and July 1, 1968, where such additional area allowance is used for the construction of a new speech facility.

(c) Conversion of existing facilities or a combination of new construction and conversion of such existing facilities to provide housing for such minors having speech defects or disorders, provided the cost does not exceed the computed cost for 200 square feet of new classroom construction based upon cost standards adopted by the board.

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(d) The acquisition of mobile speech therapy facilities, provided the cost does not exceed the combined computed cost for 200 square feet of new classroom construction, based upon cost standards adopted by the board, at all such schools which will be served by the mobile facility.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.35. Allowable Building Area for Small Elementary School Districts.

(a) For the purpose of computing the building area allowance for small elementary school districts in accordance with Section 17743 of the Education Code, the following shall apply:

(1) In an applicant district maintaining any combination of grades kindergarten through 6 with an estimated average daily attendance of less than 300 in such grades:

<i>Estimated ADA in Kindergarten and Grades 1-6</i>	<i>Maximum Total Building Area (Sq. Ft.)</i>
6-25	1,600
26-50	3,800
51-75	5,700
76-100.....	7,200
101-133.....	8,415
134-166.....	10,200
167-199.....	12,000
200-232.....	13,360
233-285.....	15,675
286-299.....	16,500

(2) In an applicant district maintaining any combination of grades kindergarten through 8 with an estimated average daily attendance of less than 300 in grades kindergarten through 6, there shall be allowed, in addition to the maximum total building area shown above, a maximum area of 75 sq. ft. for each attendance unit in grades 7 and 8.

1865.36. Allowable Building Area for Continuation High Schools.

(a) The estimated average daily attendance for continuation high schools shall be based on those pupil units attending continuation classes (as defined in Section 1865.30(b) (3) of these regulations) which are assigned to the continuation high school.

(b) Building area shall be allowed for the continuation high school in accordance with the following schedule:

<i>Pupil Units of Continuation High School</i>	<i>Square Feet of Building Area</i>
21 to 40	4,800
41 to 60	4,800 + 120 for each pupil unit over 40
61 to 90	7,200 + 115 for each pupil unit over 60
91 to 120	10,650 + 105 for each pupil unit over 90
121 to 150	13,800 + 90 for each pupil unit over 120
Over 150	16,500 + 60 for each pupil unit over 150

(c) For purposes of this section, a continuation high school must be physically and operationally distinguishable from other schools. If the continuation high school shares space with another type of school, it can be considered to be a continuation high school within the meaning of this section only if the district can show conclusively that the continuation facility is in fact a separate institution with its own administration, teaching staff, and course of study, located in a clearly identifiable building area.

1865.37. Minimum Essential Instructional Facilities.

In the event the existing area of the district as determined pursuant to Section 17742 of the act results in a district being unable to apply for the minimum amount of essential instructional facilities required, the existing area may be reduced, with the approval of the board, by an amount sufficient to permit such essential instructional facilities to be constructed under the act. Such reduction shall be construed as being for the purpose of alleviating any substantial hardship which might otherwise occur.

1865.38. Building Cost Standards.

(a) Pursuant to Section 17717 of the act, the board shall establish allowable school building cost standards which shall be effective until next revised.

(b) No application or bid shall be approved and no funds shall be provided for any construction which exceeds the allowable costs established as provided herein. In the event, however, that it is shown from any studies by the board that actual building costs in an area or portion of an area differ substantially from the allowable costs established for the area, the board may at any time revise the allowable building cost standards for the area or create additional areas and establish appropriate allowable cost standards for such additional areas.

1865.39. Unconventional Sources of Energy.

Where a school district requests an increased cost allowance for the design and construction of facilities which will conserve unreplenishable energy resources pursuant to Section 17718 of the act, a life cycle cost comparison must be submitted to the board. Such cost comparison shall be prepared by a competent authority and provide for the amortization of the increased cost allowance over a period not to exceed the lesser of 30 years or the term of the lease.

1865.40. Reconstruction or Replacement.

(a) Any building which has not been constructed or reconstructed less than 30 years prior to the date of approval of the project applied for under the act may be eligible for reconstruction or replacement provided the allowable cost for such reconstruction or replacement is reduced to compensate for any work done to the building in the 30 years preceding the application. The amount to be deducted from the allowable cost shall be the actual cost of the work performed depreciated on the basis of 1/30 for each year which has elapsed since the performance of said work.

(1) Reconstruction. No project shall be approved for reconstruction, the cost of which will exceed cost standards established by the board for replacement of the equivalent amount of area with new construction.

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(2) Replacement. No building shall be replaced until the board has made a finding that it would not be economical or good practice to reconstruct the school facilities to meet present-day educational and structural standards.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment of subsection (a) (1) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.41. Site Development.

(a) Site development may be included as a part of the project and classified as follows:

(1) Utility Services may include but are not limited to facilities required to bring water, sewer, electricity, telephone, and fuel supply services to such suitable point on the site as may be necessary for the functioning of a project.

(2) Off-site Development may include but is not limited to such street improvements as are in line with the approved standards of the board and as are determined by the executive officer to be necessary. However, whenever a school building to be constructed pursuant to an apportionment under the act is situated in a city, city and county, or county which requires the construction of any street or road connected with the school premises on which the building is situated, the board shall review the requirement and recommend to the entity in question a plan of construction adequate to meet the needs of the school district and safety of the public. Thereafter, if any different plan of improvement or improvement to higher standards than so recommended is required by such entity, the additional cost shall be borne by the entity as provided in Section 2117 of the Streets and Highways Code.

(3) Service Site Development may include but is not limited to site clearance, rough grading, and drainage which may be required to make a site usable in accordance with standards established by the board.

(4) General Site Development may include but is not limited to any other development of a site, including such items as grading (except rough grading), walks, curbs, roadways, parking areas, fencing, flagpoles, incinerators, hand-surfaced and turfed play areas, landscaping, and playground equipment.

(A) In the event the proposed construction consists of an addition to an existing school plant (whether financed by State Funds or by other means) the countable existing construction area and the existing site development shall be evaluated by the Director of General Services in determining any allowance for general site development.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer of subsection (a) (3) and new subsections (a) (3), (a) (4), and (a) (4) (A) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.42. Furniture and Equipment.

(a) Furniture and equipment may be included as part of the project.

(b) Cost standards for furniture and equipment shall be established on a quarterly basis by the board based upon the kinds, quality, quantities, and costs of furniture and equipment most commonly acquired by school districts for comparable facilities.

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(c) Before requesting funds for furniture and equipment for a project, the district shall give full consideration to all usable furniture and equipment existing in the district. The district may apply for funds to provide such furniture and equipment as needed to complete the project within the standards established by the board. The furniture and equipment allowance for replacement or reconstruction projects cannot exceed 50% of the allowance for comparable new facilities unless specifically approved by the board.

(d) An allowance will be calculated for each construction project in accordance with 1865.42 (b) and (c) above. The amount so calculated will be authorized as the cash allowance for the project to be expended by the district in furnishing and equipping the project.

(e) Furniture and equipment shall be purchased by the district by competitive bidding where required to do so by the Education Code or other provisions of law. However, even where the district is not otherwise required to purchase the same through competitive bidding, the board may require the district to do so where it believes that it is likely that such bidding would result in a lower cost than other methods.

1865.43. Repairs, Renewals, and Replacements.

(a) The district shall make all repairs, renewals and replacements necessary to keep the project in good repair, working order and condition at all times. All costs for this purpose will be borne by the district.

(b) In the event the project requires repairs, renewals or replacements as a result of damages from any cause, casualty, or otherwise, the district shall make the same. In such event the board shall contribute any insurance funds available to it for this purpose.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

Article 5. Project Approvals and Lease-Purchase Agreements

1865.50. Approval of Applications.

Upon receipt of the application, the executive officer shall review it for proper form and compliance with statutes and regulations of the board. After such review and any necessary corrections, the executive officer shall present the application to the board with recommendations, whereupon the board shall consider the application provided it (the application) has sufficient priority to warrant such consideration. If the application meets with the board's approval, it shall grant its approval and make a reservation of funds for the financing of the project from any sources available for such purposes. This reservation shall be known as an apportionment and shall be conditioned upon the district subsequently entering into a lease-purchase agreement with the state. After such approval and reservation of the funds, the executive officer of the board shall authorize the district, as the agent of the board, to perform all acts necessary to obtain construction bids for the project. Such authorization shall be specifically set forth in writing to the district and shall be conditioned upon the district having entered into or subsequently entering into a lease-purchase agreement with the board either in the form of (1) the lease-purchase of a site and/or plans, or (2) the lease-purchase of an entire project. Failure on the part of the district to enter into such agreement shall invalidate such authorization, and any obligations incurred as a result thereof shall become the sole responsibility of the district. Upon receipt of bids, the executive officer shall have the

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authority to amend the project budget within the apportionment so made or to reduce the total apportionment to conform to the project as bid. The executive officer is authorized to enter into a lease-purchase agreement or agreements with the district on behalf of the board.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.51. Apportionment.

(a) In addition to complying with any other requirements of these regulations or the act, the board, at the time of making an apportionment, shall:

- (1) Approve a total estimated cost and a budget for the project.
- (2) Prescribe the purposes for which an apportionment may be expended.
- (3) Prescribe the manner, terms, and conditions for releasing the apportionment to the district.

(b) Notwithstanding anything to the contrary in these regulations, the board shall have power to modify any apportionment or resolution of apportionment where it determines good cause exists therefor.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer of subsections (a) (4)-(5) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.52. Rental Payment.

The rental payments required by Section 17732 of the act will become due and payable on September 15 following the date the lease-purchase agreement is executed and on each successive September 15th thereafter during the life of this agreement. The payment may be in the form of a contribution toward the cost of an ongoing project or as a direct remittance. An Annual Certification of Funds Available for Rents shall be submitted by each district prior to August 15 each year. The payment required for a district desiring to exercise an option to purchase shall be the total cost of the project less any rental payments made or to be made from sources identified in Section 17732(c) and (d) of the act.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

Article 6. Project Budget**1865.60. Contents of Project Budget.**

(a) The project budget prescribed by the board shall be set up in such a manner as to contain all costs attributable to the project, categorized as follows: Sites; Plans; Construction; Tests; Inspection; Furniture and Equipment; and Contingencies. Within these major categories the following limitations shall apply:

(1) Sites:

(A) The board shall not authorize the expenditure of any funds for real property in excess of the fair market value of such property.

(B) Relocation assistance costs to landowners or persons displaced pursuant to Sections 7260 et seq. of Chapter 16, Division 7, Title I of the Government Code, referred to as the "Relocation Assistance Law", in conjunction with an acquisition of a site for which an application for a lease-purchase project is made, shall be administered by the district affected in accordance with the requirements of said sections.

(2) Plans:

(A) Fees for architectural and engineering services, including architectural supervision, shall not exceed the customary amounts.

(B) The board shall require that each architectural contract contain a clause to the effect that the architect shall be responsible for making, without additional cost to the district, any changes or redesigning made necessary as a result of the bids exceeding the cost standards established by the board.

(C) Any other plan fees or changes required by law.

(3) Construction: Costs shown for construction shall not exceed the cost standards established by the board.

(4) Tests: The amount for tests shall be limited to the actual costs of tests which are required by Title 21 of the California Administrative Code or other applicable provisions of law, or which are in accordance with good or accepted practice.

(5) Inspection: The amount for inspection shall be limited to such amounts as is required to insure that the project is completed in accordance with plans and specifications and any other legal requirements.

(6) Furniture and Equipment: The amount for furniture and equipment shall be limited to that determined pursuant to Section 1865.42 hereof.

(7) Contingencies:

(A) An amount may be included for contingencies which shall not exceed such maximums as the board may prescribe for any class of application or value of facilities in a project budget.

(B) Contingency funds may be used only after specific approval by the executive officer for items of construction or other approved project costs where the cost increase or the item required is necessary for the completion of a facility which has been approved by the board.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. New subsection (a) (2) (C) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency will be repealed on 7-16-80.

1865.61. Revision of a Project Budget.

(a) The executive officer may revise any item within a project budget, upward or downward, provided that no such revision results in an increase in the total amount of the project budget approved by the board.

(b) The executive officer may reduce any apportionment as may be necessary to reflect any revision made pursuant to (a) above.

Article 7. Disposition of Property

1865.70. Disposition of School Buildings or Land.

Whenever a district disposes by sale or lease of any land or buildings no longer needed for school purposes, the net proceeds therefrom shall be remitted to the state, as rental payments pursuant to Education Code Section 17732. Such payment(s) shall be applied to the outstanding balance of any approved projects in the order(s) of approval.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

1865.71. Disposition of Excess Improvements Acquired With Site Purchase.

(a) Excess improvements acquired with a site purchase shall be offered for sale prior to the advertising of a project for construction bids, in accordance with the method and manner prescribed for the sale of personal property under Section 39520 et seq. of the Education Code. The net proceeds received from any such disposition shall be deposited in the County School Lease-Purchase Fund as a credit against the cost of the project.

(b) When facilities acquired with a site purchase have been offered for sale pursuant to Section 39520 et seq. of the Education Code and no acceptable bids are received prior to the time the construction project is ready to be advertised for construction bids, the district shall adopt a resolution making a finding that the property is of insufficient value to defray the costs of arranging a subsequent sale as provided by Section 39521(b) of the Education Code and proceed to demolish such property using funds approved in the project for this purpose.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment of subsection (a) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

Article 8. Lease-Purchase of Sites and Plans

1865.75. Advance Purchase of Sites and Preparation of Plans.

(a) Except as otherwise provided by the act or these regulations, the provisions of these regulations shall apply to applications for sites and/or plans and specifications made pursuant to Section 17720 of the act.

(b) Nothing contained in the regulations shall be construed to prohibit the executive officer from entering into a lease agreement with option to purchase for a site and/or plans pursuant to Regulation 1865.32 without construction, even though such items may constitute only a part of the project as approved by the board. A lease-purchase agreement or agreements may be subsequently entered into by the executive officer for the balance of the project.

Article 9. Environmental Impact Requirements

1865.80. Section References Unless Otherwise Qualified.

Section references, unless otherwise qualified, apply to the respective sections of the "Guidelines" as hereinafter defined.

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§ 1865.3

§ 1865.33

§ 1865.43

§ 1865.50

§ 1865.70

Article 1. Definitions

1863.1. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the act:

- (a) **The Act.** Chapter 22, Part 10, of the Education Code.
- (b) **Board.** The State Allocation Board.
- (c) **Executive Officer.** The executive officer of the State Allocation Board.
- (d) **Application.** A request pursuant to the act to lease a project. Such request shall be on forms prescribed by the board, together with such other information as may be required by the executive officer.
- (e) **District or Applicant School District.** Any school district applying for a project or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.
- (f) **District Representative.** One or more individual members of the district's staff appointed by it as "district representative" to file an application with the board on behalf of the district and to act as liaison between the board and the district.
- (g) **Agent of the Board.** The applicant school district appointed by the board as its agent to perform specifically authorized acts necessary to construct and equip the project.
- (h) **Facility.** All or a portion of any real property, site improvement, utilities, buildings, or furniture and equipment contained in a project.
- (i) **Lease Agreement with Option to Purchase.** An agreement between an applicant school district and the State to lease with an option to purchase a project, as defined in the act, from the State.
- (j) **Lease-Purchase Project.** A project for which the district has or intends to enter into one or more lease agreements with option to purchase on a given site.
- (k) **Reconstruction.** Reconstruction for the purpose of Section 17721 shall be considered the substantial architectural alteration or modification of a building in order to bring it to modern educational standards.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. New Subgroup 11 (Sections 1863.1-1863.25, not consecutive) filed 2-3-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment of subsections (e) and (g) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 180 days or emergency language will be repealed on 7-16-80.
3. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

Article 2. General Provisions

1863.2. Purpose.

The purpose of these regulations is to prescribe the procedures necessary for the implementation and administration of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (hereinafter referred to as "the act").

1853.3. What May Be Provided.

The act provides for the construction, reconstruction, or replacement of school facilities by the State Allocation Board under an agreement between a school district and the State.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment filed 3-17-50 as an emergency, effective upon filing (Register 50, No. 11). A Certificate of Compliance must be transmitted to OAH within 150 days or emergency language will be repealed on 7-15-50.

2. Certificate of Compliance filed 6-25-50 (Register 50, No. 25).

1853.4. Qualifications.

Any school district may qualify to file an application for a lease-purchase project and enter into a lease agreement with option to purchase with the board, providing such applicant school district has sufficient building area entitlement as determined pursuant to the provisions of Article 4 of these regulations to justify the application being filed for new building construction or reconstruction.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-50 as an emergency, effective upon filing (Register 50, No. 11). A Certificate of Compliance must be transmitted to OAH within 150 days or emergency language will be repealed on 7-15-50.

2. Certificate of Compliance filed 6-25-50 (Register 50, No. 25).

1853.5. Executive Officer.

The executive officer shall perform all acts necessary to carry out the provisions of the act except such functions as are reserved to the board and to other agencies by law or by these regulations.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment filed 3-17-50 as an emergency, effective upon filing (Register 50, No. 11). A Certificate of Compliance must be transmitted to OAH within 150 days or emergency language will be repealed on 7-15-50.

2. Certificate of Compliance filed 6-25-50 (Register 50, No. 25).

1853.6. Limitation of State Responsibility.

In approving an application for a lease-purchase project and making funds available therefor, neither the State nor any department or agency thereof shall assume any responsibility not otherwise imposed on it by statute or these regulations.

1853.7. References to Education Code Prior to Recodification of 1976.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer filed 3-17-50 as an emergency, effective upon filing (Register 50, No. 12). A Certificate of Compliance must be transmitted to OAH within 150 days or emergency language will be repealed on 7-15-50.

2. Certificate of Compliance filed 6-25-50 (Register 50, No. 25).

1853.8. Insurance.

The insurance required by Section 17735 of the act shall be in an amount that will guarantee full replacement or repair of the facilities for which claims are made.

(Register 22, No. 22—4-20-62)

1563.9. Priority Points.

(a) Priority points shall be computed and assigned to applications whenever the board determines that there will be insufficient funds to meet the estimated needs for all districts in any given fiscal year. Whenever the assignment of priority points is required, applications that are in order for approval shall be considered by the board in sequence according to the number of priority points credited to each application. The board shall from time to time establish the minimum number of priority points necessary to qualify an application for approval consideration by the board. Such minimum shall be based upon the funds available and the estimated needs for the fiscal year.

(b) Priority points shall be computed on a districtwide basis, except for those districts having four or more high school attendance areas (excluding continuation high schools). In such case, points shall be considered on the basis of the attendance area of the project and all attendance areas adjacent thereto.

(c) For the purposes of computing priority points pursuant to the provisions of Section 17716 of the act, all existing building areas except central administration and maintenance facilities, shall be considered.

(d) Priority points shall be allowed as follows:

(1) Five priority points shall be allowed for each percent of the maximum allowable building area which may be included in an application as new building area (not replacement area).

(2) One priority point shall be allowed for each percent of the maximum allowable building area which may be included in an application as new building area replacing existing inadequate building area.

(3) One priority point shall be allowed for each percent of the maximum allowable building area which may be included in an application as reconstruction of an existing building, originally constructed at least 30 years prior to the date of approval of the reconstruction project.

(4) One priority point shall be allowed for each 5% of increase between the current average daily attendance and the average daily attendance 5 years previously. The average daily attendance will be based on the active enrollment report (R-30) filed with the Department of Education as of the end of the first school month.

(5) One priority point shall be allowed for each month that the application of the district has been in good order and awaiting approval.

(e) If any computation of priority points results in a fraction of a point that is less than one-half, such fraction shall be disregarded and the number of priority points shall be taken as the next lowest whole number. If such computation results in a fraction of a point which is one-half or more, such fraction shall be disregarded and the number of priority points shall be taken as the next highest whole number.

(f) Approvals and lease agreements made in priority order pursuant to this section shall be limited to that portion of a project pertaining to the acquisition of a site and the preparation of construction plans and specifications. Such approvals shall be limited to not more than 25% of the funds made available for the program.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. New section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 25).

1865.10. Priority Points for Construction.

(a) Priority points may be computed and applied in the consideration of approvals for construction funds. Such priority points shall be maintained as a separate series from priority points computed pursuant to Section 1865.9 of these regulations, and shall be identified as "priority points for construction". Any such computation of priority points for construction shall be determined as prescribed by said Section 1865.9, except as follows:

(1) The term "maximum allowable building area" in Section 1865.9(d) (1) shall mean the most recent computation of such area rather than that which applied at the time the application was first approved.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. New section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 25).

1865.11. Priority Points for Remote Attendance Center.

(a) Upon a finding by the board that an extreme hardship exists as a result of an attendance center of a school district being located in a remote area, in excess of 30 miles from any other attendance center of the district, the board may base the computation of priority points for the remote attendance center in the same manner as if it was a separate school district.

NOTE: Authority cited: Section 17705, Education Code. Reference: Section 17700-17749, Education Code.

HISTORY:

1. New section filed 6-23-80; effective thirtieth day thereafter (Register 80, No. 25).

Article 3. Application Procedure

1865.21. Form of Application.

A district desiring to obtain a project pursuant to the act shall file documents substantially as follows:

(a) A resolution of the governing board of the applicant district authorizing the application.

(b) An application in proper form.

(c) A statement of the estimated cost of the project certified by a licensed architect or structural engineer.

(d) Layout plans showing the entire construction project.

(e) Such other documentation as may be required by the executive officer.

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any building area being acquired by any lease-purchase agreement, proposed building area which has been otherwise financed or any building area which has been used to justify any site and/or plans lease-purchased project under this act. Existing building area shall be excluded as follows:

(1) The area of any building to which Article 3 of Chapter 2, Part 23 of the Education Code would not apply.

(2) The area of any building, the construction or reconstruction of which has occurred more than 30 years prior to the date of the application.

(3) The area of any relocatable structure under lease pursuant to Education Code Section 39243.

(d) Existing and proposed building area shall be computed in accordance with the following:

(1) All measurements shall be made from exterior rough wall lines.

(2) Totally enclosed space shall be counted as full area. Among the various types of space to be included shall be areas such as:

(A) Basement rooms and basement boiler rooms.

(B) Heater rooms, including those above the normal floor level.

(C) Each floor of multi-story buildings.

(D) The area of completely enclosed stairs for each floor level served.

(3) Certain partially enclosed areas shall be counted as full area and shall include:

(A) Open, covered areas which provide shelter between buildings that are less than 20 feet apart.

(B) Mezzanines open on one or more sides which may easily and readily be used or converted to use as instructional space or passageways.

(C) Each floor of library stacks.

(4) Covered unenclosed space shall be counted as one-half of the actual area. Included in such space are:

(A) Open, covered passages, arcades, shelters, porches, and planting areas.

(B) Open, covered areas which provide shelter between buildings that are 20 feet apart or more.

(C) Overhangs and sun control devices which are so designed and located that they function as, and in lieu of, covered walks or other shelter areas.

(D) Mezzanines for storage purposes.

(5) Areas which shall not be counted include:

(A) Eaves and sun control devices except as specified above.

(B) Unsheltered platforms and steps.

(C) When isolated from building structures, the area of incinerators, pump-houses, transformer vaults, and service yards.

(D) Elevator shafts where constructed in order to comply with Chapter 7 of Division 5 of the Government Code (commencing with Section 4450), relating to facilities for handicapped persons.

(E) That portion of the area below the first floor of a multistory building used exclusively for employee parking, provided the board finds that other means of parking are not economically feasible.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

L. New subsection (c) (3) filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).

1983.94. Allowable School Building Area for Facilities for Exceptional Children.

(a) In conformity with the requirements of Section 17747 of the Education Code, the board establishes allowable building areas for the education of physically handicapped, educationally handicapped, and mentally retarded minors, to be computed as follows:

(1) Divide the number of eligible pupils by the maximum class size established by law for special day classes for the type of pupils to be enrolled and increase the quotient to the next highest integer where a fractional amount is produced.

(2) Multiply the number computed in (1) by the maximum building area allowance shown below when the facility is planned for the following types of exceptional children:

Types of Pupils	Maximum Class Size		Area Allowance—Sq. Ft.		
	Ages 3-8	Ages 9-20	K-3	7-9	9-12
Acoustic.....	6	6	1060	1060	1060
Deaf Acoustic, Multihandicapped*, or Combination of Deaf & Severely Hard of Hearing.....	6	6	1235	1235	1300
Blind Severely Hard of Hearing, or Combination of Blind & Partially Hearing.....	8	10	1200	1410	1440
Partially Hearing.....	10	15	1390	1410	1440
Educationally Handicapped.....	12	12	1000	1000	1000
Trained Mentally Retarded.....	12	12	1000	1000	1000
Educable Mentally Retarded.....	15	15	1373	1335	1500
Orthopedically Handicapped.....	(See 3)	(See 3)			
	15	15	2000	2000	2000
Development Centers for Handicapped Pupils.....	10	10	2000	2000	2000
Deaf-Blind Multihandicapped.....	3	5	1500	1500	1500
			(See 4)	(See 4)	(See 4)

*Other than Deaf-Blind Multihandicapped

(3) When the chronological age span of educable mentally retarded minors is greater than four years, the maximum class size shall be 15 pupils.

(4) When facilities to be constructed will include occupational therapy, physical therapy, and related auxiliary spaces for orthopedically handicapped minors, additional building area allowances for such spaces of up to 5,000 square feet shall be made if the facility is designed for one to three classes and up to 7,000 square feet for four to eight classes.

(5) When facilities are to be constructed for deaf-blind multihandicapped, a one-time additional building area allowance of 500 square feet per school will be made for the initial construction of facilities.

(6) When facilities are to be constructed for blind or partially seeing minors served in an integrated instructional program which is housed in two or more schools, the building area allowance may be allocated among the schools when approved by the Department of Education. No area of instruction shall be allowed which is less than 200 square feet.

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(Register 80, No. 28--0-28-80)

(7) When facilities are to be provided for minors having speech defects or disorders, additional building area per school is permitted. This additional area allowance is limited to:

(a) 200 square feet of new building area per school in schools constructed after July 1, 1968, where such schools are designed to permit utilization for remedial and other special services.

(b) 200 square feet of new building area per school in schools constructed between July 1, 1933 and July 1, 1968, where such additional area allowance is used for the construction of a new speech facility.

(c) Conversion of existing facilities or a combination of new construction and conversion of such existing facilities to provide housing for such minors having speech defects or disorders, provided the cost does not exceed the computed cost for 200 square feet of new classroom construction based upon cost standards adopted by the board.

(d) The acquisition of mobile speech therapy facilities, provided the cost does not exceed the combined computed cost for 200 square feet of new classroom construction, based upon cost standards adopted by the board, at all such schools which will be served by the mobile facility.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment filed 3-17-80 as an emergency, effective upon filing (Register 80, No. 18). A Certificate of Compliance must be transmitted to OAH within 180 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 5-26-80 (Register 80, No. 20).

1885.35 Allowable Building Area for Small Elementary School Districts.

(a) For the purpose of computing the building area allowance for small elementary school districts in accordance with Section 17743 of the Education Code, the following shall apply:

(1) In an applicant district maintaining any combination of grades kindergarten through 6 with an estimated average daily attendance of less than 300 in such grades:

<i>Estimated ADA in Kindergarten and Grades 1-6</i>	<i>Maximum Total Building Area (Sq. Ft.)</i>
6-25	1,000
26-50	3,500
51-75	5,750
76-100	7,500
101-125	8,415
126-150	10,200
151-175	12,000
176-200	13,500
201-225	15,075
226-250	16,500

(2) In an applicant district maintaining any combination of grades kindergarten through 6 with an estimated average daily attendance of less than 300 in grades kindergarten through 6, there shall be allowed, in addition to the maximum total building area shown above, a maximum area of 75 sq. ft. for each attendance unit in grades 7 and 8.

1801.31. Allowable Building Area for Continuation High Schools.

(a) The estimated average daily attendance for continuation high schools shall be based on those pupil units attending continuation classes (as defined in Section 1771.30(b) (3) of these regulations) which are assigned to the continuation high school.

(b) Building area shall be allowed for the continuation high school in accordance with the following schedule:

<i>Estimated Average Daily Attendance</i>	<i>Square Feet of Building Area</i>
21 to 40	4,800
41 to 60	4,800 + 120 for each pupil unit over 40
61 to 90	7,900 + 115 for each pupil unit over 60
91 to 120	10,650 + 105 for each pupil unit over 90
121 to 150	13,800 + 90 for each pupil unit over 120
Over 150	16,500 + 60 for each pupil unit over 150

(c) For purposes of this section, a continuation high school must be physically and operationally distinguishable from other schools. If the continuation high school shares space with another type of school, it can be considered to be a continuation high school within the meaning of this section only if the district can show conclusively that the continuation facility is in fact a separate institution with its own administration, teaching staff, and course of study, located in a clearly identifiable building area.

1801.32. Minimum Essential Instructional Facilities.

If the extent the existing area of the district as determined pursuant to Section 17742 of the act results in a district being unable to apply for the minimum amount of essential instructional facilities required, the existing area may be reduced, with the approval of the board, by an amount sufficient to permit such essential instructional facilities to be constructed under the act. Such reduction shall be construed as being for the purpose of alleviating any substantial hardship which might otherwise occur.

1801.33. Building Cost Standards.

(a) Pursuant to Section 17717 of the act, the board shall establish allowable school building cost standards which shall be effective until next revised.

(b) No application or bid shall be approved and no funds shall be provided for any construction which exceeds the allowable costs established as provided herein. In the event, however, that it is shown from any studies by the board that actual building costs in an area or portion of an area differ substantially from the allowable costs established for the area, the board may at any time revise the allowable building cost standards for the area or create additional areas and establish appropriate allowable cost standards for such additional areas.

1801.34. Unconventional Sources of Energy.

Where a school district requests an increased cost allowance for the design and construction of facilities which will conserve unreplenishable energy resources pursuant to Section 17718 of the act, a life cycle cost comparison must be submitted to the board. Such cost comparison shall be prepared by a competent authority and provide for the amortization of the increased cost allowance over a period not to exceed the lesser of 30 years or the term of the lease.

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(p. 71.72,50.7)****(Register 69, No. 22-42349)****1935.40. Reconstruction or Replacement.**

(a) Any building which has not been constructed or reconstructed less than 30 years prior to the date of approval of the project applied for under the act may be eligible for reconstruction or replacement provided the allowable cost for such reconstruction or replacement is reduced to compensate for any work done to the building in the 30 years preceding the application. The amount to be deducted from the allowable cost shall be the actual cost of the work performed depreciated on the basis of 1/30 for each year which has elapsed since the performance of said work.

(1) No project shall be approved for reconstruction, the cost of which will exceed cost standards established by the board for replacement of the amount of area equivalent to the actual reconstruction area.

(2) Replacement. No building shall be replaced until the board has made a finding that it would not be economical or good practice to reconstruct the school facilities to meet present-day educational and structural standards.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment of subsection (a) (1) filed 3-17-80 as an emergency, effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-81.

2. Certificate of Compliance including amendment filed 6-25-80 (Register 80, No. 26).

1935.41. Site Development.

(a) Site development may be included as a part of the project and classified as follows:

(1) Utility Services may include but are not limited to facilities required to bring water, sewer, electricity, telephone, and fuel supply services to such suitable point on the site as may be necessary for the functioning of a project.

(2) Off-site Development may include but is not limited to such street improvements as are in line with the approved standards of the board and as are determined by the executive officer to be necessary. However, whenever a school building to be constructed pursuant to an apportionment under the act is situated in a city, city and county, or county which requires the construction of any street or road connected with the school premises on which the building is situated, the board shall review the requirement and recommend to the entity in question a plan of construction adequate to meet the needs of the school district and safety of the public. Thereafter, if any different plan of improvement or improvement to higher standards than so recommended is required by such entity, the additional cost shall be borne by the entity as provided in Section 2117 of the Streets and Highways Code.

(3) Service Site Development may include but is not limited to site clearance, rough grading, and drainage which may be required to make a site usable in accordance with standards established by the board.

(4) General Site Development may include but is not limited to any other development of a site, including such items as grading (except rough grading), walks, curbs, roadways, parking areas, fencing, flagpoles, immaturity, hand-surfaced and turfed play areas, landscaping, and playground equipment.

(A) In the event the proposed construction consists of an addition to an existing school plant (whether financed by State Funds or by other means) the complete existing construction area and the existing site development shall be evaluated by the Director of General Services in determining any allowance for general site development.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer of subsection (a) (3) and new subsections (a) (3), (a) (4), and (a) (4) (A) filed 3-17-50 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-15-50.

1939.42. Furniture and Equipment.

- (a) Furniture and equipment may be included as part of the project.
- (b) Cost standards for furniture and equipment shall be established on a quarterly basis by the board based upon the kinds, quality, quantities, and costs of furniture and equipment most commonly acquired by school districts for comparable facilities.
- (c) Before requesting funds for furniture and equipment for a project, the district shall give full consideration to all usable furniture and equipment existing in the district. The district may apply for funds to provide such furniture and equipment as needed to complete the project within the standards established by the board. The furniture and equipment allowance for replacement or reconstruction projects cannot exceed 50% of the allowance for comparable new facilities unless specifically approved by the board.
- (d) An allowance will be calculated for each construction project in accordance with 1939.42 (b) and (c) above. The amount so calculated will be authorized as the cash allowance for the project to be expended by the district in furnishing and equipping the project.
- (e) Furniture and equipment shall be purchased by the district by competitive bidding where required to do so by the Education Code or other provisions of law. However, even where the district is not otherwise required to purchase the same through competitive bidding, the board may require the district to do so where it believes that it is likely that such bidding would result in a lower cost than other methods.

1939.43. Repairs, Renewals, and Replacements.

- (a) The district shall make all repairs, renewals and replacements necessary to keep the project in good repair, working order and condition at all times. All costs for this purpose will be borne by the district.
- (b) In the event the project requires repairs, renewals or replacements as a result of damages from any cause, casualty, or otherwise, the district shall make the same. In such event the board shall contribute any insurance funds available to it for this purpose.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-50 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-15-50.

2. Certificate of Compliance filed 6-25-50 (Register 80, No. 25).

(Register 50, No. 25—60222)

Article 5. Project Approvals and Lease-Purchase Agreements**1985.50. Approval of Applications.**

The board may approve in whole or in part any application submitted pursuant to the Act. Upon receipt of the application, the executive officer shall review it for proper form and compliance with statutes and regulations of the board. After such review and any necessary corrections, the executive officer shall present the application to the board with recommendations, in whole or in such part as will satisfy the board's policy of approving funds for feasibility studies, site acquisition and/or preparing plans and specifications, and project construction in separate increments, whereupon the board shall consider the application provided it (the application) has sufficient priority to warrant such consideration. If the application meets with the board's approval, it shall grant its approval and shall make an apportionment for the financing of the project from any sources available for such purposes. The apportionment shall be conditioned upon the district subsequently entering into a lease-purchase agreement with the state. After such approval and apportionment of funds, the executive officer of the board shall authorize the district, as the agent of the board, to perform all acts necessary to effectively complete the particular phase of the approved project. Such authorization shall be specifically set forth in writing to the district and shall be conditioned upon the district having entered into or subsequently entering into a lease-purchase agreement with the board either in the form of (1) a lease-purchase for feasibility studies, (2) the lease-purchase of a site and/or plans, or (3) the lease-purchase of an entire project. Failure on the part of the district to enter into such agreement shall invalidate such authorization, and any obligations incurred as a result thereof shall become the sole responsibility of the district. Upon receipt of successive phases of the project, the executive officer shall have the authority to amend the project budget within the apportionment so made or to reduce the total apportionment to conform to the project as bid. The executive officer is authorized to enter into a lease-purchase agreement or agreements with the district on behalf of the board.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment filed 3-17-80 as an emergency; effective upon filing (Register 50, No. 12). A Certificate of Compliance must be transmitted to OAH within 180 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance including amendment filed 6-25-80 (Register 50, No. 25).

1985.51. Apportionment.

(a) In addition to complying with any other requirements of these regulations or the act, the board, at the time of making an apportionment, shall:

- (1) Approve a total estimated cost and a budget for the project.
- (2) Prescribe the purposes for which an apportionment may be expended.
- (3) Prescribe the manner, terms, and conditions for releasing the apportionment to the district.

(b) Notwithstanding anything to the contrary in these regulations, the board shall have power to modify any apportionment or resolution of apportionment where it determines good cause exists therefor.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer of subsections (a) (4)-(5) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 18). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

1983.52. Rental Payment.

The rental payments required by Section 17732 of the act will become due and payable on September 15 following the date the lease-purchase agreement is executed and on each successive September 15th thereafter during the life of this agreement. The payment may be in the form of a contribution toward the cost of an ongoing project or as a direct remittance. An Annual Certification of Funds Available for Rents shall be submitted by each district prior to August 15 each year. The payment required for a district desiring to exercise an option to purchase shall be the total cost of the project less any rental payments made or to be made from sources identified in Section 17732 (c) and (d) of the act.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 18). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

Article 6. Project Budget

1983.50. Contents of Project Budget.

(a) The project budget prescribed by the board shall be set up in such a manner as to contain all costs attributable to the project, categorized as follows: Sites; Plans; Construction; Tests; Inspection; Furniture and Equipment; and Contingencies. Within these major categories the following limitations shall apply:

(1) Sites:

(A) The board shall not authorize the expenditure of any funds for real property in excess of the fair market value of such property.

(B) Relocation assistance costs to landowners or persons displaced pursuant to Sections 7960 et seq. of Chapter 15, Division 7, Title I of the Government Code, referred to as the "Relocation Assistance Law", in conjunction with an acquisition of a site for which an application for a lease-purchase project is made, shall be administered by the district affected in accordance with the requirements of said sections.

(2) Plans:

(A) Fees for architectural and engineering services, including architectural supervision, shall not exceed the customary amounts.

(B) The board shall require that each architectural contract contain a clause to the effect that the architect shall be responsible for making, without additional cost to the district, any changes or redesigning made necessary as a result of the bids exceeding the cost standards established by the board.

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(P. 71.7259.11)****(Register 80, No. 25--020-02)**

(C) Any other plan fees or changes required by law.

(3) Construction: Costs shown for construction shall not exceed the cost standards established by the board.

(4) Tests: The amount for tests shall be limited to the actual costs of tests which are required by Title 21 of the California Administrative Code or other applicable provisions of law, or which are in accordance with good or accepted practice.

(5) Inspection: The amount for inspection shall be limited to such amounts as is required to insure that the project is completed in accordance with plans and specifications and any other legal requirements.

(6) Furniture and Equipment: The amount for furniture and equipment shall be limited to that determined pursuant to Section 1865.42 hereof.

(7) Contingencies:

(A) An amount may be included for contingencies which shall not exceed such maximums as the board may prescribe for any class of application or value of facilities in a project budget.

(B) Contingency funds may be used only after specific approval by the executive officer for items of construction or other approved project costs where the cost increase or the item required is necessary for the completion of a facility which has been approved by the board.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. New subsection (a) (8) (C) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

1865.61. Revision of a Project Budget.

(a) The executive officer may revise any item within a project budget, upward or downward, provided that no such revision results in an increase in the total amount of the project budget approved by the board.

(b) The executive officer may reduce any apportionment as may be necessary to reflect any revision made pursuant to (a) above.

Article 7. Disposition of Property**1865.70. Disposition of School Buildings or Land.**

Whenever a district disposes by sale or lease of any land or buildings no longer needed for school purposes, the net proceeds therefrom shall be remitted to the state, as rental payments pursuant to Education Code Section 17732. Such payment(s) shall be applied to the outstanding balance of any approved projects in the order(s) of approval.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

2. § 1865.32.5
§ 1865.32.5
§ 1865.32.5

Title 2, CCR, Register 81-19

§ 1865.32.5

§ 1865.33

Article 1. Definitions

1865.1. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the act:

- (a) The Act. Chapter 22, Part 10, of the Education Code.
- (b) Board. The State Allocation Board.
- (c) Executive Officer. The executive officer of the State Allocation Board.
- (d) Application. A request pursuant to the act to lease a project. Such request shall be on forms prescribed by the board, together with such other information as may be required by the executive officer.
- (e) District or Applicant School District. Any school district applying for a project or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.
- (f) District Representative. One or more individual members of the district's staff appointed by it as "district representative" to file an application with the board on behalf of the district and to act as liaison between the board and the district.
- (g) Agent of the Board. The applicant school district appointed by the board as its agent to perform specifically authorized acts necessary to construct and equip the project.
- (h) Facility. All or a portion of any real property, site improvement, utilities, buildings, or furniture and equipment contained in a project.
- (i) Lease Agreement with Option to Purchase. An agreement between an applicant school district and the State to lease with an option to purchase a project, as defined in the act, from the State.
- (j) Lease-Purchase Project. A project for which the district has or intends to enter into one or more lease agreements with option to purchase on a given site.
- (k) Reconstruction. Reconstruction for the purpose of Section 17721 shall be considered the substantial architectural alteration or modification of a building in order to bring it to modern educational standards.
- (l) Construction. Construction for purposes of Education Code Section 17702.1 shall include the correction of structural deficiencies in a school building previously constructed pursuant to Article 3 of Chapter 2 of Part 23 of Division 3 of Title 2 of the Education Code when it is determined by the Board that such deficiencies constitute a serious health and safety hazard.

NOTE: Authority cited: Section 17705, Education Code. Reference: Section 17702.1, Education Code.

HISTORY:

1. New Subgroup 11 (Sections 1865.1-1865.95, not consecutive) filed 2-3-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment of subsections (e) and (g) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 180 days or emergency language will be repealed on 7-16-80.
3. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).
4. New subsection (l) filed 5-4-81; effective thirtieth day thereafter (Register 81, No. 19).

Article 2. General Provisions

1865.2. Purpose.

The purpose of these regulations is to prescribe the procedures necessary for the implementation and administration of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (hereinafter referred to as "the act").

1865.3. What May Be Provided.

The act provides for the construction, reconstruction, or replacement of school facilities by the State Allocation Board under an agreement between a school district and the State.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

1865.4. Qualifications.

Any school district may qualify to file an application for a lease-purchase project and enter into a lease agreement with option to purchase with the board, providing such applicant school district has sufficient building area entitlement as determined pursuant to the provisions of Article 4 of these regulations to justify the application being filed for new building construction or reconstruction.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

1865.5. Executive Officer.

The executive officer shall perform all acts necessary to carry out the provisions of the act except such functions as are reserved to the board and to other agencies by law or by these regulations.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

1865.6. Limitation of State Responsibility.

In approving an application for a lease-purchase project and making funds available therefor, neither the State nor any department or agency thereof shall assume any responsibility not otherwise imposed on it by statute or these regulations.

1865.7. References to Education Code Prior to Recodification of 1976.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

1865.8. Insurance.

The insurance required by Section 17738 of the act shall be in an amount that will guarantee full replacement or repair of the facilities for which claims are made.

(Register 61, No. 19-6-9-81)

(4) Progress the latest reported enrollment through the applicable two or three year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (3) above.

(d) From the projected enrollment, compute the estimated average daily attendance as defined in Subsection (b) (5) above.

(e) In the event that there is good reason to believe the number of pupils being added from construction of new housing units exceeds the number implicit in the cohort survival computation and when the land area of the district is less than 75% developed, the board may, at its discretion, modify the estimated average daily attendance as follows:

(1) Determine the graded enrollment one year from the latest reported enrollment by a one-year grade progression, adjusted for dropouts at the high school level.

(2) Determine the enrollment derived from new homes implicit in the cohort survival computation as follows: (i) Subtract the enrollment computed in (1) above from the one-year projection of enrollment as determined by the cohort survival method; (ii) To the remainder, add two percent of the latest enrollment for the end of the first or sixth school month, whichever is applicable. If the foregoing computations result in a negative number, the number shall be deemed to be zero.

(3) Determine the pupil yield per housing unit of housecount, as established by a survey of occupied housing units in the district, for the current year and the two preceding years. The survey shall take into consideration the different pupil yields of multiple and single family housing units or other significant yield characteristics. The current year yield factor for each type of housing unit shall be modified by the average annual difference of the factor for each type for the two preceding years.

(4) In the event that prior year data referred to in (3) is unavailable, the current yield factor shall be modified as the board shall prescribe.

(5) Establish the pupil yield of the housecount by multiplying the number of housing units in the housecount by the applicable yield per housing unit as determined above. Subtract the enrollment from new homes determined in (2) above from the yield of the housecount; the result of this computation is the amount by which the graded enrollment computed under the cohort survival method shall be changed.

(6) The housecount and surveys described in (3) and (4) shall be conducted by the district in accordance with methods, procedures, and standards which are approved by the Office of Local Assistance with respect to each specific case.

(f) Other provisions of this section notwithstanding, high school enrollment of a district or attendance area for the end of the first school month may be used for estimating ADA.

1865.31. Estimated Average Daily Attendance—High School Attendance Area.

(a) As permitted by Section 17741, a district may file an application based upon a high school attendance area rather than a districtwide basis. A high school district or a unified school district filing on a high school level would base its application on enrollment estimated to attend such high school and upon facilities already existing in such high school attendance area. An elementary school district or unified district filing on an elementary level would base its application on the enrollment and existing facilities of the elementary schools serving the high school attendance area under consideration.

(b) The estimated average daily attendance of a high school attendance area as permitted by Section 17741 of the act for determining the allowable building area, when the district is applying only on a high school attendance area basis as opposed to a districtwide basis, shall be computed in the same manner as that set forth in regulation 1865.30, except that the enrollment used in such computation shall be that of the high school attendance area rather than the entire district and shall be certified by the district.

(c) In those instances where the high school attendance area results in a split in individual attendance areas of the contributing elementary or junior high schools, an assignment of enrolled pupils in such split attendance areas shall be made by the district in a manner satisfactory to the executive officer.

1865.32. Application for Site and/or Plans.

In order to expedite a total school facility, a school district may first apply for a project which includes only the advance purchase of the land and preparation of plans and specifications. The acquisition of the site and the plans preparation shall be based on justification documents for the total school facility.

1865.32.5. Utilization of Existing Facilities.

(a) No project shall be approved for any district until the board has first made a determination that the applicant district will utilize all existing facilities to the extent economically and practically feasible. Sufficient justification must be provided by the district to permit the board to make such determination.

(b) If the board determines that it will not be economical or practical to utilize all existing facilities of the district, project approval then will be contingent upon the agreement by the district to dispose of any salable interest in any building or site that the board determines cannot be utilized and contribute the net proceeds of the sales to the State School Building Lease-Purchase Fund as rents pursuant to Section 17732 of the act.

(c) Approval of a project applied for pursuant to Section 17741 of the act will be contingent upon the conditions specified in subdivisions (a) and (b) of this section.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17722 and 17741, Education Code.

HISTORY:

1. New section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Amendment of subsection (b) filed 5-4-81; effective thirtieth day thereafter (Register 81, No. 19).

1865.33. Computation of Allowable School Building Area.

(a) No project shall be approved, the building area of which, when added to the area of adequate school construction existing in the applicant school district or the applicable high school attendance area if the application is filed on such basis, will provide a total area of school building construction in excess of that computed pursuant to Education Code Sections 17740 through 17749.

(b) All of the existing building area owned or operated by the district regardless of conditions or purpose for which used, shall be reported to the board by the district as prescribed in this regulation. Where an allowable building area is computed on the basis of an attendance area as provided by Section 17741 of the act, the existing building area shall be considered the building area within such attendance area.

(c) Existing adequate building area shall include all existing building area not otherwise excluded by the act or these regulations, building area for which applications have been approved under any state or federal building program.

(Register 81, No. 19—5-8-81)

any building area being acquired by any lease-purchase agreement, proposed building area which has been otherwise financed or any building area which has been used to justify any site and/or plans lease-purchased project under this act. Existing building area shall be excluded as follows:

(1) The area of any building to which Article 3 of Chapter 2, Part 23 of the Education Code would not apply.

(2) The area of any relocatable structure for temporary use building under lease pursuant to Education Code Sections 39243 or 39245.

(3) The area of any district administration or district maintenance facilities except those constructed pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

(d) Existing and proposed building area shall be computed in accordance with the following:

(1) All measurements shall be made from exterior rough wall lines.

(2) Totally enclosed space shall be counted as full area. Among the various types of space to be included shall be areas such as:

(A) Basement rooms and basement boiler rooms.

(B) Heater rooms, including those above the normal floor level.

(C) Each floor of multi-story buildings.

(D) The area of completely enclosed stairs for each floor level served.

(3) Certain partially enclosed areas shall be counted as full area and shall include:

(A) Open, covered areas which provide shelter between buildings that are less than 20 feet apart.

(B) Mezzanines open on one or more sides which may easily and readily be used or converted to use as instructional space or passageways.

(C) Each floor of library stacks.

(4) Covered unenclosed space shall be counted as one-half of the actual area.

Included in such space are:

(A) Open, covered passages, arcades, shelters, porches, and planting areas.

(B) Open, covered areas which provide shelter between buildings that are 20 feet apart or more.

(C) Overhangs and sun control devices which are so designed and located that they function as, and in lieu of, covered walks or other shelter areas.

(D) Mezzanines for storage purposes.

(5) Areas which shall not be counted include:

(A) Eaves and sun control devices except as specified above.

(B) Unsheltered platforms and steps.

(C) When isolated from building structures, the area of incinerators, pump-houses, transformer vaults, and service yards.

(D) Elevator shafts where constructed in order to comply with Chapter 7 of Division 5 of the Government Code (commencing with Section 4450), relating to facilities for handicapped persons.

(E) That portion of the area below the first floor of a multistory building used exclusively for employee parking, provided the board finds that other means of parking are not economically feasible.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17740-17749, Education Code.

HISTORY:

1. New subsection (c) (3) filed 6-26-80; effective thirtieth day thereafter (Register 80, No. 28).

2. Amendments of subsections (b) and (c) filed 5-4-81; effective thirtieth day thereafter (Register 81, No. 19).

1003.34. Allowable School Building Area for Facilities for Exceptional Children.

(a) In conformity with the requirements of Section 17747 of the Education Code, the board establishes allowable building areas for the education of physically handicapped, educationally handicapped, and mentally retarded minors, to be computed as follows:

(1) Divide the number of eligible pupils by the maximum class size established by law for special day classes for the type of pupils to be enrolled and increase the quotient to the next highest integer where a fractional amount is produced.

(2) Multiply the number computed in (1) by the maximum building area allowance shown below when the facility is planned for the following types of exceptional children:

Types of Pupils	Maximum Class Size		Area Allowance—Sq. Ft.		
	Ages 3-8	Ages 9-20	K-8	7-9	9-12
Autistic	6	6	1080	1080	1080
Deaf, Aphasie, Multihandicapped*, or Combination of Deaf & Severely Hard of Hearing	6	8	1235	1335	1360
Blind, Severely Hard of Hearing, or Combination of Blind & Partially Seeing	8	10	1290	1410	1440
Partially Seeing	10	12	1290	1410	1440
Educationally Handicapped	12	12	1080	1080	1080
Trainable Mentally Retarded	12	12	1860	1860	1860
Educable Mentally Retarded	18	18	1373	1635	1660
Orthopedically Handicapped	(See 3) 12	(See 3) 16	2000 (See 4)	2000 (See 4)	2000 (See 4)
Development Centers for Handicapped Pupils	10	10	2000 (See 4)	2000 (See 5)	2000 (See 5)
Deaf-Blind Multihandicapped	3	5	1500 (See 4)	1500 (See 4)	1500 (See 4)

* Other than Deaf-Blind Multihandicapped

(3) When the chronological age span of educable mentally retarded minors is greater than four years, the maximum class size shall be 15 pupils.

(4) When facilities to be constructed will include occupational therapy, physical therapy, and related auxiliary spaces for orthopedically handicapped minors, additional building area allowances for such spaces of up to 5,200 square feet shall be made if the facility is designed for one to three classes and up to 7,000 square feet for four to eight classes.

(5) When facilities are to be constructed for deaf-blind multihandicapped, a one-time additional building area allowance of 500 square feet per school will be made for the initial construction of facilities.

(6) When facilities are to be constructed for blind or partially seeing minors served in an integrated instructional program which is housed in two or more schools, the building area allowance may be allocated among the schools when approved by the Department of Education. No area of instruction shall be allowed which is less than 200 square feet.

(b) Notwithstanding anything to the contrary in these regulations, the board shall have power to modify any apportionment or resolution of apportionment where it determines good cause exists therefor.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer of subsections (a) (4)-(5) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 18). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

1865.52. Rental Payment.

The rental payments required by Section 17732 of the act will become due and payable on September 15 following the date the lease-purchase agreement is executed and on each successive September 15th thereafter during the life of this agreement. The payment may be in the form of a contribution toward the cost of an ongoing project or as a direct remittance. An Annual Certification of Funds Available for Rents shall be submitted by each district prior to August 15 each year. The payment required for a district desiring to exercise an option to purchase shall be the total cost of the project less any rental payments made or to be made from sources identified in Section 17732(c) and (d) of the act.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

Article 6. Project Budget

1865.60. Contents of Project Budget.

(a) The project budget prescribed by the board shall be set up in such a manner as to contain all costs attributable to the project, categorized as follows: Sites; Plans; Construction; Tests; Inspection; Furniture and Equipment; and Contingencies. Within these major categories the following limitations shall apply:

(1) Sites:

(A) The board shall not authorize the expenditure of any funds for real property in excess of the fair market value of such property.

(B) Relocation assistance costs to landowners or persons displaced pursuant to Sections 7260 et seq. of Chapter 16, Division 7, Title I of the Government Code, referred to as the "Relocation Assistance Law", in conjunction with an acquisition of a site for which an application for a lease-purchase project is made, shall be administered by the district affected in accordance with the requirements of said sections.

(2) Plans:

(A) Fees for architectural and engineering services, including architectural supervision, shall not exceed the standards established by the board.

(B) The board shall require that each architectural contract contain a clause to the effect that the architect shall be responsible for making, without additional cost to the district, any changes or redesigning made necessary as a result of the bids exceeding the cost standards established by the board.

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(C) Any other plan fees or changes required by law.

(3) Construction: Costs shown for construction shall not exceed the cost standards established by the board.

(4) Tests: The amount for tests shall be limited to the actual costs of tests which are required by Title 21 of the California Administrative Code or other applicable provisions of law, or which are in accordance with good or accepted practice.

(5) Inspection: The amount for inspection shall be limited to such amounts as is required to insure that the project is completed in accordance with plans and specifications and any other legal requirements.

(6) Furniture and Equipment: The amount for furniture and equipment shall be limited to that determined pursuant to Section 1865.42 hereof.

(7) Contingencies:

(A) An amount may be included for contingencies which shall not exceed such maximums as the board may prescribe for any class of application or value of facilities in a project budget.

(B) Contingency funds may be used only after specific approval by the executive officer for items of construction or other approved project costs where the cost increase or the item required is necessary for the completion of a facility which has been approved by the board.

NOTE: Authority cited: Section 17705, Education Code. Reference: Section 17729, Education Code.

HISTORY:

1. New subsection (a) (2) (C) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 180 days or emergency will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

3. Amendment of subsection (a) (2) (A) filed 5-4-81; effective thirtieth day thereafter (Register 81, No. 19).

1865.61. Revision of a Project Budget.

(a) The executive officer may revise any item within a project budget, upward or downward, provided that no such revision results in an increase in the total amount of the project budget approved by the board.

(b) The executive officer may reduce any apportionment as may be necessary to reflect any revision made pursuant to (a) above.

Article 7. Disposition of Property**1865.70. Disposition of School Buildings or Land.**

Whenever a district disposes by sale or lease of any land or buildings no longer needed for school purposes, the net proceeds therefrom shall be remitted to the state, as rental payments pursuant to Education Code Section 17732. Such payment(s) shall be applied to the outstanding balance of any approved projects in the order(s) of approval.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Repealer and new section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 180 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

1865.71. Disposition of Excess Improvements Acquired With Site Purchase.

(a) Excess improvements acquired with a site purchase shall be offered for sale prior to the advertising of a project for construction bids, in accordance with the method and manner prescribed for the sale of personal property under Section 39520 et seq. of the Education Code. The net proceeds received from any such disposition shall be deposited in the County School Lease-Purchase Fund as a credit against the cost of the project.

(b) When facilities acquired with a site purchase have been offered for sale pursuant to Section 39520 et seq. of the Education Code and no acceptable bids are received prior to the time the construction project is ready to be advertised for construction bids, the district shall adopt a resolution making a finding that the property is of insufficient value to defray the costs of arranging a subsequent sale as provided by Section 39521 (b) of the Education Code and proceed to demolish such property using funds approved in the project for this purpose.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700-17749, Education Code.

HISTORY:

1. Amendment of subsection (a) filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

Article 8. Lease-Purchase of Sites and Plans

1865.75. Advance Purchase of Sites and Preparation of Plans.

(a) Except as otherwise provided by the act or these regulations, the provisions of these regulations shall apply to applications for sites and/or plans and specifications made pursuant to Section 17720 of the act.

(b) Nothing contained in the regulations shall be construed to prohibit the executive officer from entering into a lease agreement with option to purchase for a site and/or plans pursuant to Regulation 1865.32 without construction, even though such items may constitute only a part of the project as approved by the board. A lease-purchase agreement or agreements may be subsequently entered into by the executive officer for the balance of the project.

Article 9. Environmental Impact Requirements

1865.80. Section References Unless Otherwise Qualified.

Section references, unless otherwise qualified, apply to the respective sections of the "Guidelines" as hereinafter defined.

1865.81. Definitions.

(a) For the purposes of this article, the following definitions shall apply:

(1) CEQA. The California Environmental Quality Act (Sections 21000 et seq., Public Resources Code).

(2) Significant Effect. A substantial adverse change in any of the physical conditions within the area affected by the activity (Section 15040).

(3) Guidelines. The regulations of the Secretary for Resources adopted in Title 14, Section 15000 et seq., California Administrative Code, pertaining to CEQA.

(4) Responsible Agency. The State Allocation Board. Except as expressly provided herein, the board shall have no responsibility for preparing environmental documents (Section 15039).

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(b) The estimated average daily attendance of a high school attendance area as permitted by Section 17741 of the act for determining the allowable building area, when the district is applying only on a high school attendance area basis as opposed to a districtwide basis, shall be computed in the same manner as that set forth in regulation 1865.30, except that the enrollment used in such computation shall be that of the high school attendance area rather than the entire district and shall be certified by the district.

(c) In those instances where the high school attendance area results in a split in individual attendance areas of the contributing elementary or junior high schools, an assignment of enrolled pupils in such split attendance areas shall be made by the district in a manner satisfactory to the executive officer.

1865.32. Application for Site and/or Plans.

In order to expedite a total school facility, a school district may first apply for a project which includes only the advance purchase of the land and preparation of plans and specifications. The acquisition of the site and the plans preparation shall be based on justification documents for the total school facility.

1865.32.5. Utilization of Existing Facilities.

(a) If the board determines that it will not be economical or practical to utilize all existing facilities of the district, project approval then will be contingent upon the agreement by the district to dispose of any salable interest in any building or site that the board determines cannot be utilized and contribute the net proceeds of the sales to the State School Building Lease-Purchase Fund as rents pursuant to Section 17732 of the act.

(b) Approval of a project applied for pursuant to Section 17741 of the act will be contingent upon the conditions specified in subdivisions (a) and (b) of this section.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17722 and 17732, Education Code.

HISTORY:

1. New section filed 3-17-80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-16-80.

2. Amendment of subsection (b) filed 5-4-81; effective thirtieth day thereafter (Register 81, No. 19).

3. Amendment filed 12-21-84; effective thirtieth day thereafter (Register 84, No. 51).

1865.33. Computation of Allowable School Building Area.

(a) No project shall be approved, the building area of which, when added to the area of adequate school construction existing in the applicant school district or the applicable high school attendance area if the application is filed on such basis, will provide a total area of school building construction in excess of that computed pursuant to Education Code Sections 17740 through 17749.

(b) All of the existing building area owned or operated by the district regardless of conditions or purpose for which used, shall be reported to the board by the district as prescribed in this regulation. Where an allowable building area is computed on the basis of an attendance area as provided by Section 17741 of the act, the existing building area shall be considered the building area within such attendance area.

(c) Existing adequate building area shall include all existing building area not otherwise excluded by the act or these regulations, building area for which applications have been approved under any state or federal building program,

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Authorized Agent. A person authorized to act on behalf of the governing board of the eligible district in matters relating to an application for lease of portable classrooms.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

HISTORY:

1. New Subgroup 8.5 (Sections 1862.50-1862.56) filed 8-23-79; effective thirtieth day thereafter (Register 79, No.34). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 12-21-79.

2. Certificate of Compliance transmitted to OAH 12-19-79 and filed 1-17-80 (Register 80, No. 3)

Article 2. Acquisition of Portable Classrooms**1862.51. Acquisition of Portable Classrooms by the Board.**

(a) The Board may from time to time as it determines the need in accordance with priorities adopted herein authorize the Office of Procurement of the Department of General Services to acquire portable classrooms the Board deems will be required by eligible school districts for up to the next twelve months.

For each portable classroom so acquired a minimum of furniture and equipment necessary to make the classroom functional may be acquired by the Board. The buildings shall be placed on the school site and connected to the nearest electrical energy source at State expense.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

HISTORY:

1. Amendment filed 8-7-86; effective thirtieth day thereafter (Register 86, No. 32).

Article 3. Applications for Lease**1862.52. Form of Application.**

Applications for lease of portable classrooms pursuant to Chapter 25, shall contain the following:

A resolution on forms provided by the Board, by the governing board of the eligible district authorizing the filing of an application and the signing of a lease agreement or agreements for such numbers of portable classrooms as the Board may approve. The leases shall contain such terms and conditions as are required by existing law and by these regulations.

A completed application on forms provided by the Board.

Layout plans clearly showing the location on the site of the proposed portable classroom buildings as well as the location of existing buildings.

A certification by the authorized agent that the district has hired or will hire a teacher for each portable classroom leased to the district for the term of the lease.

A certification or other evidence, satisfactory to the Board, that the district has no available bond proceeds which could be used for the purchase of classroom facilities.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

HISTORY:

1. Amendment filed 10-31-86; effective thirtieth day thereafter (Register 86, No. 44).

Article 4. Lease Agreements

1862.53. Lease Agreements.

Lease agreements executed by the authorized agent of the school district shall be subject to such conditions as may be required by the board in addition to the following:

A year to year renewable term beginning September 1 and ending August 31 of each year.

Lease payments of \$2,000 per year for each portable classroom. The first year rental shall be prorated on a 12 month basis from the date of installation to the following August 31. Payments are to be made upon execution or renewal of each lease.

The district shall be required at its own expense to provide a near flat surface, not exceeding 9 inches in grade from the highest to the lowest point, for placement of each portable classroom. Access to the site shall also be provided by the district at its own expense.

The district shall be responsible to the State for any damages occurring to the portable classrooms and shall keep them insured, at its own expense, to the benefit of the State, at all times against fire and lightning, with extended coverage, and vandalism and malicious mischief, for the full insurable value of the property less any deductible amount for which the district is willing to accept such responsibility. The district shall at its own expense undertake all necessary maintenance repairs, renewal and replacement to ensure that the portable classrooms, furniture and equipment are at all times kept in good repair, working order and condition.

The district shall hold the State of California harmless from any claims asserted against the State by virtue of alleged negligence of the district or third parties in the operation or maintenance of portable classrooms.

Facilities leased by the Board may not be altered, relocated or removed from the site without approval of the Board, nor shall any interest held by the district under this lease be assignable.

Upon expiration of a lease, the district shall allow buildings covered by such lease to remain in place on the site free of cost to the State for a period not to exceed 120 days, pending removal by the State.

NOTE: Authority cited: Sections 17785-17795, Education Code. Reference: Sections 17785-17795, Education Code.

HISTORY:

1. Amendment filed 10-31-86; effective thirtieth day thereafter (Register 86, No. 44).

Article 5. Priorities

1862.54. Priorities.

Portable classrooms shall be approved and made available to those districts in the following order:

(a) A demonstrated need based upon loading all existing classrooms in the district with the average class sizes shown below using a one year projection of the district's current enrollment converted to average daily attendance by a .97 factor:

Title 2, CCR, Register 98-49

§ 1859.20	§ 1859.74.1
§ 1859.21	§ 1859.75
§ 1859.30	§ 1859.79
§ 1859.31	§ 1859.79.2
§ 1859.32	§ 1859.81
§ 1859.33	§ 1859.81.1
§ 1859.35	§ 1859.82
§ 1859.40	§ 1859.90
§ 1859.41	§ 1859.100
§ 1859.50	§ 1859.102
§ 1859.60	§ 1859.104
§ 1859.70	§ 1859.105
§ 1859.72	§ 1859.106

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for Eligibility Determination, Form SAB 50-03 (New 12/3/98), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (New 12/3/98), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing Insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(l) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.32. Adjustments to Gross Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) that never had a valid DSA certification, if both of the following are met:

(1) the district has submitted a report from a licensed design professional identifying any structural deficiencies of the classroom and related facilities and establishing the minimal work necessary to remedy the deficiencies to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(j) and related facilities that were constructed in accordance with Field Act requirements that subsequently need additional seismic structural improvements to avert future earthquake damage, if all the following have been met:

(1) the district has submitted a report from a licensed design professional which identifies the seismic retrofit structural improvements and minimum work needed to address the seismic structural improvements

that are necessary to avert future earthquake damage. The report must contain a detailed cost estimate of the needed repairs and shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication; and,

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(k) owned but leased to another district.

(l) any portable classroom excluded by Education Code Section 17071.30.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) and (b) or by the amount determined in (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the pupil capacity of the district or the HSAA as determined by the results of the calculations in (a) at the time of the initial determination if the existing school building capacity by either six percent of the K-6 pupil capacity for elementary and unified districts, if filing on either a district-wide or a HSAA basis or six percent of the pupils for a high school district. As an alternative, the high school district may use eight percent of the K-12 pupils within the boundaries of the HSAA.

When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils included in operational grants provided by the highest report of operational grants by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction Grants.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on a HSAA basis, eligibility for future grants in that HSAA must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on a HSAA basis may file applications by utilizing HSAA boundaries of any district within the county.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection* Form SAB 50-01 (New 12/3/98), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of K-12 students as determined by Section 1859.42. The resulting value shall be divided by the current K-12 enrollment as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total special day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current special day class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be adjusted by the average annual percentage change in (1) for each year until the five year projected enrollment has been determined.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/3/98).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (New 12/3/98), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (New 12/3/98), for a new construction SFP grant.

A district affected by reorganization may not file an application for funding for new construction grants after the reorganization has become effective until a new calculation of the district's eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/3/98), or the district certifies that no change has occurred in the district's enrollment or existing school building capacity as a result of the reorganization.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/3/98), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/3/98). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/3/98), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (New 12/3/98), after completing the applicable requirements in Section 1859.20.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

(a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

(c) If the project will include therapy room area for use by pupils that are Severely Disabled Individuals with Exceptional Needs, the district may request an increase in the new construction grant in the amount of \$75 per square foot of therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The \$75 amount shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.74. Additional Grant for Site Acquisition Cost.

The New Construction Grant will be increased for the lessor of one half of the actual cost of the site or one-half of the appraised value of the site as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by one-half of the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the in-

stallation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by two percent, but not less than \$25,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessment costs.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by one-half of the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by two percent, but not less than \$25,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessments costs.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (New 12/3/98), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.76. Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw.

(8) Embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Outside stairways, handicap ramps and retaining walls.

(10) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(11) Fire code requirements on site that are not a part of the building.

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(c) Utility service costs associated with the CDE approved site size and necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by

the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (New 12/3/98).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 have been made, the New Construction Adjusted Grant will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Addi-

tional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis. NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

The Modernization Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

(a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization Grants for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 9. Hardship Assistance**§ 1859.80. General.**

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$300,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for a separate apportionment for the following:

(a) For new construction projects, an amount not to exceed 100 percent of the lesser of the actual or appraised value of the site as provided in Sections 1859.74, 1859.74.1 and 1859.75.

(b) For new construction or modernization projects, an amount not to exceed 20 percent of the new construction or modernization grant amount for design, engineering and other pre-construction project costs.

The amount allowed in (a) and (b) may not exceed the amount of financial hardship funding the district is otherwise eligible for. The amount provided as a separate apportionment shall be off-set from the New Construction or Modernization Grant amount the district would otherwise be eligible for pursuant to 1859.70. A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (New 12/3/98).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies needed for DSA compliance, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom facility.

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a li-

censed design professional identifying the minimum work necessary to obtain DSA approval of the facility based on the structural requirements in existence when the facility was constructed. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom was lost or destroyed as a result of a natural disaster such as fire, flood or earthquake and not recoverable by insurance.

If the district qualifies, the district is eligible for New Construction Grants for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq.ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq.ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq.ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.

(b) A multi-purpose room or toilet facility was lost or destroyed as a result of a natural disaster such as fire, flood or earthquake, or otherwise no longer useable for school purposes and not recoverable by insurance. If the district qualifies, funding may be provided as part of either a new construction or modernization project or as separate facility hardship grant. The amount provided for either new construction or as modernization shall be \$75 per square foot for multi-purpose facilities and/or \$150 per square foot for toilet facilities. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71. The square footage provided, after accounting for all useable multi-purpose and toilet facilities on the site, shall not exceed the following amounts:

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

History

New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grants,

a district is eligible for an additional grant as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

GEOGRAPHIC PERCENTAGE CHART

County	% Factor	Description
Alpine	5	The entire county.
Amador, Eastern Part	5	All of Amador County except the portion lying west of a line drawn five miles east of, and paralleling State Highway 49.
Butte, Eastern Part	5	All of Butte County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 99.
Calaveras, Eastern Part	5	All of Calaveras County except that portion lying west of State Highway 49.
Del Norte	5	The entire county.
El Dorado, Eastern Part	5	El Dorado County except the following areas: <ul style="list-style-type: none"> • West of a line drawn six miles east of and paralleling State Highway 49. • Within five miles of either side of U.S. highway 50 from the western county line to a point on the eastern limit of the community of Pollock Pines. • West of a line drawn three miles easterly from and paralleling a certain county road described as the Pleasant Valley Road which connects the community of Aukum with Diamond Springs and with the city of Plymouth.
Fresno, Eastern Part	5	All of Fresno County lying east of a line drawn ten miles east of, and paralleling the west boundary of the Sierra National Forest.
Glenn, Western Part	5	All of Glenn County except that portion lying east of a line drawn ten miles west of, and paralleling Interstate Highway 5.
Humboldt, Redwood Highway	5	That portion of Humboldt County situated within five miles of the Redwood Highway (U.S. 101) except for that portion situated within ten miles of the Redwood Highway from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Humboldt, State Highway 299 and	5	That portion of Humboldt County situated within five miles of State Highway 299 and

The requests in project	Elementary School pupils	Middle School pupils	High School pupils
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

(d) **Excessive Cost Due to Urban Location, Security Requirements and Impacted Site.**

A New Construction or Modernization Grant will be increased if site coverage for the project is:

- (1) at least 30 percent but less than 75 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction or Modernization Grant will be increased by eight percent.
- (2) at least 30 percent but less than 50 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction or Modernization Grant will be increased by 15 percent.
- (3) less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Grant will be increased by 30 percent.

(e) **Excessive Cost due to Seismic Retrofit Requirements.**

A Modernization Grant will be increased for seismic retrofit work if the project meets the following criteria:

- (1) The seismic retrofit work is necessary in classrooms that qualify for Modernization Grants and is included in the project.
- (2) The district has submitted a report from a licensed design professional which identifies the seismic retrofit structural improvements and minimum work needed to address the seismic structural improvements needed to avert future earthquake damage. The report must contain a detailed cost estimate of the needed repairs and shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication.

(3) If the amount of the cost estimate in item (e)(2) and the amount of the Modernization Grant that will be provided for that classroom in the project is less than 50 percent of the Current Replacement Cost of the classrooms that need seismic retrofit work, the project qualifies for excessive grants for seismic retrofit work. The excessive cost grant for seismic work is 80 percent of the amount of the repair work reviewed by the OPSC and approved by the Board that is identified in (e)(2).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

The OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (New 12/3/98), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (New 12/3/98), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board

action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

The OPSC shall report to the Board on a monthly basis the status of funds available for New Construction Grants and the aggregate amount of SFP New Construction Grant requests that have been received but not yet funded. The Board shall declare that State funds are insufficient for New Construction Grants when the SFP grant requests that are ready for Apportionment exceed the funds available for that purpose. This declaration will implement the priority point system and the Board shall approve new construction projects and apportion funds based on the highest priority points assigned to projects. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

All New Construction Grant requests shall be funded in date order received until such time that the Board declares that the available funds for construction are insufficient to finance the grant requests ready for Apportionment. When this occurs, the Board shall fund those projects with the highest number of priority points first. When one or more projects have the same number of priority points assigned, the projects will then be funded by the date order the applications for funding were received by the OPSC.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a project shall be based on the following computations rounded to the nearest whole number. The computation shall be on a districtwide or the HSAA basis utilizing CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), in effect at the time the district's application for funding was submitted to the OPSC for the project. A project may receive a maximum of 220 points based on the total of (a), (b) and (c):

- (a) A maximum of 100 points for both of the following:
 - (1) Six points for each percent of current unhoused pupils.
 - (2) Four points for each percent of projected unhoused pupils.
- (b) A maximum of 100 points for both of the following:
 - (1) One point for each 100 currently unhoused pupils.
 - (2) One point for each 200 projected unhoused pupils.
- (c) A maximum of 20 points for the following:
 - (1) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.
 - (2) Six points for a County Superintendent of Schools' project.
 - (3) Six points for a facility hardship project that meets the requirements of Sections 1859.82(a) and (b).
 - (4) Six points for a project that used "stock plans" pursuant to Education Code Section 17070.33(b)(6).
 - (5) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Section 17072.25, Education Code.

HISTORY

New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an approvable application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an excessive cost hardship grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

(1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.

(2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to allocate to either New Construction or Modernization Grants, the Board will continue to accept, process and approve applications for eligibility determination. The Board will also accept and process applications for funding for purposes of developing an information list of projects based on the date an eligible application was received by the OPSC.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (New 12/3/98), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (New 12/3/98), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (New 12/3/98), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings shall be deemed to be any portion of the State's final apportionment and the required district contribution not needed to complete the project. A project shall be deemed complete when the notice of completion has been filed for the project, all outstanding invoices, claims, changes orders have been satisfied and the facility is currently in use by the district.

The State's portion of any savings must first be used to reduce the SFP financial hardship grant of that project or other projects within the district. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (New 12/3/98), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or 90 days after the notice of completion has been filed for the project, whichever occurs first.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or 90 days after the notice of completion has been filed, whichever occurs first.

(b) A progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.105. Program Accountability Progress Audit.

The Board shall conduct a Progress Audit to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be any of the following:

(a) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(b) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(c) All construction activities are at least 50 percent complete.

(d) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

After the Board has received the progress report required in Section 1859.104(b), a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (New 12/3/98), to the OPSC within 30 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project.

The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 30 days, the OPSC will recommend that the apportionment be rescinded.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the difference in the value of site that was used to determine the New Construction Additional Grant provided for site acquisition and the actual amount paid by the district for the site as indicated in the escrow instructions.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (New 12/3/98), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

Should the OPSC conduct an expenditure audit and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

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§ 1859.20

§ 1859.50

§ 1859.60

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for Eligibility Determination, Form SAB 50-03 (New 12/16/98), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (New 12/3/98), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(l) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.32. Adjustments to Gross Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) that never had a valid DSA certification, if both of the following are met:

(1) the district has submitted a report from a licensed design professional identifying any structural deficiencies of the classroom and related facilities and establishing the minimal work necessary to remedy the deficiencies to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(j) and related facilities that were constructed in accordance with Field Act requirements that subsequently need additional seismic structural improvements to avert future earthquake damage, if all the following have been met:

(1) the district has submitted a report from a licensed design professional which identifies the seismic retrofit structural improvements and minimum work needed to address the seismic structural improvements that are necessary to avert future earthquake damage. The report must contain a detailed cost estimate of the needed repairs and shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication; and,

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(k) owned but leased to another district.

(l) any portable classroom excluded by Education Code Section 17071.30.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) and (b) or by the amount determined in (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the pupil capacity of the district or the HSAA as determined by the results of the calculations in (a) at the time of the initial determination of the existing school building capacity by either six percent of the K-6 pupil capacity for elementary and unified districts, if filing on either a district-wide or a HSAA basis or six percent of the pupils for a high school district. As an alternative, the high school district may use eight percent of the K-12 pupils within the boundaries of the HSAA.

When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils included in operational grants provided by the highest report of operational grants by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction Grants.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on a HSAA basis, eligibility for future grants in that HSAA must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on a HSAA basis may file applications by utilizing HSAA boundaries of any district within the county.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection* Form SAB 50-01 (New 12/3/98), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision

map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(8) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of K-12 students as determined by Section 1859.42. The resulting value shall be divided by the current K-12 enrollment as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total special day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current special day class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be adjusted by the average annual

percentage change in (1) for each year until the five year projected enrollment has been determined.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (New 12/3/98), for a new construction SFP grant.

A district affected by reorganization may not file an application for funding for new construction grants after the reorganization has become effective until a new calculation of the district's eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), or the district certifies that no change has occurred in the district's enrollment or existing school building capacity as a result of the reorganization.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (New 12/3/98), after completing the applicable requirements in Section 1859.20.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

(a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

(c) If the project will include therapy room area for use by pupils that are Severely Disabled Individuals with Exceptional Needs, the district may request an increase in the new construction grant in the amount of \$75 per square foot of therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The \$75 amount shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.74. Additional Grant for Site Acquisition Cost.

The New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders

in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by one-half of the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the in-

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§ 1859.35

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for Eligibility Determination, Form SAB 50-03 (New 12/16/98), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (New 12/3/98), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(l) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.32. Adjustments to Gross Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) that never had a valid DSA certification, if both of the following are met:

(1) the district has submitted a report from a licensed design professional identifying any structural deficiencies of the classroom and related facilities and establishing the minimal work necessary to remedy the deficiencies to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(j) and related facilities that were constructed in accordance with Field Act requirements that subsequently need additional seismic structural improvements to avert future earthquake damage, if all the following have been met:

(1) the district has submitted a report from a licensed design professional which identifies the seismic retrofit structural improvements and minimum work needed to address the seismic structural improvements that are necessary to avert future earthquake damage. The report must contain a detailed cost estimate of the needed repairs and shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication; and,

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(k) owned but leased to another district.

(l) any portable classroom excluded by Education Code Section 17071.30.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) and (b) or by the amount determined in (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the pupil capacity of the district or the HSAA as determined by the results of the calculations in (a) at the time of the initial determination if the existing school building capacity by either six percent of the K-6 pupils for elementary and unified districts, if filing on either a district-wide or a HSAA basis or six percent of the pupils for a high school district. As an alternative, the high school district may use eight percent of the K-12 pupils within the boundaries of the district or the HSAA.

When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils included in operational grants provided by the highest report of operational grants by the CDE pursuant to Education Code Section 42268, less the number of pupils at school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction Grants.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on a HSAA basis, eligibility for future grants in that HSAA must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on a HSAA basis may file applications by utilizing HSAA boundaries of any district within the county.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projec-*

tion Form SAB 50-01 (New 12/3/98), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of K-12 students as determined by Section 1859.42. The resulting value shall be divided by the current K-12 enrollment as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total special day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current special day class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be adjusted by the average annual

percentage change in (1) for each year until the five year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (New 12/3/98), for a new construction SFP grant.

A district affected by reorganization may not file an application for funding for new construction grants after the reorganization has become effective until a new calculation of the district's eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), or the district certifies that no change has occurred in the district's enrollment or existing school building capacity as a result of the reorganization.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8, 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (New 12/3/98), after completing the applicable requirements in Section 1859.20.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

(a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

(c) If the project will include therapy room area for use by pupils that are Severely Disabled Individuals with Exceptional Needs, the district may request an increase in the new construction grant in the amount of \$75 per square foot of therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The \$75 amount shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.74. Additional Grant for Site Acquisition Cost.

The New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders

in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by one-half of the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the in-

[The next page is 234.7.]

Title 2, CCR, Register 99-14

§ 1859.20	§ 1859.74.1
§ 1859.21	§ 1859.75
§ 1859.30	§ 1859.79
§ 1859.31	§ 1859.79.2
§ 1859.32	§ 1859.81
§ 1859.33	§ 1859.81.1
§ 1859.35	§ 1859.82
§ 1859.40	§ 1859.90
§ 1859.41	§ 1859.100
§ 1859.50	§ 1859.102
§ 1859.60	§ 1859.104
§ 1859.70	§ 1859.105
§ 1859.72	§ 1859.106

1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for Eligibility Determination, Form SAB 50-03 (New 12/16/98), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (New 12/3/98), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(l) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.32. Adjustments to Gross Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) that never had a valid DSA certification, if both of the following are met:

(1) the district has submitted a report from a licensed design professional identifying any structural deficiencies of the classroom and related facilities and establishing the minimal work necessary to remedy the deficiencies to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(j) and related facilities that were constructed in accordance with Field Act requirements that subsequently need additional seismic structural improvements to avert future earthquake damage, if all the following have been met:

(1) the district has submitted a report from a licensed design professional which identifies the seismic retrofit structural improvements and minimum work needed to address the seismic structural improvements that are necessary to avert future earthquake damage. The report must contain a detailed cost estimate of the needed repairs and shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication; and,

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(k) owned but leased to another district.

(l) any portable classroom excluded by Education Code Section 17071.30.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom

inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) and (b) or by the amount determined in (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the pupil capacity of the district or the HSAA as determined by the results of the calculations in (a) at the time of the initial determination if the existing school building capacity by either six percent of the K-6 pupils for elementary and unified districts, if filing on either a district-wide or a HSAA basis or six percent of the pupils for a high school district. As an alternative, the high school district may use eight percent of the K-12 pupils within the boundaries of the district or the HSAA.

When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils included in operational grants provided by the highest report of operational grants by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction Grants.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
1. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on a HSAA basis, eligibility for future reports in that HSAA must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on a HSAA basis may file applications by utilizing HSAA boundaries of any district within the county.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection* Form SAB 50-01 (New 12/3/98), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of K-12 students as determined by Section 1859.42. The resulting value shall be divided by the current K-12 enrollment as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total special day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current special day class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be adjusted by the average annual percentage change in (1) for each year until the five year projected enrollment has been determined.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (New 12/3/98), for a new construction SFP grant.

A district affected by reorganization may not file an application for funding for new construction grants after the reorganization has become effective until a new calculation of the district's eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), or the district certifies that no change has occurred in the district's enrollment or existing school building capacity as a result of the reorganization.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

- (1) Permanent and at least 25 years old and not previously modernized with State funds.
- (2) Portable and at least 20 years old and not previously modernized with State funds.

(b) Identify all square footage at the school site that is:

- (1) Permanent area and at least 25 years old and not previously modernized with State funds.
- (2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.
- (c) Increased by changes in projected enrollment in subsequent enrollment reporting years.
- (d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (New 12/3/98), after completing the applicable requirements in Section 1859.20.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

- (a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

(c) If the project will include therapy room area for use by pupils that are Severely Disabled Individuals with Exceptional Needs, the district may request an increase in the new construction grant in the amount of \$75 per square foot of therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The \$75 amount shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.74. Additional Grant for Site Acquisition Cost.

The New Construction Grant will be increased for the lessor of one half of the actual cost of the site or one-half of the appraised value of the site as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by one-half of the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by two percent, but not less than \$25,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessment costs.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submitted to the OPSC for funding. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by one-half of the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by two percent, but not less than \$25,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessments costs.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (New 12/3/98), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 7070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

Note: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.76. Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw.

(8) Embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Outside stairways, handicap ramps and retaining walls.

(10) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(11) Fire code requirements on site that are not a part of the building.

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(c) Utility service costs associated with the CDE approved site size and necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (New 12/3/98).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 have been made, the New Construction Adjusted Grant will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

The Modernization Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

- (a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization Grants for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

- (a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or
- (b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

- (a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.
- (b) A facility hardship grant as provided in Section 1859.82.
- (c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$300,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for a separate apportionment for the following:

- (a) For new construction projects, an amount not to exceed 100 percent of the lesser of the actual or appraised value of the site as provided in Sections 1859.74, 1859.74.1 and 1859.75.
- (b) For new construction or modernization projects, an amount not to exceed 20 percent of the new construction or modernization grant amount for design, engineering and other pre-construction project costs.

The amount allowed in (a) and (b) may not exceed the amount of financial hardship funding the district is otherwise eligible for. The amount provided as a separate apportionment shall be off-set from the New Construction or Modernization Grant amount the district would otherwise be eligible for pursuant to 1859.70. A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (New 12/3/98).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies needed for DSA compliance, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom facility.

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval of the facility based on the structural requirements in existence when the facility was constructed. The report must contain

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq. ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom was lost or destroyed as a result of a natural disaster such as fire, flood or earthquake and not recoverable by insurance.

If the district qualifies, the district is eligible for New Construction Grants for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

(b) A multi-purpose room or toilet facility was lost or destroyed as a result of a natural disaster such as fire, flood or earthquake, or otherwise no longer useable for school purposes and not recoverable by insurance. If the district qualifies, funding may be provided as part of either a new construction or modernization project or as separate facility hardship grant. The amount provided for either new construction or as modernization shall be \$75 per square foot for multi-purpose facilities and/or \$150 per square foot for toilet facilities. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71. The square footage provided, after accounting for all useable multi-purpose and toilet facilities on the site, shall not exceed the following amounts:

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grants, a district is eligible for an additional grant as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

County	% Factor	Description
Sonoma, Northwestern Part	5	That portion of Sonoma County enclosed by a line following the northern boundary of the county from the Pacific Ocean to a point 15 miles inland, thence southerly to a point two miles west of the community of Los Lomas, thence southerly to a point on the coast two miles south of the community of Fort Ross, thence northerly along the coast line to the northern boundary of the county.
Tehama, Residual Area	5	All of Tehama County except those portions situated within ten miles west of Interstate Highway 5 from the north county line to the southern county line; within ten miles east of Interstate Highway 5 from the north county line southward to a point east of Red Bluff, thence within ten miles east of and paralleling State Highway 99 southward to the county line.
Trinity, Residual Area	15	All of Trinity County except the State Highway 299 area described below.
Trinity, State Highway 299	10	That portion of Trinity County situated within five miles of State Highway 299.
Tulare, Eastern Part	5	That portion of Tulare County lying east of a north-south line drawn through the western limits of the community of Silver City.
Tuolumne, Eastern Part	5	All of Tuolumne County except that portion lying west of State Highway 49.
Yuba, Northeastern Part	5	All of Yuba County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 65 and that portion lying south of a line drawn three miles north of, and paralleling State Highway 20.

(b) Excessive Cost for Projects that House No More than 200 Pupils (Small Size Projects).

A New Construction or Modernization Grant will be increased by 12 percent for a project that will house less than 101 pupils, or by four percent if the project will house no more 200 pupils.

(c) Excessive Cost to Construct a New School Project.

A New Construction Grant for a new elementary, middle or high school on a site with no existing school facilities shall be increased by the difference in the amount provided for the New Construction Grant and the amount shown below, based on the number of classrooms in the project:

Classrooms in project	Elementary School pupils	Middle School pupils	High School School pupils
1	\$160,000	\$674,000	\$1,466,000
2	\$377,000	\$756,000	\$1,525,000
3	\$566,000	\$840,000	\$1,885,000
4	\$717,000	\$932,000	\$2,205,000
5	\$842,000	\$1,028,000	\$2,428,000
6	\$1,021,000	\$1,125,000	\$2,651,000
7	\$1,202,000	\$1,222,000	\$2,874,000
8	\$1,341,000	\$1,328,000	\$3,046,000
9	\$1,341,000	\$1,440,000	\$3,184,000
10	\$1,577,000	\$1,553,000	\$3,321,000
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

(d) Excessive Cost Due to Urban Location, Security Requirements and Impacted Site.

A New Construction or Modernization Grant will be increased if site acreage for the project is:

(1) at least 50 percent but less than 75 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction or Modernization Grant will be increased by eight percent.

(2) at least 30 percent but less than 50 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction or Modernization Grant will be increased by 15 percent.

(3) less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Grant will be increased by 50 percent.

(e) Excessive Cost due to Seismic Retrofit Requirements.

A Modernization Grant will be increased for seismic retrofit work if the project meets the following criteria:

(1) The seismic retrofit work is necessary in classrooms that qualify for Modernization Grants and is included in the project.

(2) The district has submitted a report from a licensed design professional which identifies the seismic retrofit structural improvements and minimum work needed to address the seismic structural improvements needed to avert future earthquake damage. The report must contain a detailed cost estimate of the needed repairs and shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication.

(3) If the amount of the cost estimate in item (e)(2) and the amount of the Modernization Grant that will be provided for that classroom in the project is less than 50 percent of the Current Replacement Cost of the classrooms that need seismic retrofit work, the project qualifies for excessive grants for seismic retrofit work. The excessive cost grant for seismic work is 80 percent of the amount of the repair work reviewed by the OPSC and approved by the Board that is identified in (e)(2).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

History

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

The OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (New 12/3/98), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (New 12/3/98), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or

Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

The OPSC shall report to the Board on a monthly basis the status of funds available for New Construction Grants and the aggregate amount of SFP New Construction Grant requests that have been received but not yet funded. The Board shall declare that State funds are insufficient for New Construction Grants when the SFP grant requests that are ready for Apportionment exceed the funds available for that purpose. This declaration will implement the priority point system and the Board shall approve new construction projects and apportion funds based on the highest priority points assigned to projects. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

All New Construction Grant requests shall be funded in date order received until such time that the Board declares that the available funds for construction are insufficient to finance the grant requests ready for Apportionment. When this occurs, the Board shall fund those projects with the highest number of priority points first. When one or more projects have the same number of priority points assigned, the projects will then be funded by the date order the applications for funding were received by the OPSC.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a project shall be based on the following computations rounded to the nearest whole number. The computation shall be on a districtwide or the HSAA basis utilizing CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), in effect at the time the district's application for funding was submitted to the OPSC for the project. A project may receive a maximum of 220 points based on the total of (a), (b) and (c):

(a) A maximum of 100 points for both of the following:

- (1) Six points for each percent of current unhoused pupils.
- (2) Four points for each percent of projected unhoused pupils.

(b) A maximum of 100 points for both of the following:

- (1) One point for each 100 currently unhoused pupils.
- (2) One point for each 200 projected unhoused pupils.

(c) A maximum of 20 points for the following:

- (1) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.
- (2) Six points for a County Superintendent of Schools' project.

(3) Six points for a facility hardship project that meets the requirements of Sections 1859.82(a) and (b).

(4) Six points for a project that used "stock plans" pursuant to Education Code Section 17070.33(b)(6).

(5) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Section 17072.25, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an approvable application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an excessive cost hardship grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

(1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.

(2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to allocate to either New Construction or Modernization Grants, the Board will continue to accept, process and

approve applications for eligibility determination. The Board will also accept and process applications for funding for purposes of developing an information list of projects based on the date an eligible application was received by the OPSC.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (New 12/3/98), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (New 12/3/98), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (New 12/3/98), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings shall be deemed to be any portion of the State's final apportionment and the required district contribution not needed to complete the project. A project shall be deemed complete when the notice of completion has been filed for the project, all outstanding invoices, claims, changes orders have been satisfied and the facility is currently in use by the district.

The State's portion of any savings must first be used to reduce the SFP financial hardship grant of that project or other projects within the district. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (New 12/3/98), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or 90 days after the notice of completion has been filed for the project, whichever occurs first.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or 90 days after the notice of completion has been filed, whichever occurs first.

(b) A progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.105. Program Accountability Progress Audit.

The Board shall conduct a Progress Audit to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be any of the following:

(a) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(b) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(c) All construction activities are at least 50 percent complete.

(d) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

After the Board has received the progress report required in Section 1859.104(b), a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (New 12/3/98), to the OPSC within 30 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 30 days, the OPSC will recommend that the apportionment be rescinded.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the difference in the value of site that was used to determine the New Construction Additional Grant provided for site acquisition and the actual amount paid by the district for the site as indicated in the escrow instructions.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (New 12/3/98), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate.

If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

Should the OPSC conduct an expenditure audit and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) Article 5.

Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.

(2) Board.

State Allocation Board.

(3) DCE.

Director of Compensatory Education.

(4) Eligible School District.

Any school district:

(A) Whose application for aid under Article 5 has the approval of DCE; and

(B) Which, as determined by the DCE, experiences emergency increases in school enrollments, because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, of such magnitude as to make it impossible or imprac-

Title 2, CCR, Register 99-29

§ 1859.21

§ 1859.50

§ 1859.70

§ 1859.74.1

§ 1859.81.1

§ 1859.100

§ 1859.102

1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.13.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.16 Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for Eligibility Determination, Form SAB 50-03 (New 12/16/98), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

- (k) that have a waiver for continued use by the Board for Field Act exemptions;
- (l) used for Community School purposes;
- (m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.32. Adjustments to Gross Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- (a) abandoned and approved for replacement as a hardship under the provisions of the LPP;
- (b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;
- (c) included in any new construction LPP project that has not received a Phase C apportionment;
- (d) owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;
- (e) that is a trailer and is transported/towed on its own wheels and axles;
- (f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;
- (g) of less than 700 interior square feet;
- (h) originally built for instructional use, but converted to one of the following:
 - (1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
 - (2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
 - (3) used for school library purposes during the previous school year.
- (i) that never had a valid DSA certification, if both of the following are met:
 - (1) the district has submitted a report from a licensed design professional identifying any structural deficiencies of the classroom and related facilities and establishing the minimal work necessary to remedy the deficiencies to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.
 - (2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.
- (j) and related facilities that were constructed in accordance with Field Act requirements that subsequently need additional seismic structural improvements to avert future earthquake damage, if all the following have been met:
 - (1) the district has submitted a report from a licensed design professional which identifies the seismic retrofit structural improvements and minimum work needed to address the seismic structural improvements that are necessary to avert future earthquake damage. The report must contain a detailed cost estimate of the needed repairs and shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication; and,

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(k) owned but leased to another district.

(l) any portable classroom excluded by Education Code Section 17071.30.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) and (b) or by the amount determined in (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the pupil capacity of the district or the HSAA as determined by the results of the calculations in (a) at the time of the initial determination if the existing school building capacity by either six percent of the K-6 pupils for elementary and unified districts, if filing on either a district-wide or a HSAA basis or six percent of the pupils for a high school district. As an alternative, the high school district may use eight percent of the K-12 pupils within the boundaries of the district or the HSAA.

When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils included in operational grants provided by the highest report of operational grants by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

- or emergency language will be repealed by operation of law on the following day.
- Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
 - New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction Grants.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

- New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on a HSAA basis, eligibility for future grants in that HSAA must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on a HSAA basis may file applications by utilizing HSAA boundaries of any district within the county.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

- New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the

most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection* Form SAB 50-01 (New 12/3/98), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

- New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of K-12 students as determined by Section 1859.42. The resulting value shall be divided by the current K-12 enrollment as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total special day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current special day class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be adjusted by the average annual percentage change in (1) for each year until the five year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), is the initial eligibility of the district or HSAA. It shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Rev. 7/99-1.), for a new construction SFP grant.

A district affected by reorganization may not file an application for funding for new construction grants after the reorganization has become effective until a new calculation of the district's eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), or the district certifies that no change has occurred in the district's enrollment or existing school building capacity as a result of the reorganization.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (sections 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a new

construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(u)(2), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

- (1) Permanent and at least 25 years old and not previously modernized with State funds.
- (2) Portable and at least 20 years old and not previously modernized with State funds.

(b) Identify all square footage at the school site that is:

- (1) Permanent area and at least 25 years old and not previously modernized with State funds.
- (2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1), after completing the applicable requirements in Section 1859.20.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

§ 1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

(a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

(c) If the project will include therapy room area for use by pupils that are Severely Disabled Individuals with Exceptional Needs, the district may request an increase in the new construction grant in the amount of \$75 per square foot of therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The \$75 amount shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.74. Additional Grant for Site Acquisition Cost.

The New Construction Grant will be increased for the lessor of one half of the actual cost of the site or one-half of the appraised value of the site as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by one-half of the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by two percent, but not less than \$25,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessment costs.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. The

Appraisal may be reviewed by the OPSC for conformance with Section 59.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by one-half of the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by two percent, but not less than \$25,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessments costs.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted

to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.76. Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw.

(8) Embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Outside stairways, handicap ramps and retaining walls.

(10) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(11) Fire code requirements on site that are not a part of the building.

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(c) Utility service costs associated with the CDE approved site size and necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 have been made, the New Construction Adjusted Grant will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the

alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

The Modernization Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

- (a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district

matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization Grants for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction's due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance

must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$300,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for a separate apportionment for the following:

(a) For new construction projects, an amount not to exceed 100 percent of the lesser of the actual or appraised value of the site as provided in Sections 1859.74, 1859.74.1 and 1859.75.

(b) For new construction or modernization projects, an amount not to exceed 20 percent of the new construction or modernization grant amount for design, engineering and other pre-construction project costs.

The amount allowed in (a) and (b) may not exceed the amount of financial hardship funding the district is otherwise eligible for. The amount provided as a separate apportionment shall be off-set from the New Construction or Modernization Grant amount the district would otherwise be eligible for pursuant to 1859.70. A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

[The next page is 234.11.]

Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

The OPSC shall report to the Board on a monthly basis the status of funds available for New Construction Grants and the aggregate amount of SFP New Construction Grant requests that have been received but not yet funded. The Board shall declare that State funds are insufficient for New Construction Grants when the SFP grant requests that are ready for Apportionment exceed the funds available for that purpose. This declaration will implement the priority point system and the Board shall approve new construction projects and apportion funds based on the highest priority points assigned to projects. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

All New Construction Grant requests shall be funded in date order received until such time that the Board declares that the available funds for construction are insufficient to finance the grant requests ready for Apportionment. When this occurs, the Board shall fund those projects with the highest number of priority points first. When one or more projects have the same number of priority points assigned, the projects will then be funded by the date order the applications for funding were received by the OPSC.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a project shall be based on the following computations rounded to the nearest whole number. The computation shall be on a districtwide or the HSAA basis utilizing CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), in effect at the time the district's application for funding was submitted to the OPSC for the project. A project may receive a maximum of 220 points based on the total of (a), (b) and (c):

- (a) A maximum of 100 points for both of the following:
 - (1) Six points for each percent of current unhoused pupils.
 - (2) Four points for each percent of projected unhoused pupils.
- (b) A maximum of 100 points for both of the following:
 - (1) One point for each 100 currently unhoused pupils.
 - (2) One point for each 200 projected unhoused pupils.
- (c) A maximum of 20 points for the following:
 - (1) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.
 - (2) Six points for a County Superintendent of Schools' project.
 - (3) Six points for a facility hardship project that meets the requirements of Sections 1859.82(a) and (h).

(4) Six points for a project that used "stock plans" pursuant to Education Code Section 17070.33(b)(6).

(5) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Section 17072.25, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an approvable application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an excessive cost hardship grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

(1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.

(2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to allocate to either New Construction or Modernization Grants, the Board will continue to accept, process and

approve applications for eligibility determination. The Board will also accept and process applications for funding for purposes of developing an information list of projects based on the date an eligible application was received by the OPSC.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding, Form SAB 50-04 (Rev. 7/99-1.)*, that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding, Form SAB 50-04 (Rev. 7/99-1.)*, that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding, Form SAB 50-04 (Rev. 7/99-1.)*, that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(h)(3) shall be deemed to meet the requirements for an

additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings shall be deemed to be any portion of the State's final apportionment and the required district contribution not needed to complete the project. A project shall be deemed complete when the notice of completion has been filed for the project, all outstanding invoices, claims, changes orders have been satisfied and the facility is currently in use by the district.

The State's portion of any savings must first be used to reduce the SFP financial hardship grant of that project or other projects within the district. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report, Form SAB 50-06 (New 12/3/98)*, which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or 90 days after the notice of completion has been filed for the project, whichever occurs first.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or 90 days after the notice of completion has been filed, whichever occurs first.

(b) A progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.105. Program Accountability Progress Audit.

The Board shall conduct a Progress Audit to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be any of the following:

- (a) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.
- (b) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.
- (c) All construction activities are at least 50 percent complete.
- (d) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

After the Board has received the progress report required in Section 1859.104(b), a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (New 12/3/98), to the OPSC within 30 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 30 days, the OPSC will recommend that the apportionment be rescinded.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site ac-

quisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the difference in the value of site that was used to determine the New Construction Additional Grant provided for site acquisition and the actual amount paid by the district for the site as indicated in the escrow instructions.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (New 12/3/98), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

Should the OPSC conduct an expenditure audit and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

- (1) Article 5.

Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.

- (2) Board.

Title 2, CCR, Register 99-31

§ 1859.20	§ 1859.74.1
§ 1859.21	§ 1859.75
§ 1859.30	§ 1859.79
§ 1859.31	§ 1859.79.2
§ 1859.32	§ 1859.81
§ 1859.33	§ 1859.81.1
§ 1859.35	§ 1859.82
§ 1859.40	§ 1859.90
§ 1859.41	§ 1859.100
§ 1859.50	§ 1859.102
§ 1859.60	§ 1859.104
§ 1859.70	§ 1859.105
§ 1859.72	§ 1859.106

sions of the SFP, pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.15. Priority Two Modernization.

Districts with Priority Two modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new

application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for Eligibility Determination, Form SAB 50-03 (New 12/16/98), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(l) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.32. Adjustments to Gross Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) that never had a valid DSA certification, if both of the following are met:

(1) the district has submitted a report from a licensed design professional identifying any structural deficiencies of the classroom and related facilities and establishing the minimal work necessary to remedy the deficiencies to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(j) and related facilities that were constructed in accordance with Field Act requirements that subsequently need additional seismic structural improvements to avert future earthquake damage, if all the following have been met:

(1) the district has submitted a report from a licensed design professional which identifies the seismic retrofit structural improvements and minimum work needed to address the seismic structural improvements that are necessary to avert future earthquake damage. The report must contain a detailed cost estimate of the needed repairs and shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication; and,

(2) the amount of the cost estimate in (1) is at least 50 percent of the Current Replacement Cost of the classroom.

(k) owned but leased to another district.

(l) any portable classroom excluded by Education Code Section 17071.30.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (New 12/3/98).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) and (b) or by the amount determined in (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the pupil capacity of the district or the HSAA as determined by the results of the calculations in (a) at the time of the initial determination if the existing school building capacity by either six percent of the K-6 pupils for elementary and unified districts, if filing on either a district-wide or a HSAA basis or six percent of the pupils for a high school district. As an alternative, the high school district may use eight percent of the K-12 pupils within the boundaries of the district or the HSAA.

When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils included in operational grants provided by the highest report of operational grants by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction Grants.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on a HSAA basis, eligibility for future grants in that HSAA must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on a HSAA basis may file applications by utilizing HSAA boundaries of any district within the county.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numer-

ical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection* Form SAB 50-01 (New 12/3/98), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*. Form SAB 50-01 (New 12/3/98).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiply-

ing the reported enrollment of Special Day Class students by the five-year projection of K-12 students as determined by Section 1859.42. The resulting value shall be divided by the current K-12 enrollment as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total special day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current special day class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), shall be adjusted by the average annual percentage change in (1) for each year until the five year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Rev. 7/99-1.), for a new construction SFP grant.

A district affected by reorganization may not file an application for funding for new construction grants after the reorganization has become effective until a new calculation of the district's eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), or the district certifies that no change has occurred in the district's enrollment or existing school building capacity as a result of the reorganization.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted

to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, in-

clude the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (New 12/16/98), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.), after completing the applicable requirements in Section 1859.20.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

- (a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

(c) If the project will include therapy room area for use by pupils that are Severely Disabled Individuals with Exceptional Needs, the district may request an increase in the new construction grant in the amount of \$75 per square foot of therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The \$75 amount shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all lev-

els of the building if the site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.74. Additional Grant for Site Acquisition Cost.

The New Construction Grant will be increased for the lessor of one half of the actual cost of the site or one-half of the appraised value of the site as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by one-half of the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by two percent, but not less than \$25,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessment costs.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by one-half of the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by two percent, but not less than \$25,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessments costs.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.76. Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw.

(8) Embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Outside stairways, handicap ramps and retaining walls.

(10) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(11) Fire code requirements on site that are not a part of the building.

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(c) Utility service costs associated with the CDE approved site size and necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs

from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
 - 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 - 3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 have been made, the New Construction Adjusted Grant will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

The Modernization Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

- (a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization Grants for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$300,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for a separate apportionment for the following:

(a) For new construction projects, an amount not to exceed 100 percent of the lesser of the actual or appraised value of the site as provided in Sections 1859.74, 1859.74.1 and 1859.75.

(b) For new construction or modernization projects, an amount not to exceed 20 percent of the new construction or modernization grant amount for design, engineering and other pre-construction project costs.

The amount allowed in (a) and (b) may not exceed the amount of financial hardship funding the district is otherwise eligible for. The amount provided as a separate apportionment shall be off-set from the New Construction or Modernization Grant amount the district would otherwise be eligible for pursuant to 1859.70. A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies needed for DSA compliance, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom facility.

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval of the facility based on the structural requirements in existence when the facility was constructed. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom was lost or destroyed as a result of a natural disaster such as fire, flood or earthquake and not recoverable by insurance.

If the district qualifies, the district is eligible for New Construction Grants for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

(b) A multi-purpose room or toilet facility was lost or destroyed as a result of a natural disaster such as fire, flood or earthquake, or otherwise no longer useable for school purposes and not recoverable by insurance. If the district qualifies, funding may be provided as part of either a new construction or modernization project or as separate facility hardship grant. The amount provided for either new construction or as modernization shall be \$75 per square foot for multi-purpose facilities and/or \$150 per square foot for toilet facilities. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71. The square footage provided, after accounting for all useable multi-purpose and toilet facilities on the site, shall not exceed the following amounts:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq.ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq.ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq.ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

County	% Factor	Description
Sonoma, Northwestern Part	5	That portion of Sonoma County enclosed by a line following the northern boundary of the county from the Pacific Ocean to a point 15 miles inland, thence southerly to a point two miles west of the community of Los Lomas, thence southerly to a point on the coast two miles south of the community of Fort Ross, thence northerly along the coast line to the northern boundary of the county.
Tehama, Residual Area	5	All of Tehama County except those portions situated within ten miles west of Interstate Highway 5 from the north county line to the southern county line; within ten miles east of Interstate Highway 5 from the north county line southward to a point east of Red Bluff, thence within ten miles east of and paralleling State Highway 99 southward to the county line.
Trinity, Residual Area	15	All of Trinity County except the State Highway 299 area described below.
Trinity, State Highway 299	10	That portion of Trinity County situated within five miles of State Highway 299.
Tulare, Eastern Part	5	That portion of Tulare County lying east of a north-south line drawn through the western limits of the community of Silver City.
Tuolumne, Eastern Part	5	All of Tuolumne County except that portion lying west of State Highway 49.
Yuba, Northeastern Part	5	All of Yuba County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 65 and that portion lying south of a line drawn three miles north of, and paralleling State Highway 20.

(b) Excessive Cost for Projects that House No More than 200 Pupils (Small Size Projects).

A New Construction or Modernization Grant will be increased by 12 percent for a project that will house less than 101 pupils, or by four percent if the project will house no more 200 pupils.

(c) Excessive Cost to Construct a New School Project.

A New Construction Grant for a new elementary, middle or high school on a site with no existing school facilities shall be increased by the difference in the amount provided for the New Construction Grant and the amount shown below, based on the number of classrooms in the proj-

Classrooms in project	Elementary School pupils	Middle School pupils	High School School pupils
1	\$160,000	\$674,000	\$1,466,000
2	\$377,000	\$756,000	\$1,525,000
3	\$566,000	\$840,000	\$1,885,000
4	\$717,000	\$932,000	\$2,205,000
5	\$842,000	\$1,028,000	\$2,428,000
6	\$1,021,000	\$1,125,000	\$2,651,000
7	\$1,202,000	\$1,222,000	\$2,874,000
8	\$1,341,000	\$1,328,000	\$3,046,000
9	\$1,341,000	\$1,440,000	\$3,184,000
10	\$1,577,000	\$1,553,000	\$3,321,000
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

(d) Excessive Cost Due to Urban Location, Security Requirements and Impacted Site.

A New Construction or Modernization Grant will be increased if site acreage for the project is:

(1) at least 50 percent but less than 75 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction or Modernization Grant will be increased by eight percent.

(2) at least 30 percent but less than 50 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction or Modernization Grant will be increased by 15 percent.

(3) less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Grant will be increased by 50 percent.

(e) Excessive Cost due to Seismic Retrofit Requirements.

A Modernization Grant will be increased for seismic retrofit work if the project meets the following criteria:

(1) The seismic retrofit work is necessary in classrooms that qualify for Modernization Grants and is included in the project.

(2) The district has submitted a report from a licensed design professional which identifies the seismic retrofit structural improvements and minimum work needed to address the seismic structural improvements needed to avert future earthquake damage. The report must contain a detailed cost estimate of the needed repairs and shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication.

(3) If the amount of the cost estimate in item (e)(2) and the amount of the Modernization Grant that will be provided for that classroom in the project is less than 50 percent of the Current Replacement Cost of the classrooms that need seismic retrofit work, the project qualifies for excessive grants for seismic retrofit work. The excessive cost grant for seismic work is 80 percent of the amount of the repair work reviewed by the OPSC and approved by the Board that is identified in (e)(2).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

The OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (New 12/3/98), which is incorporated

by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (New 12/3/98), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

The OPSC shall report to the Board on a monthly basis the status of funds available for New Construction Grants and the aggregate amount of SFP New Construction Grant requests that have been received but not yet funded. The Board shall declare that State funds are insufficient for New Construction Grants when the SFP grant requests that are ready for Apportionment exceed the funds available for that purpose. This declaration will implement the priority point system and the Board shall approve new construction projects and apportion funds based on the highest priority points assigned to projects. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

All New Construction Grant requests shall be funded in date order received until such time that the Board declares that the available funds for construction are insufficient to finance the grant requests ready for Apportionment. When this occurs, the Board shall fund those projects with the highest number of priority points first. When one or more projects have the same number of priority points assigned, the projects will then be funded by the date order the applications for funding were received by the OPSC.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a project shall be based on the following computations rounded to the nearest whole number. The computation shall be on a districtwide or the HSAA basis utilizing CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (New 12/3/98), in effect at the time the district's application for funding was submitted to the OPSC for the project. A project may receive a maximum of 220 points based on the total of (a), (b) and (c):

- (a) A maximum of 100 points for both of the following:
- (1) Six points for each percent of current unhoused pupils.

- (2) Four points for each percent of projected unhoused pupils.
- (b) A maximum of 100 points for both of the following:
 - (1) One point for each 100 currently unhoused pupils.
 - (2) One point for each 200 projected unhoused pupils.
- (c) A maximum of 20 points for the following:
 - (1) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.
 - (2) Six points for a County Superintendent of Schools' project.
 - (3) Six points for a facility hardship project that meets the requirements of Sections 1859.82(a) and (b).
 - (4) Six points for a project that used "stock plans" pursuant to Education Code Section 17070.33(b)(6).
 - (5) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Section 17072.25, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an approvable application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an excessive cost hardship grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

- (1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.
- (2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will

be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to allocate to either New Construction or Modernization Grants, the Board will continue to accept, process and approve applications for eligibility determination. The Board will also accept and process applications for funding for purposes of developing an information list of projects based on the date an eligible application was received by the OPSC.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Rev. 7/99-1.), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings shall be deemed to be any portion of the State's final apportionment and the required district contribution not needed to complete the project. A project shall be deemed complete when the notice of completion has been filed for the project, all outstanding invoices, claims, changes orders have been satisfied and the facility is currently in use by the district.

The State's portion of any savings must first be used to reduce the SFP financial hardship grant of that project or other projects within the district. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (New 12/3/98), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or 90 days after the notice of completion has been filed for the project, whichever occurs first.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or 90 days after the notice of completion has been filed, whichever occurs first.

(b) A progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.105. Program Accountability Progress Audit.

The Board shall conduct a Progress Audit to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be any of the following:

(a) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(b) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(c) All construction activities are at least 50 percent complete.

(d) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

After the Board has received the progress report required in Section 1859.104(b), a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report,

the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (New 12/3/98), to the OPSC within 30 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 30 days, the OPSC will recommend that the apportionment be rescinded.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the difference in the value of site that was used to determine the New Construction Additional Grant provided for site acquisition and the actual amount paid by the district for the site as indicated in the escrow instructions.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (New 12/3/98), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

Should the OPSC conduct an expenditure audit and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

- (1) Article 5. Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.
- (2) Board. State Allocation Board.
- (3) DCE.

Director of Compensatory Education.

(4) Eligible School District.

Any school district:

(A) Whose application for aid under Article 5 has the approval of DCE; and

(B) Which, as determined by the DCE, experiences emergency increases in school enrollments, because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, of such magnitude as to make it impossible or impractical to accommodate the additional pupils in existing school buildings and facilities available to the district.

(5) Executive Officer. Executive Officer of the State Allocation Board.

(6) "Expenditures may be made to a school district pursuant to the provisions of Sections . . . 3 (Article 5) of this Act," as contained in Section 4 of Chapter 106, first extraordinary session of 1966.

This clause is deemed to authorize any expenditures under Article 5.

(7) "The means specified by Section 16042" as used in Section 16231. This shall be deemed to mean only the form which methods of availability may take and not the various collateral provisions contained in Section 16042, which are peculiar to that section.

(8) Original District. The first district who purchases or constructs portables as the agent of the State.

(9) Portable School and Classroom Buildings. As used in Article 5, this term shall be deemed to include furnishings therefor which are deemed necessary by the Board for the approved use of such buildings.

(10) Sections referred to. Unless otherwise specified, sections referred to in these rules shall be deemed to mean sections of the Education Code.

(11) Moving Expenses. May include any costs required for dismantling from one site and re-erection on another site prepared for the portables involved.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16230-16234, Education Code.

HISTORY

1. New Subgroup 7 (Sections 1861, 1861.1 through 1861.25), filed 7-15-66 as an emergency; effective upon filing (Register 66, No. 22).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 9-30-66 (Register 66, No. 33).
3. Amendment of subsections (a)(1) and (a)(7) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18).

Article 2. Method of Availability of Portable Facilities

§ 1861.1. Acquisition by Board and Conveyancing to District.

(a) Upon application by a school district approved by DCE, the Board may expend monies available under Article 5 for the acquisition by the Board of new or used portable buildings and related facilities and equipment, and thereafter convey the same to the eligible district. The convey-

[The next page is 235.]

Title 2, CCR, Register 99-41

§ 1859.20	§ 1859.74.1
§ 1859.21	§ 1859.75
§ 1859.30	§ 1859.79
§ 1859.31	§ 1859.79.2
§ 1859.32	§ 1859.81
§ 1859.33	§ 1859.81.1
§ 1859.35	§ 1859.82
§ 1859.40	§ 1859.90
§ 1859.41	§ 1859.100
§ 1859.50	§ 1859.102
§ 1859.60	§ 1859.104
§ 1859.70	§ 1859.105
§ 1859.72	§ 1859.106

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15. Priority Two Modernization.

Districts with Priority Two modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 8/99), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 8/99), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and

1859.32 and report that inventory on the *Existing School Building Capacity* Form SAB 50-02 (Revised 8/99). Completion of the calculations made on this form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.41. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing Assistance;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(l) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

1859.32. Adjustments to Gross Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) owned but leased to another district.

(j) any portable classroom excluded by Education Code Section 17071.30.

(k) that is permanent space and leased for less than five years.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 8/99).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HSAA, multiply the K-12 pupil capacity within the boundaries of the HSAA by eight percent.

When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction Grants.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance

must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on the basis of one or more HSAA, eligibility for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or HSAA's must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

Combining two or more HSAA's to determine eligibility is allowed if all the HSAA are adjacent and the facilities constructed will serve pupils in each of those HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection* Form SAB 50-01 (Revised 8/99), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total special day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current special day class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), shall be adjusted by the average annual percentage change in (1) for each year until the five year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 8/99), for a new construction SFP grant.

A district affected by reorganization may not file an application for funding for new construction grants after the reorganization has become effective until a new calculation of the district's eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), or the district certifies that no change has occurred in the district's enrollment or existing school building capacity as a result of the reorganization.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and Note, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 8/99), after completing the applicable requirements in Section 1859.20.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

(a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

(c) If the project will include therapy room area for use by pupils that are Severely Disabled Individuals with Exceptional Needs, the district may request an increase in the new construction grant in the amount of \$75 per square foot of therapy area, not to exceed 3,000 square feet, plus

750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The \$75 amount shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.74. Additional Grant for Site Acquisition Cost.

The New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessment costs.

(3) Increased by the actual cost of preparing an action plan for toxic contamination and the cost of implementing that plan provided all the following are met:

(A) The CDE certifies that there are no other available alternative sites that meet the standards adopted by the CDE pursuant to Education Code Section 17251(b) or (c)

(B) The action plan for toxic contamination was developed in accordance with the minimum standards required by the Department of Toxic Substance Control.

(C) The cost for implementation of the action plan was made in accordance with all state and federal laws.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessments costs.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 8/99), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100% of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.76. Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size and necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 8/99).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a pro-rated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis. NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

The Modernization Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

- (a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization Grants for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

- (a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or
- (b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:
 - (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.
 - (2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:

- (1) Replacement, repair or additions to existing site development.
- (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

- (a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.
- (b) A facility hardship grant as provided in Section 1859.82.
- (c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made

of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(h) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$900,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

(4) The project for which the district is requesting financial hardship meets all of the following:

(A) It has been approved as a health and safety facility hardship pursuant to Section 1859.82(a)(1) or the project was approved as a hardship under the provisions of the LPP.

(B) The district's contribution for the project is less than \$500,000, exclusive of allowable site acquisition cost pursuant to Section 1859.74.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for a separate apportionment for the following:

(a) For new construction projects, an amount not to exceed 100 percent of the lesser of the actual or appraised value of the site as provided in Sections 1859.74, 1859.74.1 and 1859.75.

(b) For new construction or modernization projects, an amount not to exceed 20 percent of the new construction or modernization grant amount for design, engineering and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount allowed in (a) and (b) may not exceed the amount of financial hardship funding the district is otherwise eligible for. The amount provided as a separate apportionment shall be off-set from the New Construction or Modernization Grant amount the district would otherwise be eligible for pursuant to 1859.70. A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 8/99).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost

to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(c).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for New Construction Grants as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities approved for replacement. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The grant amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq.ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq.ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq.ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grants, a district is eligible for an additional grant as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

The OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (Revised 8/99), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (Revised 8/99), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

The OPSC shall report to the Board on a monthly basis the status of funds available for New Construction Grants and the aggregate amount of SFP New Construction Grant requests that have been received but not yet funded. The Board shall declare that State funds are insufficient for New Construction Grants when the SFP grant requests that are ready for Apportionment exceed the funds available for that purpose. This declaration will implement the priority point system and the Board shall approve new construction projects and apportion funds based on the highest priority points assigned to projects. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

All New Construction Grant requests shall be funded in date order received until such time that the Board declares that the available funds for construction are insufficient to finance the grant requests ready for Apportionment. When this occurs, the Board shall fund those projects with the highest number of priority points first. When one or more projects have the same number of priority points assigned, the projects will then be funded by the date order the applications for funding were received by the OPSC.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a project shall be based on the following computations rounded to the nearest whole number. The computation shall be on a districtwide or the HSAA basis utilizing CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), in effect at the time the district's application for funding was submitted to the OPSC for the project. A project may receive a maximum of 220 points based on the total of (a), (b) and (c):

- (a) A maximum of 100 points for both of the following:
 - (1) Six points for each percent of current unhoused pupils.
 - (2) Four points for each percent of projected unhoused pupils.
- (b) A maximum of 100 points for both of the following:
 - (1) One point for each 100 currently unhoused pupils.
 - (2) One point for each 200 projected unhoused pupils.
- (c) A maximum of 20 points for the following:
 - (1) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.
 - (2) Six points for a County Superintendent of Schools' project.
 - (3) Six points for a facility hardship project that meets the requirements of Sections 1859.82(a) and (b).
 - (4) Six points for a project that used "stock plans" pursuant to Education Code Section 17070.33(b)(6).
 - (5) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Sections 17070.33 and 17072.25, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an approvable application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an excessive cost hardship grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

(1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.

(2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.95. Acceptance of Applications When Funding is Unavailable.

When the Board has no funds to allocate to either New Construction or Modernization Grants, the Board will continue to accept, process and approve applications for eligibility determination. The Board will also accept and process applications for funding for purposes of developing an information list of projects based on the date an eligible application was received by the OPSC.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

§ 1859.100. Restricted On-going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 8/99), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

- 1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
- 4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 8/99), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
- 4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 8/99), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 8/99), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur;

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund re-

lease for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) A progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.105. Program Accountability Progress Audit.

The Board shall conduct a Progress Audit to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be any of the following:

(a) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(b) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(c) All construction activities are at least 50 percent complete.

(d) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

After the Board has received the progress report required in Section 1859.104(b), a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 8/99), to the OPSC within 30 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 30 days, the OPSC will recommend that the apportionment be rescinded.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the

New Construction or Modernization Adjusted Grant funding provided for the project. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the difference in the value of site that was used to determine the New Construction Additional Grant provided for site acquisition and the actual amount paid by the district for the site as indicated in the escrow instructions.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 8/99), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251(b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50(b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards.

Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) Article 5.

Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.

(2) Board.

State Allocation Board.

(3) DCE.

Director of Compensatory Education.

(4) Eligible School District.

Any school district:

(A) Whose application for aid under Article 5 has the approval of DCE; and

(B) Which, as determined by the DCE, experiences emergency increases in school enrollments, because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, of such magnitude as to make it impossible or impractical to accommodate the additional pupils in existing school buildings and facilities available to the district.

(5) Executive Officer. Executive Officer of the State Allocation Board.

(6) "Expenditures may be made to a school district pursuant to the provisions of Sections . . . 3 (Article 5) of this Act," as contained in Section 4 of Chapter 106, first extraordinary session of 1966.

This clause is deemed to authorize any expenditures under Article 5.

(7) "The means specified by Section 16042" as used in Section 16231. This shall be deemed to mean only the form which methods of availabil-

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§ 1859.50

§ 1859.70

§ 1859.74.1

§ 1859.81.1

§ 1859.100

§ 1859.102

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15. Priority Two Modernization.

Districts with Priority Two modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

- (a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), which is incorporated by reference.
- (b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), which is incorporated by reference.
- (c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 8/99), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 10/99), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 8/99). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HISAA as appropriate. For the purpose of his gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(l) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year,

(i) owned but leased to another district.

(j) any portable classroom excluded by Education Code Section 17071.30.

(k) that is permanent space and leased for less than five years.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 8/99).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by adding the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.50 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HSAA, multiply the K-12 pupil capacity within the boundaries of the HSAA by eight percent.

When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99). The information provided on this Form shall serve

as the basis for determining a district's eligibility for New Construction Grants.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on the basis of one or more HSAA, eligibility for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or HSAA's must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

Combining two or more HSAA's to determine eligibility is allowed if all the HSAA are adjacent and the facilities constructed will serve pupils in each of those HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent

annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection* Form SAB 50-01 (Revised 8/99), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current

enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total special day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current special day class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), shall be adjusted by the average annual percentage change in (1) for each year until the five year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 10/99), for a new construction SFP grant.

A district affected by reorganization may not file an application for funding for new construction grants after the reorganization has become effective until a new calculation of the district's eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), or the district certifies that no change has occurred in the district's enrollment or existing school building capacity as a result of the reorganization.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years.
- (f) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (g) Adjusted as a result of amendments to these Regulations that effect the eligibility.
- (h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

- (1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

- (1) Permanent area and at least 25 years old and not previously modernized with State funds.
- (2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 10/99), after completing the applicable requirements in Section 1859.20.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

(a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

(c) If the project will include therapy room area for use by pupils that are Severely Disabled Individuals with Exceptional Needs, the district may request an increase in the new construction grant in the amount of \$75 per square foot of therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The \$75 amount shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.74. Additional Grant for Site Acquisition Cost.

The New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessment costs.

(3) Increased by the actual cost of preparing an action plan for toxic contamination and the cost of implementing that plan provided all the following are met:

(A) The CDE certifies that there are no other available alternative sites that meet the standards adopted by the CDE pursuant to Education Code Section 17251(b) or (c)

(B) The action plan for toxic contamination was developed in accordance with the minimum standards required by the Department of Toxic Substance Control.

(C) The cost for implementation of the action plan was made in accordance with all state and federal laws.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approval and Phase One and Phase Two site environmental assessments costs.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 10/99), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100% of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as in 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.76. Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:

- (1) Site clearance including the removal of trees, brush, and debris.
 - (2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.
 - (3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.
 - (4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.
 - (5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.
 - (6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.
 - (7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.
 - (10) Fire code requirements on site that are not a part of the building.
- (b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:
- (1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.
 - (2) Sidewalks mandated by local ordinances.
 - (3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.
 - (4) City and/or county or special district fees pursuant to active ordinances.
 - (5) Reasonable cost for storm drains to point of connection.
 - (6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:
 - (A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.
 - (B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.
 - (C) The state grant does not exceed \$50,000.
 - (D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.
 - (E) The SAB has determined that development of additional pedestrian paths is reasonable.
 - (c) Utility service costs associated with the CDE approved site size and necessary to serve the master planned capacity of the site as follows:
 - (1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).
 - (2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.
 - (3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of me-

ters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 10/99).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a pro-rated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis. NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.36, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

The Modernization Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

- (a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization Grants for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

- (a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or
- (b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction set-aside eligibility for the district.

(2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$900,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

(4) The project for which the district is requesting financial hardship meets all of the following:

(A) It has been approved as a health and safety facility hardship pursuant to Section 1859.82(a)(1) or the project was approved as a hardship under the provisions of the LPP.

(B) The district's contribution for the project is less than \$500,000, exclusive of allowable site acquisition cost pursuant to Section 1859.74.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for a separate apportionment for the following:

(a) For new construction projects, an amount not to exceed 100 percent of the lesser of the actual or appraised value of the site as provided in Sections 1859.74, 1859.74.1 and 1859.75.

(b) For new construction or modernization projects, an amount not to exceed 20 percent of the new construction or modernization grant amount for design, engineering and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount allowed in (a) and (b) may not exceed the amount of financial hardship funding the district is otherwise eligible for. The amount provided as a separate apportionment shall be offset from the New Construction or Modernization Grant amount the district would otherwise be eligible for pursuant to 1859.70. A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding, Form SAB 50-04 (Revised 10/99)*.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the

total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(c).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for New Construction Grants as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities approved for replacement. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The grant amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq.ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq.ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq.ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

district may request a determination of eligibility for facility hard-funding in advance of project funding.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grants, a district is eligible for an additional grant as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

The OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (Revised 8/99), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (Revised 8/99), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

The OPSC shall report to the Board on a monthly basis the status of funds available for New Construction Grants and the aggregate amount of SFP New Construction Grant requests that have been received but not yet funded. The Board shall declare that State funds are insufficient for New Construction Grants when the SFP grant requests that are ready for Apportionment exceed the funds available for that purpose. This declaration will implement the priority point system and the Board shall approve new construction projects and apportion funds based on the highest priority points assigned to projects. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

All New Construction Grant requests shall be funded in date order received until such time that the Board declares that the available funds for construction are insufficient to finance the grant requests ready for Apportionment. When this occurs, the Board shall fund those projects with the highest number of priority points first. When one or more projects have the same number of priority points assigned, the projects will then be funded by the date order the applications for funding were received to the OPSC.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a project shall be based on the following computations rounded to the nearest whole number. The computation shall be on a districtwide or the HSAA basis utilizing CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), in effect at the time the district's application for funding was submitted to the OPSC for the project. A project may receive a maximum of 220 points based on the total of (a), (b) and (c):

- (a) A maximum of 100 points for both of the following:
 - (1) Six points for each percent of current unhoused pupils.
 - (2) Four points for each percent of projected unhoused pupils.
- (b) A maximum of 100 points for both of the following:
 - (1) One point for each 100 currently unhoused pupils.
 - (2) One point for each 200 projected unhoused pupils.
- (c) A maximum of 20 points for the following:
 - (1) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.
 - (2) Six points for a County Superintendent of Schools' project.
 - (3) Six points for a facility hardship project that meets the requirements of Sections 1859.82(a) and (b).
 - (4) Six points for a project that used "stock plans" pursuant to Education Code Section 17070.33(h)(6).
 - (5) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Sections 17070.33 and 17072.25, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an approvable application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an excessive cost hardship grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

(1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.

(2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to allocate to either New Construction or Modernization Grants, the Board will continue to accept, process and approve applications for eligibility determination. The Board will also accept and process applications for funding for purposes of developing an information list of projects based on the date an eligible application was received by the OPSC.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 10/99), that a restricted account within the district's general fund has been established for the exclusive purpose of providing ongoing and major repair of its facilities, pursuant to Education Code Section 17070.75

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 10/99), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 10/99), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 10-3-99 and filed 12-22-99 (Register 99, No. 52).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, as if the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report Form* SAB 50-06 (Revised 8/99), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon comple-

tion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) A progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.105. Program Accountability Progress Audit.

The Board shall conduct a Progress Audit to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be any of the following:

(a) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(b) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(c) All construction activities are at least 50 percent complete.

(d) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

After the Board has received the progress report required in Section 1859.104(b), a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 8/99), to the OPSC within 30 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 30 days, the OPSC will recommend that the apportionment be rescinded.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligi-

bility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submittal.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the difference in the value of site that was used to determine the New Construction Additional Grant provided for site acquisition and the actual amount paid by the district for the site as indicated in the escrow instructions.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 8/99), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251(b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50(b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any ad-

justment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards. Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) Article 5.

Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.

(2) Board.

State Allocation Board.

(3) DCE.

Director of Compensatory Education.

(4) Eligible School District.

Any school district:

(A) Whose application for aid under Article 5 has the approval of DCE; and

(B) Which, as determined by the DCE, experiences emergency increases in school enrollments, because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, of such magnitude as to make it impossible or impractical to accommodate the additional pupils in existing school buildings and facilities available to the district.

(5) Executive Officer. Executive Officer of the State Allocation Board.

(6) "Expenditures may be made to a school district pursuant to the provisions of Sections . . . 3 (Article 5) of this Act," as contained in Section 4 of Chapter 106, first extraordinary session of 1966.

This clause is deemed to authorize any expenditures under Article 5.

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or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15. Priority Two Modernization.

Districts with Priority Two modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 8/99), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 8/99), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 8/99), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 10/99), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 8/99). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

- (a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;
- (b) constructed with funds from the LPP;
- (c) used for Special Day Class or Resource Specialist Programs;
- (d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;
- (e) acquired or created for Class Size Reduction purposes;
- (f) used for preschool programs;
- (g) converted to any non-classroom purpose including use by others;
- (h) with Housing and Community Development or Department of Housing insignia;
 - (i) acquired for interim housing for a modernization project;
 - (j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;
 - (k) that have a waiver for continued use by the Board for Field Act exemptions;
 - (l) used for Community School purposes;
 - (m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- (a) abandoned and approved for replacement as a hardship under the provisions of the LPP;
- (b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;
- (c) included in any new construction LPP project that has not received a Phase C apportionment;
- (d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;
- (e) that is a trailer and is transported/towed on its own wheels and axles;
 - (f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;
 - (g) of less than 700 interior square feet;
 - (h) originally built for instructional use, but converted to one of the following:
 - (1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
 - (2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
 - (3) used for school library purposes during the previous school year.
 - (i) owned but leased to another district.
 - (j) any portable classroom excluded by Education Code Section 17071.30.
 - (k) that is permanent space and leased for less than five years.
 - (l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (l) filed 1-10-2000; operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 8/99).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

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If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for a separate apportionment for the following:

(a) For new construction projects, an amount not to exceed 100 percent of the lesser of the actual or appraised value of the site as provided in Sections 1859.74, 1859.74.1 and 1859.75.

(b) For new construction or modernization projects, an amount not to exceed 20 percent of the new construction or modernization grant amount for design, engineering and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount allowed in (a) and (b) may not exceed the amount of financial hardship funding the district is otherwise eligible for. The amount provided as a separate apportionment shall be offset from the New Construction or Modernization Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81. A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 10/99).

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 10/99)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for New Construction Grants as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities approved for replacement. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 12/99), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon comple-

tion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) A progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

§ 1859.105. Program Accountability Progress Audit.

The Board shall conduct a Progress Audit to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be any of the following:

(a) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(b) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(c) All construction activities are at least 50 percent complete.

(d) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

After the Board has received the progress report required in Section 1859.104(b), a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 12/99), to the OPSC within 30 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 30 days, the OPSC will recommend that the apportionment be rescinded.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of re-submission.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the difference in the value of site that was used to determine the New Construction Additional Grant provided for site acquisition and the actual amount paid by the district for the site as indicated in the escrow instructions.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 12/99), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the approved "unfunded" list. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) Article 5.
Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.

(2) Board.

State Allocation Board.

(3) DCE.

Director of Compensatory Education.

(4) Eligible School District.

Any school district:

(A) Whose application for aid under Article 5 has the approval of DCE; and

(B) Which, as determined by the DCE, experiences emergency increases in school enrollments, because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, of such magnitude as to make it impossible or impractical to accommodate the additional pupils in existing school buildings and facilities available to the district.

(5) Executive Officer. Executive Officer of the State Allocation Board.

(6) "Expenditures may be made to a school district pursuant to the provisions of Sections . . . 3 (Article 5) of this Act," as contained in Section 4 of Chapter 106, first extraordinary session of 1966.

This clause is deemed to authorize any expenditures under Article 5.

(7) "The means specified by Section 16042" as used in Section 16231. This shall be deemed to mean only the form which methods of availability may take and not the various collateral provisions contained in Section 16042, which are peculiar to that section.

(8) Original District. The first district who purchases or constructs portables as the agent of the State.

(9) Portable School and Classroom Buildings. As used in Article 5, this term shall be deemed to include furnishings therefor which are deemed necessary by the Board for the approved use of such buildings.

(10) Sections referred to. Unless otherwise specified, sections referred to in these rules shall be deemed to mean sections of the Education Code.

(11) Moving Expenses. May include any costs required for dismantling from one site and re-erection on another site prepared for the portables involved.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16230-16234, Education Code.

HISTORY

1. New Subgroup 7 (Sections 1861, 1861.1 through 1861.25), filed 7-15-66 as an emergency; effective upon filing (Register 66, No. 22).

2. Certificate of Compliance—Section 11422.1, Government Code, filed 9-30-66 (Register 66, No. 33).

3. Amendment of subsections (a)(1) and (a)(7) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18).

Article 2. Method of Availability of Portable Facilities

§ 1861.1. Acquisition by Board and Conveyancing to District.

(a) Upon application by a school district approved by DCE, the Board may expend monies available under Article 5 for the acquisition by the Board of new or used portable buildings and related facilities and equipment, and thereafter convey the same to the eligible district. The convey-

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§ 1859.20	§ 1859.75.1
§ 1859.21	§ 1859.79
§ 1859.30	§ 1859.81
§ 1859.32	§ 1859.81.1
§ 1859.33	§ 1859.82
§ 1859.35	§ 1859.90
§ 1859.40	§ 1859.100
§ 1859.50	§ 1859.102
§ 1859.60	§ 1859.104
§ 1859.70	§ 1859.105
§ 1859.74.1	§ 1859.105.1
	§ 1859.106

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of second paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.14. Priority One Modernization.

Priority One modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, may proceed under either (a) or (b). Districts may either:

- (a) Receive funding under the provisions of the LPP; or,
- (b) By January 31, 1999, withdraw the Priority One modernization LPP project and submit a new application for funding under the provisions of the SFP, pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.15. Priority Two Modernization.

Districts with Priority Two modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

- or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding. If the project is eligible for further funding under the SFP, the:

- (a) New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.
- (b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

- (a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 01/00), which is incorporated by reference.
- (b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), which is incorporated by reference.
- (c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/00), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

- New article 3 (sections 1859.20-1859.21) and section refiled 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
 - New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 - New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 - Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 - Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding, Form SAB 50-04 (Revised 01/00)*, which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.30 and 17074.15, Education Code.

HISTORY

- New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
- Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity, Form SAB 50-02 (Revised 01/00)*. Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

- New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

- New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

- for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;
- constructed with funds from the LPP;
- used for Special Day Class or Resource Specialist Programs;
- that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;
- acquired or created for Class Size Reduction purposes;
- used for preschool programs;
- converted to any non-classroom purpose including use by others;
- with Housing and Community Development or Department of Housing insignia;
- acquired for interim housing for a modernization project;
- leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;
- that have a waiver for continued use by the Board for Field Act exemptions;
- used for Community School purposes;
- included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

- New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- abandoned and approved for replacement as a hardship under the provisions of the LPP;
- at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;
- included in any new construction LPP project that has not received a Phase C apportionment;
- that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;
- that is a trailer and is transported/towed on its own wheels and axles;
- used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 100 interior square feet;
 (h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.
 (i) owned but leased to another district.

(j) any portable classroom excluded by Education Code Section 17071.30.

(k) that is permanent space and leased for less than five years.

(l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (l) filed 1-10-2000; operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).
6. Amendment of section heading filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/00).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HISA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HISA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HISA, multiply the K-12 pupil capacity within the boundaries of the HISA by eight percent. When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction Grants.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Com-

pliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on the basis of one or more HSAA, eligibility for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or HSAA's must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

Combining two or more HSAA's to determine eligibility is allowed if all the HSAA are adjacent and the facilities constructed will serve pupils in each of those HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort

survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third pre-

vious year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 01/00).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/00), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 01/00), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
8. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/00), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) Excluded pursuant to Education Code Section 17071.30.

(4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

(5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the date the OPSC accepted an *Application For Funding*, Form SAB 50-04 (Revised 01/00) from the district for New Construction grants pursuant to Section 1859.70.

(6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving new construction grants (rounded up) for the SFP project.

(j) For small school districts, decreased:

(1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.75, 17071.76 and 17072.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 01/00). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

- (1) Permanent and at least 25 years old and not previously modernized with State funds.
- (2) Portable and at least 20 years old and not previously modernized with State funds.
- (3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

- (1) Permanent area and at least 25 years old and not previously modernized with State funds.
- (2) Portable classroom area and at least 20 years old and not previously modernized with State funds.
- (3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/00), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance

must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 01/00), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for funding for new construction grants after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the Eligibility Determination, Form SAB 50-03 (Revised 01/00), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10, 17073.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

(a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

(c) If the project will include therapy room area for use by pupils that are Severely Disabled Individuals with Exceptional Needs, the district may request an increase in the new construction grant in the amount of \$75 per square foot of therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The \$75 amount shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73.1. Additional Grant for Project Assistance.

The New Construction Grant will be increased by \$3,750 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 01/00) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/00), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100% of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below;

(a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

- (1) The costs may include the costs for preparation of the RA.
- (2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(3) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lesser of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 01/00).

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.76. Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for multilevel parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.

(D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the request with the *Application for Funding*, Form SAB 50-04 (Revised 01/00).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a pro-rata basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. New subsections (a)(11)-(a)(11)(D) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

8. New subsection (a)(12) and amendment of subsections (c) and (c)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.30 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.77.2. Use of New Construction Grant Funds.

New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

A district may request a new construction grant:

(a) That exceeds the number of pupils that will be housed in the project based on loading standards pursuant to Education Code section 17071.25(a)(2) and any loading standards adopted by the Board by these regulations subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the excess pupils receiving grants in the project as determined in (a).

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the pupils receiving grants in the project as determined in (a).

(2) The plan identified in (a)(1)(A) is acceptable to the CDE and the OPSC.

(3) When a new construction grant request exceeds 150 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations, the Board may require approval on a case by case basis.

(b) Utilizing new construction grant eligibility determined at a different grade level than the proposed project subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(2) The plan identified in (b)(1)(A) is acceptable to the CDE.

(3) The district is using all new construction grant eligibility in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(4) The new construction grant amount shall be determined on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any additional grants or excessive cost grants the district qualified for as provided by these regulations. Any excessive cost grants provided pursuant to Section 1859.83(c) shall be determined on the total of all grants provided for the project.

(5) The Board may require approval of the district's request on a case by case basis.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17072.35, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

The Modernization Grant will be increased for all Individuals With Exceptional Needs to be housed in the project as follows:

(a) By ten percent for a pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) By 100 percent for a pupil that is a Severely Disabled Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.2. Additional Grant for Project Assistance.

The Modernization Grant will be increased by \$2,000 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 01/00) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

new section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization Grants for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

- (a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or
- (b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:
 - (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.
 - (2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:
 - (1) Replacement, repair or additions to existing site development.
 - (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

- (a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.
- (b) A facility hardship grant as provided in Section 1859.82.
- (c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$900,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

(4) The project for which the district is requesting financial hardship meets all of the following:

(A) It has been approved as a health and safety facility hardship pursuant to Section 1859.82(a)(1) or the project was approved as a hardship under the provisions of the LPP.

(B) The district's contribution for the project is less than \$500,000, exclusive of allowable site acquisition cost pursuant to Section 1859.74.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an Application for Funding, Form SAB 50-04 (Revised 01/00) under the provisions of financial hardship for a period of six months from the date of the OPSC notification.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction or modernization projects, the Board will apportion an amount not to exceed 20 percent of the new construction or modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction or Modernization Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an Application For Funding, Form SAB 50-04 (Revised 01/00). A district seeking a separate apportionment for site acquisition or design costs shall submit an Application for Funding, Form SAB 50-04 (Revised 01/00). The Application For Funding, Form SAB 50-04 (Revised 01/00) must be for at least 50 percent of the New Construction Grants or at least 80 percent of the Modernization Grants the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see Application for Funding, Form SAB 50-04 (Rev. 01/00)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

8 Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for New Construction Grants

as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The grant amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech/Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq.ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq.ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq.ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 01/00) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an acceptable *Application For Funding*, Form SAB 50-04 (Revised 01/00) for the replaced facility is not received within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to acceptance of an *Application For Funding*, Form SAB 50-04 (Revised 01/00) for the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99,

No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-20-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grants, a district is eligible for an additional grant as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Section 1859.81.1(c), the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (Revised 01/00), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (Revised 01/00), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

The OPSC shall report to the Board on a monthly basis the status of funds available for New Construction Grants and the aggregate amount of SFP New Construction Grant requests that have been received but not yet funded. The Board shall declare that State funds are insufficient for New Construction Grants when the SFP grant requests that are ready for Apportionment exceed the funds available for that purpose. This declaration will implement the priority point system and the Board shall approve new construction projects and apportion funds based on the highest priority points assigned to projects. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

All New Construction Grant requests shall be funded in date order received until such time that the Board declares that the available funds for construction are insufficient to finance the grant requests ready for Apportionment. When this occurs, the Board shall fund those projects with the highest number of priority points first. When one or more projects have the same number of priority points assigned, the projects will then

be funded by the date order the applications for funding were received by the OPSC.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a project shall be based on the following computations rounded to the nearest whole number. The computation shall be on a districtwide or the HSAA basis utilizing CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), in effect at the time the district's application for funding was submitted to the OPSC for the project. A project may receive a maximum of 220 points based on the total of (a), (b) and (c):

- (a) A maximum of 100 points for both of the following:
 - (1) Six points for each percent of current unhoused pupils.
 - (2) Four points for each percent of projected unhoused pupils.
- (b) A maximum of 100 points for both of the following:
 - (1) One point for each 100 currently unhoused pupils.
 - (2) One point for each 200 projected unhoused pupils.
- (c) A maximum of 20 points for the following:
 - (1) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.
 - (2) Six points for a County Superintendent of Schools' project.
 - (3) Six points for a facility hardship project that meets the requirements of Sections 1859.82(a) and (b).
 - (4) Six points for a project that used "stock plans" pursuant to Education Code Section 17070.33(b)(6).
 - (5) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Sections 17070.33 and 17072.25, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an approvable application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.94. **Hardship Funding.**

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an excessive cost hardship grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

(1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.

(2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.95. **Acceptance of Applications When Funding Is Unavailable.**

When the Board has no funds to allocate to either New Construction or Modernization Grants, the Board will continue to accept, process and approve applications for eligibility determination. The Board will also accept and process applications for funding for purposes of developing an information list of projects based on the date an eligible application was received by the OPSC. Applications received for new construction grants for a project where the site was apportioned pursuant to Section 17075.1 shall receive a date on the information list based on the date the environmental hardship site apportionment was made for the project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/00), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/00), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/00), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following.

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

Amendment of subsections (a) and (b), new subsection (c) and amendment of Note filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be any of the following:

- (1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.
- (2) At least 90 percent of the building construction activities are under contract unless the building construction activities are delayed as a result of necessary site development work.
- (3) All construction activities are at least 50 percent complete.
- (4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81 (a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81 (b), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Acceptable evidence of substantial progress shall be submittal of an acceptable *Application for Funding*, Form SAB 50-04 (Revised 01/00) for the project to the OPSC.

After the Board has received the progress report required in Section 1859.104(b) for items (a) and (b) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104(b) for items (a) or (b) above or the district has not filed an acceptable *Application for Funding*, Form SAB 50-04 (Revised 01/00) for funds received pursuant to Section 1859.81 (b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 01/00), to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within

60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligi-

bility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

- (1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.
- (2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site that was used to determine the New Construction Additional Grant provided for site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section filed 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section filed 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the approved "unfunded" list. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Title 2, CCR, Register 2000-29

§ 1859.20	§ 1859.75.1
§ 1859.21	§ 1859.81
§ 1859.30	§ 1859.81.1
§ 1859.33	§ 1859.82
§ 1859.50	§ 1859.90
§ 1859.60	§ 1859.100
§ 1859.70	§ 1859.102
§ 1859.72	§ 1859.105
§ 1859.74.1	§ 1859.107

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of second paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.14. Priority One Modernization.

Priority One modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, may proceed under either (a) or (b). Districts may either:

(a) Receive funding under the provisions of the LPP; or,

(b) By January 31, 1999, withdraw the Priority One modernization LPP project and submit a new application for funding under the provisions of the SFP, pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.15. Priority Two Modernization.

Districts with Priority Two modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding. If the project is eligible for further funding under the SFP, the:

(a) New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 07/00), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/00), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/00), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsections (a) and (c) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 07/00), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02, (Revised 07/00). Completion of the calculations

made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

- (b) constructed with funds from the LPP;
- (c) used for Special Day Class or Resource Specialist Programs;
- (d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;
- (e) acquired or created for Class Size Reduction purposes;
- (f) used for preschool programs;
- (g) converted to any non-classroom purpose including use by others;
- (h) with Housing and Community Development or Department of Housing insignia;
- (i) acquired for interim housing for a modernization project;
- (j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;
- (k) that have a waiver for continued use by the Board for Field Act exemptions;
- (l) used for Community School purposes;
- (m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- (a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) owned but leased to another district.

(j) any portable classroom excluded by Education Code Section 17071.30.

(k) that is permanent space and leased for less than five years.

(l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. New subsection (l) filed 1-10-2000; operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).

6. Amendment of section heading filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/00).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HSAA by eight percent. When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 5 Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction Grants.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.41. High School Attendance Area Reporting.

A district reports enrollment on the basis of one or more HSAA, eligible for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or HSAA's must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

Combining two or more HSAA's to determine eligibility is allowed if all the HSAA are adjacent and the facilities constructed will serve pupils in each of these HSAA.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

Note: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 07/00), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (sections 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
8. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) Excluded pursuant to Education Code Section 17071.30.

(4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

(5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the date the OPSC accepted an *Application For Funding*, Form SAB 50-04 (Revised 07/00)

from the district for New Construction grants pursuant to Section 1859.70.

(6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving new construction grants (rounded up) for the SFP project.

(j) For small school districts, decreased:

(1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.75, 17071.76 and 17072.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first paragraph, subsections (c) and (i)(5) and new subsection (l) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(c) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 07/00), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for funding for new construction grants after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.71.1. New Construction Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved application for new construction funding:

(a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$11,084 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs. The district may request an increase in the new construction grant for therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The grant amount will be increased by \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of section and NOTE filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73.1. Additional Grant for Project Assistance.

The New Construction Grant will be increased by \$3,750 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/00) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of second paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

- (1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/00), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100% of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below:

(a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

- (1) The costs may include the costs for preparation of the RA.
- (2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
- (3) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

- (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
- (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
- (3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lesser of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/00).

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code Section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.76. Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

- (a) Service site development cost, within school property lines for:
- (1) Site clearance including the removal of trees, brush, and debris.
 - (2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.
 - (3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.
 - (4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.
 - (5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the CPSC.
 - (6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.
 - (7) Erosion control improvements such as plant material, temporary silt-trap systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.
 - (10) Fire code requirements on site that are not a part of the building.
 - (11) Funding for multilevel parking structures on a new construction project when all the following have been met:
 - (A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.
 - (B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.
 - (C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.
 - (D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.
 - (12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).
 - (b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:
 - (1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.
 - (2) Sidewalks mandated by local ordinances.
 - (3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.
 - (4) City and/or county or special district fees pursuant to active ordinances.
 - (5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 07/00).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-7-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. New subsections (a)(11)-(a)(11)(D) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. New subsection (a)(12) and amendment of subsections (c) and (c)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of antepenultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.30 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.77.2. Use of New Construction Grant Funds.

New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

A district may request a new construction grant:

(a) That exceeds the number of pupils that will be housed in the project based on loading standards pursuant to Education Code section 17071.25(a)(2) and any loading standards adopted by the Board by these regulations subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the excess pupils receiving grants in the project as determined in (a).

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the pupils receiving grants in the project as determined in (a).

(2) The plan identified in (a)(1)(A) is acceptable to the CDE and the OPSC.

(3) When a new construction grant request exceeds 150 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations, the Board may require approval on a case by case basis.

(b) Utilizing new construction grant eligibility determined at a different grade level than the proposed project subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(2) The plan identified in (b)(1)(A) is acceptable to the CDE.

(3) The district is using all new construction grant eligibility in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(4) The new construction grant amount shall be determined on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any additional grants or excessive cost grants the district qualified for as provided by these regulations. Any excessive cost grants provided pursuant to Section 1859.83(c) shall be determined on the total of all grants provided for the project.

(5) The Board may require approval of the district's request on a case by case basis.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17072.35, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Repealer filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.78.2. Additional Grant for Project Assistance.

The Modernization Grant will be increased by \$2,000 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/00) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.78.3. Modernization Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved application for modernization funding:

- (a) \$7,158 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
- (b) \$4,788 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization Grants for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

- (a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or
- (b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$900,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

(4) The project for which the district is requesting financial hardship meets all of the following:

(A) It has been approved as a health and safety facility hardship pursuant to Section 1859.82(a)(1) or the project was approved as a hardship under the provisions of the LPP.

(B) The district's contribution for the project is less than \$500,000, exclusive of allowable site acquisition cost pursuant to Section 1859.74.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 07/00) under the provisions of financial hardship for a period of six months from the date of the OPSC notification.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

- (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
- (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
- (3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

- (1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.
- (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
- (3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.
- (4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction or modernization projects, the Board will apportion an amount not to exceed 20 percent of the new construction or modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction or Modernization Grant amount the district would

otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 07/00). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/00). The *Application For Funding*, Form SAB 50-04 (Revised 07/00) must be for at least 50 percent of the New Construction Grants or at least 80 percent of the Modernization Grants the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 07/00)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost

to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for New Construction Grants as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the

manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The grant amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech/Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq.ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq.ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq.ft.
Theater	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Beachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hard-nip funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 07/00) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an acceptable *Application For Funding*, Form SAB 50-04 (Revised 07/00) for the replaced facility is not received within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to acceptance of an *Application For Funding*, Form SAB 50-04 (Revised 07/00) for the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grants, a district is eligible for an additional grant as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Section 1859.81.1(c), the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (Revised 07/00), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (Revised 07/00), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

The OPSC shall report to the Board on a monthly basis the status of funds available for New Construction Grants and the aggregate amount of SFP New Construction Grant requests that have been received but not yet funded. The Board shall declare that State funds are insufficient for New Construction Grants when the SFP grant requests that are ready for Apportionment exceed the funds available for that purpose. This declaration will implement the priority point system and the Board shall approve new construction projects and apportion funds based on the highest priority points assigned to projects. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

All New Construction Grant requests shall be funded in date order received until such time that the Board declares that the available funds for construction are insufficient to finance the grant requests ready for Ap-

portionment. When this occurs, the Board shall fund those projects with the highest number of priority points first. When one or more projects have the same number of priority points assigned, the projects will then be funded by the date order the applications for funding were received by the OPSC.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a project shall be based on the following computations rounded to the nearest whole number. The computation shall be on a districtwide or the HSAA basis utilizing CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), in effect at the time the district's application for funding was submitted to the OPSC for the project. A project may receive a maximum of 220 points based on the total of (a), (b) and (c):

(a) A maximum of 100 points for both of the following:

- (1) Six points for each percent of current unhoused pupils.
- (2) Four points for each percent of projected unhoused pupils.

(b) A maximum of 100 points for both of the following:

- (1) One point for each 100 currently unhoused pupils.
- (2) One point for each 200 projected unhoused pupils.

(c) A maximum of 20 points for the following:

- (1) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.
- (2) Six points for a County Superintendent of Schools' project.
- (3) Six points for a facility hardship project that meets the requirements of Sections 1859.82(a) and (b).
- (4) Six points for a project that used "stock plans" pursuant to Education Code Section 17070.33(b)(6).
- (5) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Sections 17070.33 and 17072.25, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an approvable application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an excessive cost hardship grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

(1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.

(2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to allocate to either New Construction or Modernization Grants, the Board will continue to accept, process and approve applications for eligibility determination. The Board will also accept and process applications for funding for purposes of developing an information list of projects based on the date an eligible application was received by the OPSC. Applications received for new construction grants for a project where the site was apportioned pursuant to Section 1859.75.1 shall receive a date on the information list based on the date the environmental hardship site apportionment was made for the project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/00), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/00), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/00), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

- or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
 6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be any of the following:

(1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(3) All construction activities are at least 50 percent complete.

(4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Acceptable evidence of substantial progress shall be submittal of an acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/00) for the project to the OPSC.

After the Board has received the progress report required in Section 1859.104(b) for items (a) and (b) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a) or (b) above or the district has not filed an acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/00) for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 07/00), to the OPSC within 60 days of the OPSC

notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisi-

tion or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

(1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.

(2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site that was used to determine the New Construction Additional Grant provided for site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251(b) and (c) when the district had self-certified that the project met

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the approved "unfunded" list. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(l) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/00).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 07/00) and the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/00).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/00).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/00).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

- (1) Article 5.
Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.
- (2) Board.
State Allocation Board.
- (3) DCE.
Director of Compensatory Education.

(4) Eligible School District.

Any school district:

(A) Whose application for aid under Article 5 has the approval of DCE; and

(B) Which, as determined by the DCE, experiences emergency increases in school enrollments, because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, of such magnitude as to make it impossible or impractical to accommodate the additional pupils in existing school buildings and facilities available to the district.

(5) Executive Officer, Executive Officer of the State Allocation Board.

(6) "Expenditures may be made to a school district pursuant to the provisions of Sections . . . 3 (Article 5) of this Act," as contained in Section 4 of Chapter 106, first extraordinary session of 1966.

This clause is deemed to authorize any expenditures under Article 5. (7) "The means specified by Section 16042" as used in Section 16231. This shall be deemed to mean only the form which methods of availability may take and not the various collateral provisions contained in Section 16042, which are peculiar to that section.

(8) Original District. The first district who purchases or constructs portables as the agent of the State.

(9) Portable School and Classroom Buildings. As used in Article 5, this term shall be deemed to include furnishings therefor which are deemed necessary by the Board for the approved use of such buildings.

(10) Sections referred to. Unless otherwise specified, sections referred to in these rules shall be deemed to mean sections of the Education Code.

(11) Moving Expenses. May include any costs required for dismantling from one site and re-erection on another site prepared for the portables involved.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16230-16234, Education Code.

HISTORY

1. New Subgroup 7 (Sections 1861, 1861.1 through 1861.25), filed 7-15-66 as an emergency; effective upon filing (Register 66, No. 22).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 9-30-66 (Register 66, No. 33).
3. Amendment of subsections (a)(1) and (a)(7) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18).

Article 2. Method of Availability of Portable Facilities

§ 1861.1. Acquisition by Board and Conveyancing to District.

(a) Upon application by a school district approved by DCE, the Board may expend monies available under Article 5 for the acquisition by the Board of new or used portable buildings and related facilities and equipment, and thereafter convey the same to the eligible district. The convey-

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or emergency language will be repealed by operation of law on the following day:

1. Certificate of Compliance as to 7-29-99 order transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41)

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:
- (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.
 - (2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:
- (1) Replacement, repair or additions to existing site development.
 - (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41)

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking modernization grants must submit an *Application for Funding*, Form SAB 50-04 (Revised 07/00) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 07/00) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code

HISTORY

1. New section filed 9-12-2000, operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37)

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

- (a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant
- (b) A facility hardship grant as provided in Section 1859.82
- (c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41)

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

- (b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

- (1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$900,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

- (2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project

(3) To exceed the bonding capacity of the district) and any other SFP set to date.

(4) It is a County Superintendent of Schools.

(4) The project for which the district is requesting financial hardship meets all of the following:

(A) It has been approved as a health and safety facility hardship pursuant to Section 1859.82(a)(1) or the project was approved as a hardship under the provisions of the LPP.

(B) The district's contribution for the project is less than \$500,000, exclusive of allowable site acquisition cost pursuant to Section 1859.74.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 07/00) under the provisions of financial hardship for a period of six months from the date of the OPSC notification.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12/3/98 as an emergency; operative 12/3/98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4/2/99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3/31/99 as an emergency; operative 3/31/99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7/29/99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7/29/99 as an emergency; operative 7/29/99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11/26/99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7/29/99 order, including amendment of section, transmitted to OAL 8/26/99 and filed 10/8/99 (Register 99, No. 41).

5. Amendment of subsection (b)(5) filed 6/26/2000, operative 6/26/2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of last paragraph filed 7/17/2000 as an emergency; operative 7/17/2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11/14/2000 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEIA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction or Modernization Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 07/00). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/00). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application for Funding*, Form SAB 50-04 (Revised 07/00) must be for at least 50 percent of the New Construction Grants or at least 80 percent of the Modernization Grants the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 07/00)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12/3/98 as an emergency; operative 12/3/98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4/2/99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3/31/99 as an emergency; operative 3/31/99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7/29/99 or emergency language will be repealed by operation of law on the following day.

3. Amendment of last paragraph filed 7/12/99 as an emergency; operative 7/12/99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11/9/99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7/29/99 as an emergency; operative 7/29/99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11/26/99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7/29/99 order, including amendment of section, transmitted to OAL 8/26/99 and filed 10/8/99 (Register 99, No. 41).

6. Certificate of Compliance as to 7/12/99 order, including further amendments, transmitted to OAL 11/5/99 and filed 12/22/99 (Register 99, No. 52).

7. Amendment of subsection (b) filed 3/13/2000; operative 4/12/2000 (Register 2000, No. 11).

8. Amendment of section and Note, filed 6/26/2000; operative 6/26/2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

9. Amendment of last two paragraphs filed 7/17/2000 as an emergency; operative 7/17/2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11/14/2000 or emergency language will be repealed by operation of law on the following day.

10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9/12/2000; operative 9/12/2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for New Construction Grants as a new construction project for the lesser of the pupils housed in the facil-

ity based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HISAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The grant amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech/Elect	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,180 sq. ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq. ft.
Toilet	1 sq. ft. per pupil minimum 300 sq. ft.	1 sq. ft. per pupil minimum 300 sq. ft.	1 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hard-
p funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b)
above must submit an *Application For Funding*, Form SAB 50-04 (Re-
vised 07/00) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on
the same site.

(2) Within 24 months if the replacement facilities will be located on
a replacement site.

If an acceptable *Application For Funding*, Form SAB 50-04 (Revised
07/00) for the replaced facility is not received within the time periods
identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria
submitted by the district for replacement of the facility prior to accep-
tance of an *Application For Funding*, Form SAB 50-04 (Revised 07/00)
for the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Refer-
ence: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98,
No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99
or emergency language will be repealed by operation of law on the following
day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99,
No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following
day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99,
No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99
or emergency language will be repealed by operation of law on the following
day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section,
transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of subsection (a)(2) and new subsections (c) (c)(2) filed
6-26-2000; operative 6-26-2000 pursuant to Government Code section
11343.4(d) (Register 2000, No. 26).

6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emer-
gency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Com-
pliance must be transmitted to OAL by 11-14-2000 or emergency language
will be repealed by operation of law on the following day.

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grants,
a district is eligible for an additional grant as a result of unusual circum-
stances that created excessive project costs beyond the control of the dis-
trict. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated
in the Geographic Percentage Chart below is eligible for and may re-
quest, as part of its application for a SFP new construction or moderniza-
tion grant, to have the grant amount increased by the indicated percentage
factor and funded as an excessive cost hardship.

Title 2, CCR, Register 2000-52

§ 1859.20	§ 1859.75.1
§ 1859.21	§ 1859.81
§ 1859.30	§ 1859.81.1
§ 1859.33	§ 1859.82
§ 1859.50	§ 1859.90
§ 1859.60	§ 1859.100
§ 1859.70	§ 1859.102
§ 1859.72	§ 1859.105
§ 1859.74.1	§ 1859.107

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of second paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)

§ 1859.14. Priority One Modernization.

Priority One modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, may proceed under either (a) or (b). Districts may either:

(a) Receive funding under the provisions of the LPP; or,

(b) By January 31, 1999, withdraw the Priority One modernization LPP project and submit a new application for funding under the provisions of the SFP, pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.15. Priority Two Modernization.

Districts with Priority Two modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42)

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding. If the project is eligible for further funding under the SFP, the:

(a) New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 07/00), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/00), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsections (a) and (c) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 07/00), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/00). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

- (a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;
- (b) constructed with funds from the LPP;
- (c) used for Special Day Class or Resource Specialist Programs;
- (d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;
- (e) acquired or created for Class Size Reduction purposes;
- (f) used for preschool programs;
- (g) converted to any non-classroom purpose including use by others;
- (h) with Housing and Community Development or Department of Housing insignia;
- (i) acquired for interim housing for a modernization project;
- (j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;
- (k) that have a waiver for continued use by the Board for Field Act exemptions;
- (l) used for Community School purposes;
- (m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- (a) abandoned and approved for replacement as a hardship under the provisions of the LPP;
- (b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;
- (c) included in any new construction LPP project that has not received a Phase C apportionment;
- (d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;
- (e) that is a trailer and is transported/towed on its own wheels and axles;
- (f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;
- (g) of less than 700 interior square feet;
- (h) originally built for instructional use, but converted to one of the following:
 - (1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
 - (2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
 - (3) used for school library purposes during the previous school year.
 - (i) owned but leased to another district.
 - (j) any portable classroom excluded by Education Code Section 17071.30.
 - (k) that is permanent space and leased for less than five years.
 - (l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (l) filed 1-10-2000; operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).
6. Amendment of section heading filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/00).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HSAA, multiply the K-12 pupil capacity within the boundaries of the HSAA by eight percent. When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction Grants.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on the basis of one or more HSAA, eligibility for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or HSAA's must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

Combining two or more HSAA's to determine eligibility is allowed if all the HSAA are adjacent and the facilities constructed will serve pupils in each of those HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP grants. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 07/00), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
8. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.8: (a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) Excluded pursuant to Education Code Section 17071.30.

(4) Where the contract for the lease, lease-purchase, purchase, or reconstruction of the classroom was made prior to January 1, 2000.

(5) Where the contract for the lease, lease-purchase, purchase, or reconstruction was made no more than 180 days before the date the OPSC accepted an *Application For Funding*, Form SAB 50-04 (Revised 07/00) from the district for New Construction grants pursuant to Section 1859.70.

(6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving new construction grants (rounded up) for the SFP project.

(j) For small school districts, decreased:

(1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 170268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.75, 17071.76 and 17072.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. Amendment of first paragraph, subsections (c) and (i)(5) and new subsection (l) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization Grants shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 07/00), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for funding for new construction grants after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.71.1. New Construction Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved application for new construction funding:

(a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$11,084 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.72. Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs. The district may request an increase in the new construction grant for therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The grant amount will be increased by \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of section and NOTE filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73.1. Additional Grant for Project Assistance.

The New Construction Grant will be increased by \$3,750 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Fundirg*, Form SAB 50-04 (Revised 07/00) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of second paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/00), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100% of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below;

(a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(1) The costs may include the costs for preparation of the RA.

(2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(3) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lessor of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lessor of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/00).

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.76. Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

- (a) Service site development cost, within school property lines for:
 - (1) Site clearance including the removal of trees, brush, and debris.
 - (2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.
 - (3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.
 - (4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.
 - (5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.
 - (6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.
 - (7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for multilevel parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.

(D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 07/00).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. New subsections (a)(11)-(a)(11)(D) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. New subsection (a)(12) and amendment of subsections (c) and (c)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of antepenultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.30 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.77.2. Use of New Construction Grant Funds.

New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

A district may request a new construction grant:

(a) That exceeds the number of pupils that will be housed in the project based on loading standards pursuant to Education Code section 17071.25(a)(2) and any loading standards adopted by the Board by these regulations subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the excess pupils receiving grants in the project as determined in (a).

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the pupils receiving grants in the project as determined in (a).

(2) The plan identified in (a)(1)(A) is acceptable to the CDE and the OPSC.

(3) When a new construction grant request exceeds 150 percent of the number of pupils that will be housed in the project based on loading stan-

and pursuant to Education Code Section 17071.25(a)(2) and any load-bearing standards adopted by the SAB by these regulations, the Board may require approval on a case by case basis.

(b) Utilizing a new construction grant eligibility determined at a different grade level than the proposed project subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(2) The plan identified in (b)(1)(A) is acceptable to the CDE.

(3) The district is using all new construction grant eligibility in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(4) The new construction grant amount shall be determined on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any additional grants or excessive cost grants the district qualifies for as provided by these regulations. Any excessive cost grants provided pursuant to Section 1859.83(c) shall be determined on the total of all grants provided for the project.

(5) The Board may require approval of the district's request on a case by case basis.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17072.35, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Repealer filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.78.2. Additional Grant for Project Assistance.

The Modernization Grant will be increased by \$2,000 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/00) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.78.3. Modernization Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved application for modernization funding:

(a) \$7,158 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$4,788 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization Grants for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

Modernization Grant funds may be used on any school facilities on the site. If the classroom facilities on the site include areas that are currently

ineligible for modernization, it will not disqualify those facilities from future modernization funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking modernization grants must submit an *Application for Funding*, Form SAB 50-04 (Revised 07/00) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 07/00) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regard-

ing funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$900,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

(4) The project for which the district is requesting financial hardship meets all of the following:

(A) It has been approved as a health and safety facility hardship pursuant to Section 1859.82(a)(1) or the project was approved as a hardship under the provisions of the LPP.

(B) The district's contribution for the project is less than \$500,000, exclusive of allowable site acquisition cost pursuant to Section 1859.74.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 07/00) under the provisions of financial hardship for a period of six months from the date of the OPSC notification.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction or Modernization Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 07/00). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/00). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application for Funding*, Form SAB 50-04 (Revised 07/00) must be for at least 50 percent of the New Construction Grants or at least 80 percent of the Modernization Grants the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 07/00)] to as-

sure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost

modernization grant for rehabilitation costs pursuant to Section 1859.83(c).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for New Construction Grants as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The grant amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq.ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq.ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq.ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 07/00) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an acceptable *Application For Funding*, Form SAB 50-04 (Revised 07/00) for the replaced facility is not received within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to acceptance of an *Application For Funding*, Form SAB 50-04 (Revised 07/00) for the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grants, a district is eligible for an additional grant as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Section 1859.81.1(c), the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (Revised 07/00), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (Revised 07/00), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

The OPSC shall report to the Board on a monthly basis the status of funds available for New Construction Grants and the aggregate amount of SFP New Construction Grant requests that have been received but not yet funded. The Board shall declare that State funds are insufficient for New Construction Grants when the SFP grant requests that are ready for Apportionment exceed the funds available for that purpose. This declaration will implement the priority point system and the Board shall approve new construction projects and apportion funds based on the highest priority points assigned to projects. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

All New Construction Grant requests shall be funded in date order received until such time that the Board declares that the available funds for construction are insufficient to finance the grant requests ready for Apportionment. When this occurs, the Board shall fund those projects with the highest number of priority points first. When one or more projects have the same number of priority points assigned, the projects will then be funded by the date order the applications for funding were received by the OPSC.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a project shall be based on the following computations rounded to the nearest whole number. The computation shall be on a districtwide or the HSAA basis utilizing CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), in effect at the time the district's application for funding was submitted to the OPSC for the project. A project may receive a maximum of 220 points based on the total of (a), (b) and (c):

- (a) A maximum of 100 points for both of the following:
 - (1) Six points for each percent of current unhoused pupils.
 - (2) Four points for each percent of projected unhoused pupils.
- (b) A maximum of 100 points for both of the following:
 - (1) One point for each 100 currently unhoused pupils.
 - (2) One point for each 200 projected unhoused pupils.
- (c) A maximum of 20 points for the following:
 - (1) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.
 - (2) Six points for a County Superintendent of Schools' project.
 - (3) Six points for a facility hardship project that meets the requirements of Sections 1859.82(a) and (b).
 - (4) Six points for a project that used "stock plans" pursuant to Education Code Section 17070.33(b)(6).
 - (5) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Sections 17070.33 and 17072.25, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an approvable application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an excessive cost hardship grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

(1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.

(2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to allocate to either New Construction or Modernization Grants, the Board will continue to accept, process and approve applications for eligibility determination. The Board will also accept and process applications for funding for purposes of developing an information list of projects based on the date an eligible application was received by the OPSC. Applications received for new construction

grants for a project where the site was apportioned pursuant to Section 1859.75.1 shall receive a date on the information list based on the date the environmental hardship site apportionment was made for the project. NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 11. Miscellaneous School Facility Program Requirements**§ 1859.100. Restricted On-going and Major Maintenance Fund.**

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/00), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/00), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/00), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial

hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to sub-

stantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be any of the following:

(1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(3) All construction activities are at least 50 percent complete.

(4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Acceptable evidence of substantial progress shall be submittal of an acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/00) for the project to the OPSC.

After the Board has received the progress report required in Section 1859.104(b) for items (a) and (b) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a) or (b) above or the district has not filed an acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/00) for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 07/00), to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made

for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

(1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.

(2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site that was used to determine the New Construction Additional Grant provided for site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization proj-

ects, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the approved "unfunded" list. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn

and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(l) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/00).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 07/00) and the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/00).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/00).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/00).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

- (1) Article 5.

Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.

(2) Board.

State Allocation Board.

(3) DCE.

Director of Compensatory Education.

(4) Eligible School District.

Any school district:

(A) Whose application for aid under Article 5 has the approval of DCE; and

(B) Which, as determined by the DCE, experiences emergency increases in school enrollments, because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, of such magnitude as to make it impossible or impractical to accommodate the additional pupils in existing school buildings and facilities available to the district.

(5) Executive Officer. Executive Officer of the State Allocation Board.

(6) "Expenditures may be made to a school district pursuant to the provisions of Sections . . . 3 (Article 5) of this Act," as contained in Section 4 of Chapter 106, first extraordinary session of 1966.

This clause is deemed to authorize any expenditures under Article 5.

(7) "The means specified by Section 16042" as used in Section 16231. This shall be deemed to mean only the form which methods of availability may take and not the various collateral provisions contained in Section 16042, which are peculiar to that section.

(8) Original District. The first district who purchases or constructs portables as the agent of the State.

(9) Portable School and Classroom Buildings. As used in Article 5, this term shall be deemed to include furnishings therefor which are deemed necessary by the Board for the approved use of such buildings.

(10) Sections referred to. Unless otherwise specified, sections referred to in these rules shall be deemed to mean sections of the Education Code.

(11) Moving Expenses. May include any costs required for dismantling from one site and re-erection on another site prepared for the portables involved.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16230-16234, Education Code.

HISTORY

1. New Subgroup 7 (Sections 1861, 1861.1 through 1861.25), filed 7-15-66 as an emergency; effective upon filing (Register 66, No. 22).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 9-30-66 (Register 66, No. 33).
3. Amendment of subsections (a)(1) and (a)(7) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18).

Article 2. Method of Availability of Portable Facilities

§ 1861.1. Acquisition by Board and Conveyancing to District.

(a) Upon application by a school district approved by DCE, the Board may expend monies available under Article 5 for the acquisition by the Board of new or used portable buildings and related facilities and equipment, and thereafter convey the same to the eligible district. The convey-

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§ 1859.20	§ 1859.75.1
§ 1859.21	§ 1859.79.3
§ 1859.30	§ 1859.81
§ 1859.33	§ 1859.81.1
§ 1859.40	§ 1859.82
§ 1859.50	§ 1859.90
§ 1859.60	§ 1859.100
§ 1859.70	§ 1859.102
§ 1859.72	§ 1859.105
§ 1859.74.1	§ 1859.107

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsections (a) and (c) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 01/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

- (a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;
- (b) constructed with funds from the LPP;
- (c) used for Special Day Class or Resource Specialist Programs;
- (d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;
- (e) acquired or created for Class Size Reduction purposes;
- (f) used for preschool programs;
- (g) converted to any non-classroom purpose including use by others;
- (h) with Housing and Community Development or Department of Housing insignia;
- (i) acquired for interim housing for a modernization project;
- (j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;
- (k) that have a waiver for continued use by the Board for Field Act exemptions;
- (l) used for Community School purposes;
- (m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- (a) abandoned and approved for replacement as a hardship under the provisions of the LPP;
- (b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;
- (c) included in any new construction LPP project that has not received a Phase C apportionment;
- (d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;
- (e) that is a trailer and is transported/towed on its own wheels and axles;
- (f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;
- (g) of less than 700 interior square feet;
- (h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) owned but leased to another district.

(j) any portable classroom excluded by Education Code Section 17071.30.

(k) that is permanent space and leased for less than five years.

(l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (l) filed 1-10-2000; operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).
6. A amendment of section heading filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HSAA, multiply the K-12 pupil capacity within the boundaries of the HSAA by eight percent. When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on the basis of one or more HSAA, eligibility for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or HSAA's must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

Combining two or more HSAA's to determine eligibility is allowed if all the HSAA are adjacent and the facilities constructed will serve pupils in each of those HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current

enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/00).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 01/01), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
8. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of second paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) Excluded pursuant to Education Code Section 17071.30.

(4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

(5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.

(6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.

(j) For small school districts, decreased:

(1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction

shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a re-organization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.75, 17071.76 and 17072.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. Amendment of first paragraph, subsections (c) and (i)(5) and new subsection (l) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

9. Amendment of first paragraph and subsections (i)(5) and (i)(6) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

- (1) Permanent area and at least 25 years old and not previously modernized with State funds.
- (2) Portable classroom area and at least 20 years old and not previously modernized with State funds.
- (3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination, Form SAB 50-03 (Revised 01/01)*, shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.
- (c) Increased by changes in projected enrollment in subsequent enrollment reporting years.
- (d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.
- (e) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file an *Application for Funding, Form SAB 50-04 (Revised 01/01)*, after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the *Eligibility Determination, Form SAB 50-03 (Revised 01/01)*, or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70-1859.79.2) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of first and second paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999 those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.71.1. New Construction Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

- (a) \$10,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
- (b) \$11,054 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any new construction grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading and first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.72. New Construction Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs. The district may request an increase in the New Construction Grant for therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The grant amount will be increased by \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of section and NOTE filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
7. Amendment of section heading and section filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73.1. New Construction Additional Grant for Project Assistance.

The New Construction Grant will be increased by \$3,750 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 01/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of second paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost and the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB

50-04 (Revised 01/01), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100% of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below:

(a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(1) The costs may include the costs for preparation of the RA.

(2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(3) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The difference in the amounts determined pursuant to Section 1859.74(a) and (h).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(h) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lessor of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the

site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lessor of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 01/01).

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

4. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.76. New Construction Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.
(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for multilevel parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.

(D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 01/01).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a pro-rated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. New subsections (a)(11)-(a)(11)(D) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. New subsection (a)(12) and amendment of subsections (c) and (c)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of antepenultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of section heading and subsection (c)(5) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any re-

maintaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.30 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.77.2. Use of New Construction Grant Funds.

New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

A district may request a new construction grant:

(a) That exceeds the number of pupils that will be housed in the project based on loading standards pursuant to Education Code section 17071.25(a)(2) and any loading standards adopted by the Board by these regulations subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the excess pupils receiving grants in the project as determined in (a).

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the pupils receiving grants in the project as determined in (a).

(2) The plan identified in (a)(1)(A) is acceptable to the CDE and the OPSC.

(3) When a new construction grant request exceeds 150 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations, the Board may require approval on a case by case basis.

(b) Utilizing new construction grant eligibility determined at a different grade level than the proposed project subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(2) The plan identified in (b)(1)(A) is acceptable to the CDE.

(3) The district is using all new construction grant eligibility in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(4) The new construction grant amount shall be determined on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any additional grants or excessive cost grants the district qualified for as provided by these regulations. Any excessive cost grants provided pursuant to Section 1859.83(c) shall be determined on the total of all grants provided for the project.

(5) The Board may require approval of the district's request on a case by case basis.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17072.35, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Repealer filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.78.2. Modernization Additional Grant for Project Assistance.

The Modernization Grant will be increased by \$2,000 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 01/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.78.3. Modernization Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for modernization funding:

- (a) \$7,158 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
- (b) \$4,788 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any modernization grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading, first paragraph and subsection (b) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district

matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

- (1) Replacement, repair or additions to existing site development.
- (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order, including amendment of section and Note, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking a modernization grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 01/01) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 01/01) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

- 1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
- 2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

- (a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.
- (b) A facility hardship grant as provided in Section 1859.82.
- (c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

- 1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance

must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

- 2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

- (b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

- (1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$900,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

- (2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

- (3) It is a County Superintendent of Schools.

- (4) The project for which the district is requesting financial hardship meets all of the following:

- (A) It has been approved as a health and safety facility hardship pursuant to Section 1859.82(a)(1) or the project was approved as a hardship under the provisions of the LPP.

- (B) The district's contribution for the project is less than \$500,000, exclusive of allowable site acquisition cost pursuant to Section 1859.74.

- (5) Other evidence of reasonable effort as approved by the SAB.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 01/01) under the pro-

visions of financial hardship for a period of six months from the date of the OPSC notification.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an es-

timate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 01/01). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 01/01). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application for Funding*, Form SAB 50-04 (Revised 01/01) must be for at least 50 percent of the New Construction Grant or at least 80 percent of the Modernization Grant the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 01/01)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accor-

dance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq. ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 01/01) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grant, a district is eligible for an additional funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Section 1859.81.1(c), the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (Revised 01/01), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (Revised 01/01), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

(a) The OPSC shall report to the Board on a monthly basis the amount of funds available for New Construction Grants and Modernization Grants and the estimated amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned. The Board shall implement a priority point mechanism in (b) for New Construction Grants requests when either of the following occur:

(1) The amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned exceed the funds available for New Construction Grants and Modernization Grants.

(2) The funds available for New Construction Grants are \$300 million or less.

(b) Once either (1) or (2) in (a) occurs, the Board shall approve and apportion the funds available for New Construction Grants requests based on the following priority point mechanism:

(1) From the funds available for New Construction Grants, the Board shall establish a final allotment equal to the lesser of \$450 million or the balance of the funds available for New Construction Grants, to be apportioned in accordance with (2) below. After deducting the final allotment, the Board shall divide the remaining funds into seven equal allotments, to be apportioned on a quarterly basis, commencing with the last quarter of calendar year 2000 and ending the second quarter of calendar year 2002. Quarterly apportionments are subject to the following:

(A) The Board shall apportion Approved Applications for New Construction Grants requests received prior to the beginning of the quarter that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List, in descending order, commencing with the project having the greatest number of priority points until the funds available for New Construction Grants for that quarter are exhausted. Projects exempt from priority points pursuant to Section 1859.92(c) shall be apportioned first.

(B) If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(C) No New Construction Grants request will be recommended for apportionment unless the project can be entirely apportioned from the funds available for that quarter.

(D) If the Approved Applications for New Construction Grants received prior to the quarter that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List prior to the quarter are less than the quarterly allotment, plus any funds remaining from the previous quarter(s), the excess funds shall be added to the next quarterly allotment.

(E) If the Approved Applications for New Construction Grants requests received prior to the quarter that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List prior to the quarter are greater than the quarterly allotment, plus any funds remaining from the previous quarter(s), any New Construction Grants requests not apportioned by the Board shall be placed on an Unfunded List.

(F) All New Construction Grants requests, as described in (A) above, that are Ready for Apportionment in a quarter shall not be apportioned before the last regularly scheduled Board meeting for that quarter with the exception of New Construction Grants requests that meet the criteria for exemption from priority points pursuant to Section 1859.92(c). Any New Construction Grants request that is Ready for Apportionment in a quarter that meets the criteria for exemption from priority points pursuant to Section 1859.92(c) may be apportioned at any of the regularly scheduled Board meetings during that quarter.

(2) The final allotment shall be apportioned subject to the following:

(A) The Board shall apportion Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List, in descending order, commencing with the project having the greatest number of priority points until the final allotment, plus any funds remaining from the previous quarters are exhausted. Projects exempt from priority points pursuant to Section 1859.92(c) shall be apportioned first.

(B) If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(C) If the Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Ap-

portionment and all New Construction Grants requests that were included on an Unfunded List are greater than the final allotment, plus any remaining funds from the previous quarter(s), any New Construction Grants requests not apportioned by the Board shall be placed on an Unfunded List.

(D) All New Construction Grants requests, as described in (A) above, that are Ready for Apportionment shall be apportioned at the regularly scheduled Board meeting in August 2002 with the exception of New Construction Grants requests that meet the criteria for exemption from priority points pursuant to Section 1859.92(c). Any New Construction Grants request that is Ready for Apportionment that meets the criteria for exemption from priority points pursuant to Section 1859.92(c) may be apportioned at either the regularly scheduled Board meeting in July or August 2002.

(E) If the Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List are less than the final allotment, plus any remaining funds from the previous quarter(s), the excess funds shall be apportioned on a monthly basis beginning in September 2002 for Approved Applications for New Construction Grants received after June 26, 2002 that are Ready for Apportionment, in descending order, commencing with the project having the greatest number of priority points. This process shall continue until the funds available are exhausted. If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(c) The Board shall declare that State funds are not available for new facility construction when the New Construction Grants requests Ready for Apportionment exceed the funds available for that purpose. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a)

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a New Construction Grants request shall be based on the following computations rounded up to the nearest whole number. The computation shall be made on a districtwide basis if the district utilized districtwide CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), in effect at the time the district's application for funding was submitted to the OPSC for the project. The computation shall be made on a HSAA basis if the district utilized HSAA CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), in effect at the time the district's application for funding was submitted to the OPSC for the project. Notwithstanding the provisions of Section 1859.41, a district that has previously reported its enrollment on a HSAA basis may calculate both its eligibility and its priority points on

a districtwide basis. A project shall receive priority points based on the total of (a), (b) and (c):

(a) Priority points for the percent of unhoused pupils for both of the following:

- (1) Six points for each percent of current unhoused pupils.
- (2) Four points for each percent of projected unhoused pupils.

(b) Priority points for the number of unhoused pupils for both of the following:

- (1) One point for each 100 currently unhoused pupils.
- (2) One point for each 200 projected unhoused pupils.

(c) A maximum of 100 priority points for the following:

(1) Twenty points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.

(2) Twenty points for a County Superintendent of Schools' project that only includes classroom space solely for Non-Severely Disabled Individuals with Exceptional Needs.

(3) Twenty points if the site acreage for the project is less than 50 percent of the site size recommended by the CDE for the master planned pupil capacity.

(4) Twenty points for a project that either used "stock plans" pursuant to Education Code Section 17070.33(b)(6) or re-used plans that were previously used to construct at least two other schools.

(5) Twenty points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

(6) Twenty points for a project that uses 20 percent less energy than the Energy Budget as defined and calculated in a manner consistent with the California Energy Code, Part 6, Subchapter 5, Section 141 — Performance Approach: Energy Budgets.

(7) Twenty points for a project that is a new high school serving any grades nine through twelve.

(8) Twenty points for a project that received financial hardship assistance pursuant to Section 1859.81.

(9) Twenty points for a project where the site acquisition qualified and received an apportionment authorized under Section 1859.75.1, Separate Site Apportionment for Environmental Hardship.

(10) One hundred points if the Approved Application was accepted prior to the date the priority point mechanism is implemented by the Board pursuant to Section 1859.91(a)(1) or (a)(2).

(d) The calculation of priority points in (a), (b) and (c) above shall be determined at the time the Approved Application is accepted.

(e) The following projects are exempt from priority points:

(1) A project that received Facility Hardship approval pursuant to Section 1859.82.

(2) A county superintendent of schools' project that includes classroom space for Severely Disabled Individuals with Exceptional Needs.

(3) A county superintendent of schools' project that only includes classroom space solely for community school pupils.

(4) A school district's project that only includes classroom space solely for Severely Disabled Individuals with Exceptional Needs.

(f) If the project received a separate site and/or design apportionment under the provisions of the LPP or pursuant to Sections 1859.75.1 or 1859.81.1, the district's funding priority of the project shall be determined by the Approved Application date for the New Construction Grant request.

NOTE: Authority cited: Sections 17070.35, 17072.25 and 100420(d), Education Code. Reference: Sections 17070.33 and 17072.25, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.93. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an Approved Application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.25, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an Excessive Cost Hardship Grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

(1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.

(2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to apportion or the application does not qualify for funding because of the Board's priority point mechanism pursuant to Sections 1859.91 and 1859.92, the Board will continue to accept and process applications for eligibility determination. The Board will also accept and process applications for apportionment for purposes of developing an Unfunded List based on the date the Approved Application was accepted by the OPSC. Applications for New Construction Adjusted Grants for a project where the site was apportioned pursuant to Section 1859.75.1 shall receive a date on the Unfunded List based on the date the environmental hardship site apportionment was made for the project.

With the exception of financial hardship eligibility, a district with an application included on an Unfunded List shall not be required to re-establish eligibility for that application prior to apportionment.

An application for funding included on an Unfunded List is eligible for reimbursement subject to adjustments in the New Construction Grants amount pursuant to Section 1859.77.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/01), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/01), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/01), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

(1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(3) All construction activities are at least 50 percent complete.

(4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be submittal of an Approved Application.

After the Board has received the progress report required in Section 1859.104(b) for items (a) and (b) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a) or (b) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 07/00), to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

- (1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.
- (2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of site that was used to determine the New Construction Additional Grant provided for site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.
- (b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

- or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
 6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(i) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 01/01).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 01/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 01/01).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 01/01).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 01/01).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) Article 5.

Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.

(2) Board.

State Allocation Board.

(3) DCE.

Director of Compensatory Education.

(4) Eligible School District.

Any school district:

(A) Whose application for aid under Article 5 has the approval of DCE; and

(B) Which, as determined by the DCE, experiences emergency increases in school enrollments, because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, of such magnitude as to make it impossible or impractical to accommodate the additional pupils in existing school buildings and facilities available to the district.

(5) Executive Officer. Executive Officer of the State Allocation Board.

(6) "Expenditures may be made to a school district pursuant to the provisions of Sections . . . 3 (Article 5) of this Act," as contained in Section 4 of Chapter 106, first extraordinary session of 1966.

This clause is deemed to authorize any expenditures under Article 5.

(7) "The means specified by Section 16042" as used in Section 16231. This shall be deemed to mean only the form which methods of availability may take and not the various collateral provisions contained in Section 16042, which are peculiar to that section.

(8) Original District. The first district who purchases or constructs portables as the agent of the State.

(9) Portable School and Classroom Buildings. As used in Article 5, this term shall be deemed to include furnishings therefor which are deemed necessary by the Board for the approved use of such buildings.

(10) Sections referred to. Unless otherwise specified, sections referred to in these rules shall be deemed to mean sections of the Education Code.

(11) Moving Expenses. May include any costs required for dismantling from one site and re-erection on another site prepared for the portables involved.

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§ 1859.20	§ 1859.75.1
§ 1859.21	§ 1859.79.3
§ 1859.30	§ 1859.81
§ 1859.33	§ 1859.81.1
§ 1859.40	§ 1859.82
§ 1859.50	§ 1859.90
§ 1859.60	§ 1859.100
§ 1859.70	§ 1859.102
§ 1859.72	§ 1859.105
§ 1859.74.1	§ 1859.107

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited Section 17070.35, Education Code Reference Section 17009.5, Education Code

HISTORY

1. New section filed 12 3 98 as an emergency, operative 12 3 98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4 2 99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3 31 99 as an emergency, operative 3 31 99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7 29 99 as an emergency, operative 7 29 99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7 29 99 order transmitted to OAL, 8 26 99 and filed 10 8 99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6 26 2000, operative 6 26 2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

- (a) For new construction, either districtwide or HISAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-01 (Revised 01/01), which is incorporated by reference.
- (b) For new construction projects, either districtwide or HISAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), which is incorporated by reference.
- (c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01), which is incorporated by reference.

NOTE: Authority cited Section 17070.35, Education Code Reference Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17071.10, Education Code

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12 3 98 as an emergency, operative 12 3 98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4 2 99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12 23 98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 37).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3 31 99 as an emergency; operative 3 31 99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7 29 99 as an emergency, operative 7 29 99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7 29 99 order, including amendment of section, transmitted to OAL, 8 26 99 and filed 10 8 99 (Register 99, No. 41).
6. Amendment of subsections (a)-(c) filed 6 26 2000; operative 6 26 2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsections (a) and (c) filed 7 17 2000 as an emergency, operative 7 17 2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11 14 2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7 17 2000 order transmitted to OAL, 11 9 2000 and filed 12 27 2000 (Register 2000, No. 52).
9. Amendment filed 1 2 2001 as an emergency, operative 1 2 2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5 2 2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1 2 2001 order transmitted to OAL, 5 1 2001 and filed 6 13 2001 (Register 2001, No. 24).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 01/01), which is incorporated by reference.

NOTE: Authority cited Section 17070.35, Education Code Reference Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code

HISTORY

1. New section filed 12 3 98 as an emergency, operative 12 3 98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4 2 99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3 31 99 as an emergency, operative 3 31 99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7 12 99 as an emergency, operative 7 12 99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11 9 99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7 29 99 as an emergency, operative 7 29 99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7 29 99 order, including amendment of section, transmitted to OAL, 8 26 99 and filed 10 8 99 (Register 99, No. 41).
6. Certificate of Compliance as to 7 12 99 order, including further amendments, transmitted to OAL, 11 5 99 and filed 12 22 99 (Register 99, No. 52).
7. Amendment filed 6 26 2000, operative 6 26 2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7 17 2000 as an emergency, operative 7 17 2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11 14 2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7 17 2000 order transmitted to OAL, 11 9 2000 and filed 12 27 2000 (Register 2000, No. 52).
10. Amendment filed 1 2 2001 as an emergency, operative 1 2 2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5 2 2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1 2 2001 order transmitted to OAL, 5 1 2001 and filed 6 13 2001 (Register 2001, No. 24).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited, Section 17070.35, Education Code Reference Section 17071.10, Education Code

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12 3 98 as an emergency; operative 12 3 98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4 2 99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3 31 99 as an emergency; operative 3 31 99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7 29 99 as an emergency; operative 7 29 99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7 29 99 order, including amendment of section, transmitted to OAL, 8 26 99 and filed 10 8 99 (Register 99, No. 41).
5. Amendment filed 6 26 2000; operative 6 26 2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7 17 2000 as an emergency; operative 7 17 2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by

- 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- 7 Certificate of Compliance as to 7-17-2000 order transmitted to OAL, 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
- 8 Amendment filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1) A Certificate of Compliance must be transmitted to OAL, by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 9 Certificate of Compliance as to 1-2-2001 order transmitted to OAL, 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

- (a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;
- (b) constructed with funds from the LPP;
- (c) used for Special Day Class or Resource Specialist Programs;
- (d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;
- (e) acquired or created for Class Size Reduction purposes;
- (f) used for preschool programs;
- (g) converted to any non-classroom purpose including use by others;
- (h) with Housing and Community Development or Department of Housing insignia;
- (i) acquired for interim housing for a modernization project;
- (j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;
- (k) that have a waiver for continued use by the Board for field Act exemptions;
- (l) used for Community School purposes;
- (m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL, by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL, by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL, by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- (a) abandoned and approved for replacement as a hardship under the provisions of the LPP;
- (b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;
- (c) included in any new construction LPP project that has not received a Phase C apportionment;
- (d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;
- (e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) owned but leased to another district.

(j) any portable classroom excluded by Education Code Section 17071.30.

(k) that is permanent space and leased for less than five years.

(l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL, by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL, by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL, by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 5 New subsection (h) filed 1-10-2000, operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).
- 6 Amendment of section heading filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL, by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL, by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL, by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 5 Amendment filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- 6 Amendment filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29) A Certificate of Compliance must be transmitted to OAL, by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

- 7 Certificate of Compliance as to 7 17 2000 order transmitted to OAL 11 9 2000 and filed 12 27 2000 (Register 2000, No. 52)
- 8 Amendment filed 1 2 2001 as an emergency, operative 1 2 2001 (Register 2001, No. 1) A Certificate of Compliance must be transmitted to OAL by 5 2 2001 or emergency language will be repealed by operation of law on the following day
- 9 Certificate of Compliance as to 1 2 2001 order transmitted to OAL 5 1 2001 and filed 6 13 2001 (Register 2001, No. 24)

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HSAA, multiply the K-12 pupil capacity within the boundaries of the HSAA by eight percent. When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

- 1 New section filed 12 3 98 as an emergency, operative 12 3 98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4 2 99 or emergency language will be repealed by operation of law on the following day
- 2 Change without regulatory effect amending subsection (b) filed 3-10 99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11)
- 3 New section refiled 3-31 99 as an emergency, operative 3 31 99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day
- 4 New section refiled 7-29 99 as an emergency, operative 7 29 99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day
- 5 Certificate of Compliance as to 7 29 99 order, including amendment of section, transmitted to OAL 8 26 99 and filed 10 8 99 (Register 99, No. 41)
- 6 Amendment of subsection (b) filed 6 26 2000, operative 6 26 2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB

50-01 (Revised 01/01). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference Sections 17071.25 and 17071.76, Education Code.

HISTORY

- 1 New article 5 (sections 1859 40 1859 43) and section filed 12 3 98 as an emergency, operative 12 3 98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL by 4 2 99 or emergency language will be repealed by operation of law on the following day.
- 2 New article 5 (sections 1859 40 1859 43) and section refiled 3 31 99 as an emergency, operative 3 31 99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day.
- 3 New article 5 (sections 1859 40 1859 43) and section refiled 7 29 99 as an emergency, operative 7 29 99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day
- 4 Certificate of Compliance as to 7 29 99 order, including amendment of section, transmitted to OAL 8 26 99 and filed 10 8 99 (Register 99, No. 41)
- 5 Amendment filed 6 26 2000, operative 6 26 2000 pursuant to Government Code section 11343 4(d) (Register 2000, No. 26)
- 6 Amendment filed 1 2 2001 as an emergency, operative 1 2 2001 (Register 2001, No. 1) A Certificate of Compliance must be transmitted to OAL by 5 2 2001 or emergency language will be repealed by operation of law on the following day
- 7 Certificate of Compliance as to 1 2 2001 order transmitted to OAL 5 1 2001 and filed 6 13 2001 (Register 2001, No. 24)

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on the basis of one or more HSAA, eligibility for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or HSAA's must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

Combining two or more HSAA's to determine eligibility is allowed if all the HSAA are adjacent and the facilities constructed will serve pupils in each of those HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference Sections 17070.35, 17071.75 and 17071.76, Education Code

HISTORY

- 1 New section filed 12 3 98 as an emergency, operative 12 3 98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4 2 99 or emergency language will be repealed by operation of law on the following day
- 2 New section refiled 3 31 99 as an emergency, operative 3 31 99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7 29 99 as an emergency, operative 7 29 99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day
- 4 Certificate of Compliance as to 7 29 99 order, including amendment of section, transmitted to OAL 8 26 99 and filed 10 8 99 (Register 99, No. 41)

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPS shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the

numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Cer-

tificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 01/01), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited Section 17070.35, Education Code Reference Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code

HISTORY

1. New article 6 (sections 1859.50-1859.51) and section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency, operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL, 11-5-99 and filed 12-23-99 (Register 99, No. 52).
8. Amendment filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL, 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of second paragraph filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1-2-2001 order, including amendment of first paragraph, transmitted to OAL, 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.
- (f) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (g) Adjusted as a result of amendments to these Regulations that effect the eligibility.
- (h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).
- (i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any

classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

- (1) That is a trailer and transportable/towed on its own wheels and axles.
- (2) Of less than 700 interior square feet.
- (3) Excluded pursuant to Education Code Section 17071.30.
- (4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.
- (5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.
- (6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.
- (j) For small school districts, decreased:

(1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited Section 17070.35, Education Code Reference Sections 17071.25, 17071.75, 17071.76 and 17072.20, Education Code

HISTORY

1. New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of section and NOTE filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first paragraph, subsections (c) and (i)(5) and new subsection (l) filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL, 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first paragraph and subsections (i)(5) and (i)(6) filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of

Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

10 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

9. Amendment of first and last paragraphs filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference Sections 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and Note, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. New subsection (g) filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 01/01), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70, 1859.79.2) and section filed 12.3.98 as an emergency, operative 12.3.98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4.2.99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70, 1859.79.2) and section refiled 3.31.99 as an emergency, operative 3.31.99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7.29.99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7.12.99 as an emergency, operative 7.12.99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11.9.99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70, 1859.72) and section refiled 7.29.99 as an emergency, operative 7.29.99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11.26.99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7.29.99 order, including amendment of section, transmitted to OAL 8.26.99 and filed 10.8.99 (Register 99, No. 41).
6. Certificate of Compliance as to 7.12.99 order, including further amendments, transmitted to OAL 11.5.99 and filed 12.22.99 (Register 99, No. 52).
7. Amendment of section and Note filed 6.26.2000, operative 6.26.2000 pursuant to Government Code section 11341.4(d) (Register 2000, No. 26).
8. Amendment filed 7.17.2000 as an emergency, operative 7.17.2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11.14.2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7.17.2000 order transmitted to OAL 11.9.2000 and filed 12.27.2000 (Register 2000, No. 53).
10. Amendment of first and second paragraphs filed 1.2.2001 as an emergency, operative 1.2.2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5.2.2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1.2.2001 order transmitted to OAL 5.1.2001 and filed 6.13.2001 (Register 2001, No. 24).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12.3.98 as an emergency, operative 12.3.98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4.2.99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3.31.99 as an emergency, operative 3.31.99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7.29.99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7.29.99 as an emergency, operative 7.29.99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11.26.99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7.29.99 order, including amendment of section, transmitted to OAL 8.26.99 and filed 10.8.99 (Register 99, No. 41).

§ 1859.71.1. New Construction Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

- (a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
- (b) \$11,084 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any new construction grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17073.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7.17.2000 as an emergency, operative 7.17.2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11.14.2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7.17.2000 order transmitted to OAL 11.9.2000 and filed 12.27.2000 (Register 2000, No. 52).
3. Amendment of section heading and first and last paragraphs filed 1.2.2001 as an emergency, operative 1.2.2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5.2.2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1.2.2001 order transmitted to OAL 5.1.2001 and filed 6.13.2001 (Register 2001, No. 24).

§ 1859.72. New Construction Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs. The district may request an increase in the New Construction Grant for therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The grant amount will be increased by \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25 and S6026, Education Code.

HISTORY

1. New section filed 12.3.98 as an emergency, operative 12.3.98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4.2.99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3.31.99 as an emergency, operative 3.31.99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7.29.99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7.29.99 as an emergency, operative 7.29.99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11.26.99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7.29.99 order transmitted to OAL 8.26.99 and filed 10.8.99 (Register 99, No. 41).
5. Amendment of section and Note filed 7.17.2000 as an emergency, operative 7.17.2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11.14.2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7.17.2000 order transmitted to OAL 11.9.2000 and filed 12.27.2000 (Register 2000, No. 52).
7. Amendment of section heading and section filed 1.2.2001 as an emergency, operative 1.2.2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5.2.2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1.2.2001 order transmitted to OAL 5.1.2001 and filed 6.13.2001 (Register 2001, No. 24).

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12.3.98 as an emergency, operative 12.3.98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4.2.99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3.31.99 as an emergency, operative 3.31.99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7.29.99

or emergency language will be repealed by operation of law on the following day

- 1 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day
- 4 Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL, § 26-99 and filed 10-8-99 (Register 99, No. 41)

§ 1859.73.1. New Construction Additional Grant for Project Assistance.

The New Construction Grant will be increased by \$3,750 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 01/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code Reference Section 17072.10, Education Code

HISTORY

- 1 New section filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)
- 2 Amendment of second paragraph filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29) A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day
- 3 Certificate of Compliance as to 7-17-2000 order transmitted to OAL, 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52)
- 4 Amendment of section heading and last paragraph filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1) A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day
- 5 Certificate of Compliance as to 1-2-2001 order transmitted to OAL, 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one-half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submitted to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equip-

ment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code Reference Sections 17072.12 and 17251, Education Code

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day
- 3 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day
- 4 Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL, § 26-99 and filed 10-8-99 (Register 99, No. 41)
- 5 Amendment filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/01), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100% of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code Reference Sections 17070.35 and 17072.12, Education Code.

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day

- 2 New section refiled 3/31/99 as an emergency, operative 3/31/99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7/29/99 or emergency language will be repealed by operation of law on the following day.
- 1 Amendment of first paragraph filed 7/12/99 as an emergency, operative 7/12/99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11/9/99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7/29/99 as an emergency, operative 7/29/99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11/26/99 or emergency language will be repealed by operation of law on the following day.
- 5 Certificate of Compliance as to 7/29/99 order, including amendment of section, transmitted to OAL, 8/26/99 and filed 10/5/99 (Register 99, No. 41).
- 6 Certificate of Compliance as to 7/12/99 order, including further amendments, transmitted to OAL, 11/5/99 and filed 12/22/99 (Register 99, No. 52).
- 7 Amendment of first paragraph filed 6/26/2000, operative 6/26/2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- 5 Amendment of first paragraph filed 7/17/2000 as an emergency, operative 7/17/2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11/14/2000 or emergency language will be repealed by operation of law on the following day.
- 9 Certificate of Compliance as to 7/17/2000 order transmitted to OAL, 11/9/2000 and filed 12/27/2000 (Register 2000, No. 52).
- 10 Amendment of first paragraph filed 1/2/2001 as an emergency, operative 1/2/2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5/2/2001 or emergency language will be repealed by operation of law on the following day.
- 11 Certificate of Compliance as to 1/2/2001 order transmitted to OAL, 5/1/2001 and filed 6/13/2001 (Register 2001, No. 24).

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below:

- (a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
 - (1) The costs may include the costs for preparation of the RA.
 - (2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
 - (3) The costs may not include continuous operational and maintenance costs associated with the RA.
- (b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited, Sections 17070.35 and 17072.13, Education Code. Reference, Sections 17072.12 and 17251, Education Code.

HISTORY

- 1 New section filed 6/26/2000, operative 6/26/2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

- (a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,
- (b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:
 - (1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser; or
 - (2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited, Section 17070.35, Education Code. Reference, Section 17072.12, Education Code.

NOTE: Authority cited, Section 17070.35, Education Code. Reference, Section 17072.12, Education Code.

HISTORY

- 1 New section filed 12/3/98 as an emergency, operative 12/3/98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4/2/99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3/31/99 as an emergency, operative 3/31/99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7/29/99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7/29/99 as an emergency, operative 7/29/99 (Register 99, No. 11). A Certificate of Compliance must be transmitted to OAL by 11/26/99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7/29/99 order transmitted to OAL, 8/26/99 and filed 10/5/99 (Register 99, No. 41).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

- (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
- (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
- (3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

- (1) The lesser of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.
- (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 01/01).

NOTE: Authority cited, Section 17072.13, Education Code. Reference, Sections 17072.13 and 17076.10, Education Code.

HISTORY

- 1 New section filed 6/26/2000, operative 6/26/2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- 2 Amendment of last paragraph filed 7-17-2000 as an emergency, operative 7/17/2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- 3 Certificate of Compliance as to 7-17-2000 order transmitted to OAL, 11/9/2000 and filed 12-27-2000 (Register 2000, No. 52).
- 4 Amendment of last paragraph filed 1-2-2001 as an emergency, operative 1/2/2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5/2/2001 or emergency language will be repealed by operation of law on the following day.

5 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.76. New Construction Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

- (a) Service site development cost, within school property lines for:
 - (1) Site clearance including the removal of trees, brush, and debris
 - (2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.
 - (3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.
 - (4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.
 - (5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.
 - (6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.
 - (7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.
 - (10) Fire code requirements on site that are not a part of the building
 - (11) Funding for multilevel parking structures on a new construction project when all the following have been met:
 - (A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.
 - (B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.
 - (C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.
 - (D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.
 - (12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).
 - (h) Off-site development cost on up to two immediately adjacent sides of the site, for the following:
 - (1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.
 - (2) Sidewalks mandated by local ordinances.
 - (3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.
 - (4) City and/or county or special district fees pursuant to active ordinances.
 - (5) Reasonable cost for storm drains to point of connection.
 - (6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:
 - (A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form

of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 01/01).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a pro-rated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 Amendment of antepenultimate paragraph filed 7-12-99 as an emergency, operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
- 4 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 5 Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)
- 6 Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52)
- 7 New subsections (a)(11) (a)(11)(D) filed 3-13-2000, operative 4-12-2000 (Register 2000, No. 11)

- 8 New subsection (a)(12) and amendment of subsections (c) and (c)(5) filed 6 26 2000, operative 6 26 2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)
- 9 Amendment of antecedentultimate paragraph filed 7 17 2000 as an emergency, operative 7 17 2000 (Register 2000, No. 29) A Certificate of Compliance must be transmitted to OAL by 11 14 2000 or emergency language will be repealed by operation of law on the following day
- 10 Certificate of Compliance as to 7 17 2000 order transmitted to OAL 11 9 2000 and filed 12 27 2000 (Register 2000, No. 52)
- 11 Amendment of section heading and subsection (c)(5) filed 1 2 2001 as an emergency, operative 1 2 2001 (Register 2001, No. 1) A Certificate of Compliance must be transmitted to OAL by 5 2 2001 or emergency language will be repealed by operation of law on the following day
- 12 Certificate of Compliance as to 1 2 2001 order transmitted to OAL 5 1 2001 and filed 6 13 2001 (Register 2001, No. 24)

- or emergency language will be repealed by operation of law on the following day
- 2 New section refiled 3 31 99 as an emergency, operative 3 31 99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day
- 3 New section refiled 7 29 99 as an emergency, operative 7 29 99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day
- 4 Certificate of Compliance as to 7 29 99 order transmitted to OAL, 8 26 99 and filed 10 8 99 (Register 99, No. 41)
- 5 New second paragraph and amendment of Note filed 6 26 2000, operative 6 26 2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)

§ 1859.77.2. Use of New Construction Grant Funds.

New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

A district may request a new construction grant:

(a) That exceeds the number of pupils that will be housed in the project based on loading standards pursuant to Education Code section 17071.25(a)(2) and any loading standards adopted by the Board by these regulations subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the excess pupils receiving grants in the project as determined in (a)

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the pupils receiving grants in the project as determined in (a).

(2) The plan identified in (a)(1)(A) is acceptable to the CDE and the OPSC.

(3) When a new construction grant request exceeds 150 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations, the Board may require approval on a case by case basis.

(b) Utilizing new construction grant eligibility determined at a different grade level than the proposed project subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(2) The plan identified in (b)(1)(A) is acceptable to the CDE.

(3) The district is using all new construction grant eligibility in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(4) The new construction grant amount shall be determined on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any additional grants or excessive cost grants the district qualified for as provided by these regulations. Any excessive cost grants provided pursuant to Section 1859.83(c) shall be determined on the total of all grants provided for the project.

(5) The Board may require approval of the district's request on a case by case basis.

NOTE: Authority cited, Section 17072.13, Education Code Reference Sections 17072.11 and 17072.35, Education Code

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited, Section 17070.35, Education Code Reference Section 17072.20(b), Education Code, and Section 65995.7, Government Code

HISTORY

- 1 New section filed 12 3 98 as an emergency, operative 12 3 98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL by 4 2 99 or emergency language will be repealed by operation of law on the following day
- 2 New section refiled 3 31 99 as an emergency, operative 3 31 99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day
- 3 New section refiled 7 29 99 as an emergency, operative 7 29 99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day
- 4 Certificate of Compliance as to 7 29 99 order, including amendment of section, transmitted to OAL, 8 26 99 and filed 10 8 99 (Register 99, No. 41)

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited, Section 17070.35, Education Code Reference Sections 17072.10 and 17077.10, Education Code

HISTORY

- 1 New section filed 12 3 98 as an emergency, operative 12 3 98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL by 4 2 99

HISTORY

- 1 New section filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code Reference: Section 17074.10, Education Code

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code Reference: Sections 17071.25, 17074.10 and 56026, Education Code

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 5 Repealer filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- 6 Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52)

§ 1859.78.2. Modernization Additional Grant for Project Assistance.

The Modernization Grant will be increased by \$2,000 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 01/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code Reference: Section 17074.10, Education Code

HISTORY

- 1 New section filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)
- 2 Amendment of last paragraph filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- 3 Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

- 4 Amendment of section heading and last paragraph filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

- 5 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.78.3. Modernization Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for modernization funding:

(a) \$7,158 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$4,788 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any modernization grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code Reference: Sections 17072.10 and 17074.10, Education Code

HISTORY

- 1 New section filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- 2 Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
- 3 Amendment of section heading, first paragraph and subsection (b) filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code Reference: Sections 17074.15 and 17077.10, Education Code

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)
- 5 New second paragraph and amendment of Note filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.15, Education Code Reference Sections 17070.15, 17074.25 and 42250.1, Education Code

HISTORY

- 1. New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41).
Amendment of first paragraph filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL, 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:
 - (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction area of the eligibility for the district.
 - (2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:
 - (1) Replacement, repair or additions to existing site development.
 - (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjacent grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.15, Education Code Reference Sections 17070.15, 17074.25 and 100420(c), Education Code

HISTORY

- 1. New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day

- 4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41)

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking a modernization grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 01/01) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 01/01) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB

NOTE: Authority cited: Section 17070.15, Education Code Reference Sections 17074.25 and 100420(c), Education Code

HISTORY

- 1. New section filed 9-12-2000, operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37)
- 2. Amendment filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL, 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

- (a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.
- (b) A facility hardship grant as provided in Section 1859.82.
- (c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.15, Education Code Reference Sections 17075.10 and 17070.15, Education Code

HISTORY

- 1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41)

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be

deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$900,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

(4) The project for which the district is requesting financial hardship meets all of the following:

(A) It has been approved as a health and safety facility hardship pursuant to Section 1859.82(a)(1) or the project was approved as a hardship under the provisions of the LFP.

(B) The district's contribution for the project is less than \$500,000, exclusive of allowable site acquisition cost pursuant to Section 1859.74.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 01/01) under the provisions of financial hardship for a period of six months from the date of the OPSC notification.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be trans-

mitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application for Funding*, Form SAB 50-04 (Revised 01/01). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 01/01). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application for Funding*, Form SAB 50-04 (Revised 01/01) must be for at least 50 percent of the New Construction Grant or at least 80 percent of the Modernization Grant the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date (see *Application for Funding*, Form SAB 50-04 (Rev. 01/01)) to as-

sure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited Sections 17070.35, 17072.11 and 17075.15, Education Code. Reference Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12/3/98 as an emergency, operative 12/3/98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4/2/99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3/31/99 as an emergency, operative 3/31/99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7/29/99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7/12/99 as an emergency, operative 7/12/99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11/9/99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7/29/99 as an emergency, operative 7/29/99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11/26/99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7/29/99 order, including amendment of section, transmitted to OAL 8/26/99 and filed 10/8/99 (Register 99, No. 41).
6. Certificate of Compliance as to 7/12/99 order, including further amendments, transmitted to OAL 11/5/99 and filed 12/22/99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3/13/2000, operative 4/12/2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6/26/2000, operative 6/26/2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7/17/2000 as an emergency, operative 7/17/2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11/14/2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9/12/2000, operative 9/12/2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7/17/2000 order transmitted to OAL 11/9/2000 and filed 12/27/2000 (Register 2000, No. 52).
12. Amendment of last two paragraphs of subsection (c) filed 1/2/2001 as an emergency, operative 1-2/2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2/2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2/2001 order transmitted to OAL 5/1/2001 and filed 6/13/2001 (Register 2001, No. 24).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include ap-

plicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi Purpose	5.3 sq ft. per pupil minimum 3,500 sq ft	5.3 sq ft. per pupil minimum 4,500 sq ft	6.3 sq ft. per pupil minimum 7,500 sq ft
Mech/Elect	0.3 sq ft. per pupil maximum 100 sq ft	0.3 sq ft. per pupil maximum 100 sq ft	0.3 sq ft. per pupil maximum 100 sq ft
Food Service	2 sq ft. per pupil minimum 400 sq ft maximum 1,480 sq ft	2 sq ft. per pupil minimum 400 sq ft maximum 1,880 sq ft	3 sq ft. per pupil minimum 600 sq ft maximum 3,975 sq ft
Toilet	1 sq ft. per pupil minimum 300 sq ft	4 sq ft. per pupil minimum 300 sq ft	5 sq ft. per pupil minimum 300 sq ft
Gymnasium	N/A	7 sq ft. per pupil minimum 5,828 sq ft	8 sq ft. per pupil minimum 7,280 sq ft
Shower/Locker	N/A	4 sq ft. per pupil minimum 400 sq ft	5 sq ft. per pupil minimum 500 sq ft
P.E. Office	N/A	50 sq ft./coach	50 sq ft./coach
P.E. Storage	N/A	0.5 sq ft. per pupil minimum 500 sq ft	0.5 sq ft. per pupil minimum 500 sq ft
Bleachers	N/A	0.9 sq ft. per pupil maximum 1,820 sq ft	1.3 sq ft. per pupil maximum 2,600 sq ft
Mech/Elect	N/A	0.3 sq ft. per pupil minimum 100 sq ft	0.3 sq ft. per pupil minimum 100 sq ft
School Administration	1 sq ft. per pupil minimum 600 sq ft	1 sq ft. per pupil minimum 600 sq ft	4 sq ft. per pupil minimum 800 sq ft
Library/Media Center	2.3 sq ft. per pupil + 600 sq ft	3.3 sq ft. per pupil + 600 sq ft	4.3 sq ft. per pupil + 600 sq ft

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 01/01) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code Reference: Sections 17075.10 and 17075.15, Education Code

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)
5. Amendment of subsection (a)(2) and new subsections (c) (c)(2) filed 6-24-2000; operative 6-26-2000 pursuant to Government Code section 11503.4(d) (Register 2000, No. 26).
6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52)
8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grant, a district is eligible for an additional funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

(3) A modernization grant will be increased by \$14,400 for each additional stop of the new elevator required in (2) above. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code Reference: Sections 17075.10 and 17075.15, Education Code

HISTORY

1. New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Amendment adding second paragraph following the table in subsection (c) filed 4-5-2001, operative 4-5-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 14).
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Section 1859.81.1(c), the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (Revised 01/01), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (Revised 01/01), within 18 months of the apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.30, 17074.15 and 17076.10, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be trans-

mitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of first paragraph filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

(a) The OPSC shall report to the Board on a monthly basis the amount of funds available for New Construction Grants and Modernization Grants and the estimated amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned. The Board shall implement a priority point mechanism described in (b) for New Construction Grants requests when either of the following occur:

(1) The amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned exceed the funds available for New Construction Grants and Modernization Grants.

(2) The funds available for New Construction Grants are \$300 million or less.

(b) Once either (1) or (2) in (a) occurs, the Board shall approve and apportion the funds available for New Construction Grants requests based on the following priority point mechanism:

(1) From the funds available for New Construction Grants, the Board shall establish a final allotment equal to the lesser of \$450 million or the balance of the funds available for New Construction Grants, to be apportioned in accordance with (2) below. After deducting the final allotment, the Board shall divide the remaining funds into seven equal allotments, to be apportioned on a quarterly basis, commencing with the last quarter of calendar year 2000 and ending the second quarter of calendar year 2002. Quarterly apportionments are subject to the following:

(A) The Board shall apportion Approved Applications for New Construction Grants requests received prior to the beginning of the quarter that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List, in descending order, commencing with the project having the greatest number of priority points until the funds available for New Construction Grants for that quarter are exhausted. Projects exempt from priority points pursuant to Section 1859.92(c) shall be apportioned first.

(B) If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(C) No New Construction Grants request will be recommended for apportionment unless the project can be entirely apportioned from the funds available for that quarter.

(D) If the Approved Applications for New Construction Grants received prior to the quarter that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List prior to the quarter are less than the quarterly allotment, plus any funds remaining from the previous quarter(s), the excess funds shall be added to the next quarterly allotment.

(E) If the Approved Applications for New Construction Grants requests received prior to the quarter that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List prior to the quarter are greater than the quarterly allotment, plus any funds remaining from the previous quarter(s), any New Construction Grants requests not apportioned by the Board shall be placed on an Unfunded List.

(F) All New Construction Grants requests, as described in (A) above, that are Ready for Apportionment in a quarter shall not be apportioned before the last regularly scheduled Board meeting for that quarter with the exception of New Construction Grants requests that meet the criteria for exemption from priority points pursuant to Section 1859.92(c). Any New Construction Grants request that is Ready for Apportionment in a

quarter that meets the criteria for exemption from priority points pursuant to Section 1859.92(c) may be apportioned at any of the regularly scheduled Board meetings during that quarter.

(2) The final allotment shall be apportioned subject to the following:

(A) The Board shall apportion Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List, in descending order, commencing with the project having the greatest number of priority points until the final allotment, plus any funds remaining from the previous quarters are exhausted. Projects exempt from priority points pursuant to Section 1859.92(c) shall be apportioned first.

(B) If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(C) If the Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List are greater than the final allotment, plus any remaining funds from the previous quarter(s), any New Construction Grants requests not apportioned by the Board shall be placed on an Unfunded List.

(D) All New Construction Grants requests, as described in (A) above, that are Ready for Apportionment shall be apportioned at the regularly scheduled Board meeting in August 2002 with the exception of New Construction Grants requests that meet the criteria for exemption from priority points pursuant to Section 1859.92(c). Any New Construction Grants request that is Ready for Apportionment that meets the criteria for exemption from priority points pursuant to Section 1859.92(c) may be apportioned at either the regularly scheduled Board meeting in July or August 2002.

(E) If the Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment and all New Construction Grants requests that were included on an Unfunded List are less than the final allotment, plus any remaining funds from the previous quarter(s), the excess funds shall be apportioned on a monthly basis beginning in September 2002 for Approved Applications for New Construction Grants received after June 26, 2002 that are Ready for Apportionment, in descending order, commencing with the project having the greatest number of priority points. This process shall continue until the funds available are exhausted. If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(c) The Board shall declare that State funds are not available for new facility construction when the New Construction Grants requests Ready for Apportionment exceed the funds available for that purpose. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

NOTE: Authority cited Sections 17072.25 and 17070.35, Education Code Reference: Section 17072.25, Education Code; and Section 65995.7, Government Code

HISTORY

1. New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section filed 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section filed 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by

5-2-2001 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL, 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.92. Priority Points For New Construction Projects.

The priority points allowed for a New Construction Grants request shall be based on the following computations rounded up to the nearest whole number. The computation shall be made on a districtwide basis if the district utilized districtwide CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), in effect at the time the district's application for funding was submitted to the OPSC for the project. The computation shall be made on a HSAA basis if the district utilized HSAA CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), in effect at the time the district's application for funding was submitted to the OPSC for the project. Notwithstanding the provisions of Section 1859.41, a district that has previously reported its enrollment on a HSAA basis may calculate both its eligibility and its priority points on a districtwide basis. A project shall receive priority points based on the total of (a), (b) and (c):

(a) Priority points for the percent of unboxed pupils for both of the following:

- (1) Six points for each percent of current unboxed pupils
- (2) Four points for each percent of projected unboxed pupils.

(b) Priority points for the number of unboxed pupils for both of the following:

- (1) One point for each 100 currently unboxed pupils.
- (2) One point for each 200 projected unboxed pupils.
- (c) A maximum of 100 priority points for the following:

(1) Twenty points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.

(2) Twenty points for a County Superintendent of Schools' project that only includes classroom space solely for Non-Severely Disabled Individuals with Exceptional Needs.

(3) Twenty points if the site acreage for the project is less than 50 percent of the site size recommended by the CDEI for the master planned pupil capacity.

(4) Twenty points for a project that either used "stock plans" pursuant to Education Code Section 17070.33(b)(6) or re-used plans that were previously used to construct at least two other schools.

(5) Twenty points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

(6) Twenty points for a project that uses 20 percent less energy than the Energy Budget as defined and calculated in a manner consistent with the California Energy Code, Part 6, Subchapter 5, Section 141 — Performance Approach: Energy Budgets.

(7) Twenty points for a project that is a new high school serving any grades nine through twelve.

(8) Twenty points for a project that received financial hardship assistance pursuant to Section 1859.81.

(9) Twenty points for a project where the site acquisition qualified and received an apportionment authorized under Section 1859.75.1, Separate Site Apportionment for Environmental Hardship.

(10) One hundred points if the Approved Application was accepted prior to the date the priority point mechanism is implemented by the Board pursuant to Section 1859.91(a)(1) or (a)(2).

(d) The calculation of priority points in (a), (b) and (c) above shall be determined at the time the Approved Application is accepted.

(e) The following projects are exempt from priority points:

(1) A project that received Facility Hardship approval pursuant to Section 1859.82.

(2) A county superintendent of schools' project that includes classroom space for Severely Disabled Individuals with Exceptional Needs.

(3) A county superintendent of schools' project that only includes classroom space solely for community school pupils.

(4) A school district's project that only includes classroom space solely for Severely Disabled Individuals with Exceptional Needs.

(f) If the project received a separate site and/or design apportionment under the provisions of the LPP or pursuant to Sections 1859.75.1 or 1859.81.1, the district's funding priority of the project shall be determined by the Approved Application date for the New Construction Grant request.

NOTE: Authority cited Sections 17070.35, 17072.25 and 100420(d), Education Code Reference Sections 17070.35 and 17072.25, Education Code

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 1 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 5 Amendment of first paragraph filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)
- 6 Amendment of section and NOTE filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 7 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.83. Modernization Projects.

All modernization applications shall be funded in the order of receipt of an Approved Application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited, Section 17070.35, Education Code Reference Section 17074.15, Education Code

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)
- 5 Amendment filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 6 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.84. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an Excessive Cost Hardship Grant pursuant

to Section 1859.83 and the Board has no funds to allocate for that specific hardship as a result of the reservation of funds made pursuant to (b), the district may elect to either:

(1) Accept funding for the project based on the New Construction or Modernization Adjusted Grant less any hardship funding grants that are not available pursuant to (b). When this option is made, the funds allocated shall be the full and final apportionment for the project.

(2) Suspend its application for funding until funding for the specific hardship grant is available to the Board. Applications of this nature will be retained by the OPSC and included on a list for future funding based on the date the district elected to suspend the application.

NOTE: Authority cited Sections 17075.15 and 17070.35, Education Code Reference Section 17075.15, Education Code

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)
- 5 Amendment of subsection (c) filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 6 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.85. Acceptance of Applications When Funding is Unavailable.

When the Board has no funds to apportion or the application does not qualify for funding because of the Board's priority point mechanism pursuant to Sections 1859.91 and 1859.92, the Board will continue to accept and process applications for eligibility determination. The Board will also accept and process applications for apportionment for purposes of developing an Unfunded List based on the date the Approved Application was accepted by the OPSC. Applications for New Construction Adjusted Grants for a project where the site was apportioned pursuant to Section 1859.75.1 shall receive a date on the Unfunded List based on the date the environmental hardship site apportionment was made for the project.

With the exception of financial hardship eligibility, a district with an application included on an Unfunded List shall not be required to re-establish eligibility for that application prior to apportionment.

An application for funding included on an Unfunded List is eligible for reimbursement subject to adjustments in the New Construction Grants amount pursuant to Section 1859.77.

NOTE: Authority cited Sections 17070.35 and 17072.25, Education Code Reference Section 17070.35, Education Code

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)
- 5 Amendment filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)
- 6 Amendment of section and NOTE filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be trans-

nated to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day

- 7 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/01), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code

HISTORY

- 1 New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day
- 2 New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day
- 3 Amendment filed 7-12-99 as an emergency, operative 7-12-99 (Register 99, No. 29) A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day
- 4 New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day
- 5 Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)
- 6 Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52)
- 7 Amendment filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)
- 8 Amendment filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29) A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day
- 9 Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52)
- 10 Amendment filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1) A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day
- 11 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/01), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day
- 3 Amendment filed 7-12-99 as an emergency, operative 7-12-99 (Register 99, No. 29) A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day

- 4 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day

- 5 Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)
- 6 Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52)
- 7 Amendment filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)
- 8 Amendment filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29) A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day
- 9 Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52)
- 10 Amendment filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1) A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day
- 11 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 01/01), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(h)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code

HISTORY

- 1 New section filed 12-3-98 as an emergency, operative 12-3-98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day
- 2 New section refiled 3-31-99 as an emergency, operative 3-31-99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day
- 3 Amendment of first paragraph filed 7-12-99 as an emergency, operative 7-12-99 (Register 99, No. 29) A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day
- 4 New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day
- 5 Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41)
- 6 Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52)
- 7 Amendment filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)
- 8 Amendment of first paragraph filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29) A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day
- 9 Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52)
- 10 Amendment filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1) A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day
- 11 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFY financial hardship grant of that project or other financial hardship projects within

the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited Section 17070.35, Education Code Reference Section 17070.63, Education Code

HISTORY

- 1 New section filed 12 3 98 as an emergency, operative 12 3 98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL by 4 2 99 or emergency language will be repealed by operation of law on the following day
- 2 New section refiled 3 31 99 as an emergency, operative 3 31 99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day
- 3 New section refiled 7 29 99 as an emergency, operative 7 29 99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day
- 4 Certificate of Compliance as to 7 29 99 order, including amendment of section, transmitted to OAL 8 26 99 and filed 10 8 99 (Register 99, No. 41)
- 5 New third paragraph filed 6 26 2000; operative 6 26 2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1), or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension

of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited Sections 17070.35 and 17072.13, Education Code Reference Sections 17070.35, 17072.13 and 17076.10, Education Code

HISTORY

- 1 New section filed 12 3 98 as an emergency, operative 12 3 98 (Register 98, No. 49) A Certificate of Compliance must be transmitted to OAL by 4 2 99 or emergency language will be repealed by operation of law on the following day
- 2 New section refiled 3 31 99 as an emergency, operative 3 31 99 (Register 99, No. 14) A Certificate of Compliance must be transmitted to OAL by 7 29 99 or emergency language will be repealed by operation of law on the following day
- 3 New section refiled 7 29 99 as an emergency, operative 7 29 99 (Register 99, No. 31) A Certificate of Compliance must be transmitted to OAL by 11 26 99 or emergency language will be repealed by operation of law on the following day
- 4 Certificate of Compliance as to 7 29 99 order, including amendment of section, transmitted to OAL 8 26 99 and filed 10 8 99 (Register 99, No. 41)
- 5 Amendment of subsection (a) filed 3 13 2000; operative 4 12 2000 (Register 2000, No. 11)
- 6 Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6 26 2000; operative 6 26 2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26)

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.1(a)(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

(1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(3) All construction activities are at least 50 percent complete

(4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDI.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be submittal of an Approved Application.

After the Board has received the progress report required in Section 1859.104(b) for items (a) and (b) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a) or (b) above or the district has not filed an Ap-

proved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 07/00), to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmission.

NOTE: Authority cited Sections 17070.35 and 17072.13, Education Code. Reference Sections 17070.35 and 17076.10, Education Code.

HISTORY

- 1. New section filed 12-1-98 as an emergency, operative 12-1-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-11-99 as an emergency, operative 3-11-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency, operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 5. Amendment of third paragraph of subsection (d) filed 3-13-2000, operative 4-12-2000 (Register 2000, No. 11).
- 6. Amendment of section and NOTE filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- 7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency, operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- 8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
- 9. Amendment filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

- (1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.
- (2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited Sections 17070.35 and 17072.13, Education Code. Reference Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

- 1. New section filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of site that was used to determine the New Construction Additional Grant provided for site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.
- (b) For 50 percent of any insurance proceeds collectible by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education

Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.30, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

- 1 New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2 New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3 New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4 Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 5 Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
- 6 Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that

has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(I) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 01/01).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 01/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 01/01).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 01/01).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 01/01).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

- 1 New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
- 2 Amendment adding four paragraphs as codified filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- 3 Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
- 4 Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 5 Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

- 1 Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
- 2 Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) Article 5.

Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.

(2) Board.

State Allocation Board.

(3) DCE.

Director of Compensatory Education.

Title 2, CCR, Register 2001-30

§ 1859.21	§ 1859.79.3
§ 1859.22	§ 1859.81
§ 1859.50	§ 1859.81.1
§ 1859.70	§ 1859.82
§ 1859.74.1	§ 1859.100
§ 1859.75.1	§ 1859.102
	§ 1859.107

1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding. If the project is eligible for further funding under the SFP, the:

(a) New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HISAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), which is incorporated by reference.

(b) For new construction projects, either districtwide or HISAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. Amendment of subsections (a) and (c) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 02/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.22. SFP Application for Funding on Leased Land.

In addition to meeting the requirements of Sections 1859.20 and 1859.21, a district may receive SFP New Construction or Modernization Grants for facilities that are or will be located on real property leased by the district provided all the following are met:

(a) The real property is leased from a governmental agency.

(b) The term of the lease for the land for which the district is requesting SFP funding at the time the Approved Application is accepted is one of the following:

(1) At least 25 years if the lease is for real property owned by the federal government.

(2) At least 40 years if the lease is for real property owned by a governmental agency other than the federal government.

(3) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has certified to all the following:

(A) There are no other educationally adequate sites for new construction available under a 40-year lease.

(B) The cost per year to lease the real property for no less than 30 years is no greater than the cost per year to lease the real property for 40 years.

(4) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has provided other evidence satisfactory to the Board that a shorter lease term is necessary.

A district seeking modernization funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(c).

A district seeking new construction funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(a) and (i).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.71, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by

5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(l) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) owned but leased to another district.

(j) any portable classroom excluded by Education Code Section 17071.30.

(k) that is permanent space and leased for less than five years.

(l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (l) filed 1-10-2000; operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).
Amendment of section heading filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 9-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HSAA, multiply the K-12 pupil capacity within the boundaries of the HSAA by eight percent. When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance

- must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
 6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on the basis of one or more HSAA, eligibility for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or HSAA's must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

Combining two or more HSAA's to determine eligibility is allowed if all the HSAA are adjacent and the facilities constructed will serve pupils in each of those HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the

most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall

by the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 02/01), for a new construction SFP grant.

A district affected by a reorganization election on or after November 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
8. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of second paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1-2-2001 order, including amendment of first paragraph, transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
13. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) Excluded pursuant to Education Code Section 17071.30.

(4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

(5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.

(6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.

(j) For small school districts, decreased:

(1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.75, 17071.76 and 17072.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first paragraph, subsections (e) and (i)(5) and new subsection (f) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
- Amendment of first paragraph and subsections (i)(5) and (i)(6) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 (Register 2001, No. 24).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

§ 1859.61 Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a modernization LPP project at the specific site.
- (b) Reduced by the number of pupils housed, based on the loading standards per unit to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.60 and 1859.15
- (c) Increased by changes in projected enrollment in subsequent enrollment reporting years
- (d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105
- (e) Adjusted as a result of errors or omissions by the district or by the OPSC
- (f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order, including amendment of section and Note, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 02/01), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

HISTORY

- 1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
- 4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
- 7. Amendment of section and Note filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- 8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
- 10. Amendment of first and second paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
- 12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.71.1. New Construction Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

- (a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
- (b) \$11,084 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any new

construction grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading and first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.72. New Construction Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs. The district may request an increase in the New Construction Grant for therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The grant amount will be increased by \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of section and NOTE: filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
7. Amendment of section heading and section filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

- New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73.1. New Construction Additional Grant for Project Assistance.

The New Construction Grant will be increased by \$3,750 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 02/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of second paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.73.2. Construction Additional Grant for Replaced Facilities.

(a) The New Construction Grant will be increased by the amount(s) in (b) below for the replacement cost of one-story buildings that are demolished at a school in order to increase pupil capacity of that school if all the following conditions are met:

(1) The school must be on MTYRE at the time the Approved Application is accepted.

(2) The site size as determined by the CDE for the existing capacity of the school is less than 75 percent of the recommended CDE site size.

(3) The pupil capacity of the school must be increased by at least the greater of (A) or (B) below:

(A) Twenty percent of the existing pupil capacity (before replacement) of the school. Existing pupil capacity shall be determined by multiplying classrooms intended for grades kindergarten through six by 25, classrooms intended for grades seven through 12 by 27, classrooms intended for Non-Severely Disabled Individuals with Exceptional Needs by 13 and classrooms intended for Severely Disabled Individuals with Exceptional Needs by nine. Classrooms shall not include any classrooms reduced from the Gross Classroom Inventory pursuant to Section 1859.32.

(B) 200 pupils.

(4) The sum of (A) and (B) below is less than the amount determined in (E) below:

(A) Determine the estimated cost of demolition of the one-story buildings to be replaced. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Cost Publication.

(B) Multiply the square footage of the buildings to be replaced by the Current Replacement Cost.

(C) Multiply the New Construction Grants requested in box 2 of the *Application for Funding*, Form SAB 50-04 (Revised 02/01), by .01775 for K-6, .021 for 7-8 and .02472 for 9-12.

(D) Determine the average appraised value of land per acre, including relocation costs, within the attendance boundaries of the school. The appraisal must be consistent with Section 1859.74.1.

(E) Multiply the sums of the products determined in (C) above by the average appraised value of land per acre determined in (D) above.

(5) The CDE has determined that the replacement of the one-story buildings on the existing site with multilevel building(s) would be the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.

(6) The one-story buildings to be replaced on the existing site may not be leased facilities.

(7) With the exception of portables acquired with Class Size Reduction funds, the one-story buildings to be replaced on the site may not have been funded for either new construction or modernization funds from Proposition 1A funds within the past five years from the date the Approved Application is accepted.

(b) If the criteria in (a) are met, the New Construction Grant will be increased by \$150 per square foot for toilet facilities and by \$75 per square foot for all other facilities included in the one-story buildings to be replaced adjusted for the following:

(1) The amounts shall be adjusted annually in the manner prescribed in Section 1859.71.

(2) The amounts shall be increased by the percentage authorized in Section 1859.73 if the replacement area will be multilevel building(s).

(3) The amounts shall be increased for excess cost grants as provided pursuant to Section 1859.83(a) and (d).

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the New Construction Grant for the SFP project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 71.46, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30)

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The rea-

sonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (**Revised 02/01**), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100% of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

- or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
 4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
 7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
 8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 10. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
 12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below;

- (a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
- (1) The costs may include the costs for preparation of the RA.
 - (2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
 - (3) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.3. Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes, the New Construction Grant will be increased for the lesser of one half of the amounts allowed in (a) or (b) below:

- (a) The sum of all of the following:
- (1) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.

(4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the costs for preparation of the RA.

(B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(C) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.71, 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 7-25-2000; operative 7-25-2000 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lessor of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lessor of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 02/01).

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

4. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.76. New Construction Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for multilevel parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.

(D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of me-

ters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 02/01).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a pro-rated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. New subsections (a)(11)-(a)(11)(D) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. New subsection (a)(12) and amendment of subsections (c) and (c)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of antepenultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of section heading and subsection (c)(5) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
13. Amendment of antepenultimate paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant

and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.30 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.77.2. Use of New Construction Grant Funds.

New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

A district may request a new construction grant:

(a) That exceeds the number of pupils that will be housed in the project based on loading standards pursuant to Education Code section 17071.25(a)(2) and any loading standards adopted by the Board by these regulations subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the excess pupils receiving grants in the project as determined in (a).

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the pupils receiving grants in the project as determined in (a).

(2) The plan identified in (a)(1)(A) is acceptable to the CDE and the OPSC.

(3) When a new construction grant request exceeds 150 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations, the Board may require approval on a case by case basis.

(b) Utilizing new construction grant eligibility determined at a different grade level than the proposed project subject to all the following:

(1) The district has submitted a school board resolution, which includes all the following:

(A) A plan that identifies how the district has or will adequately house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.

(C) Acknowledgement that the State has satisfied its obligation to house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.

(2) The plan identified in (b)(1)(A) is acceptable to the CDE.

(3) The district is using all new construction grant eligibility in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(4) The new construction grant amount shall be determined on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any additional grants or excessive cost grants the district qualifies for as provided by these regulations. Any excessive cost grants provided pursuant to Section 1859.83(c) shall be determined on the total of all grants provided for the project.

(5) The Board may require approval of the district's request on a case by case basis.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17072.35, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Repealer filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.78.2. Modernization Additional Grant for Project Assistance.

The Modernization Grant will be increased by \$2,000 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 02/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.78.3. Modernization Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for modernization funding:

(a) \$7,158 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$4,788 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any modernization grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading, first paragraph and subsection (b) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

- (a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or
- (b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:
 - (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.
 - (2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:
 - (1) Replacement, repair or additions to existing site development.
 - (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking a modernization grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 02/01) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 02/01) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37)

Amendment filed 1-2-2001 as an emergency, operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL, 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001, operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL, 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$900,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of

general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

(4) The project for which the district is requesting financial hardship meets all of the following:

(A) It has been approved as a health and safety facility hardship pursuant to Section 1859.82(a)(1) or the project was approved as a hardship under the provisions of the LPP.

(B) The district's contribution for the project is less than \$500,000, exclusive of allowable site acquisition cost pursuant to Section 1859.74.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 02/01) under the provisions of financial hardship for a period of six months from the date of the OPSC notification.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 02/01). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 02/01). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application for Funding*, Form SAB 50-04 (Revised 02/01) must be for at least 50 percent of the New Construction Grant or at least 80 percent of the Modernization Grant the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 02/01)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(c).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant

as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration

or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq.ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq.ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq.ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 02/01) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section,

transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of subsection (c) filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grant, a district is eligible for an additional funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

mitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

1. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 02/01), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 02/01), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99

or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 02/01), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be de-

clared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds

were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

(1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(3) All construction activities are at least 50 percent complete.

(4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be submittal of an Approved Application.

After the Board has received the progress report required in Section 1859.104(b) for items (a) and (b) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made

on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a) or (b) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 07/00), to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(e). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

- (1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.
- (2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of site that was used to determine the New Construction Additional Grant provided for site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.
- (b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated

with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be

withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(f) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 02/01).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 01/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 02/01).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 02/01).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 02/01).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210-16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4-29-77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1-8, Sections 1860-1860.21) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).

Title 2, CCR, Register 2001-33

§ 1859.21
§ 1859.50
§ 1859.70
§ 1859.74.1
§ 1859.75.1
§ 1859.79.3

§ 1859.81
§ 1859.81.1
§ 1859.82
§ 1859.100
§ 1859.102
§ 1859.107

1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding. If the project is eligible for further funding under the SFP, the:

(a) New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure**§ 1859.20. SFP Application for Determination of Eligibility.**

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. Amendment of subsections (a) and (c) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 03/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

13. Amendment of form SAB 50-04 (incorporated by reference) and amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.22. SFP Application for Funding on Leased Land.

In addition to meeting the requirements of Sections 1859.20 and 1859.21, a district may receive SFP New Construction or Modernization

Grants for facilities that are or will be located on real property leased by the district provided all the following are met:

- (a) The real property is leased from a governmental agency.
- (b) The term of the lease for the land for which the district is requesting SFP funding at the time the Approved Application is accepted is one of the following:
 - (1) At least 25 years if the lease is for real property owned by the federal government.
 - (2) At least 40 years if the lease is for real property owned by a governmental agency other than the federal government.
 - (3) At least 10 years if the lease is for real property owned by a governmental agency other than the federal government and the district has certified to all the following:
 - (A) There are no other educationally adequate sites for new construction available under a 40-year lease.
 - (B) The cost per year to lease the real property for no less than 30 years is no greater than the cost per year to lease the real property for 40 years.
 - (4) At least 35 years if the lease is for real property owned by a governmental agency other than the federal government and the district has provided other evidence satisfactory to the Board that a shorter lease term is necessary.

A district seeking modernization funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(c).

A district seeking new construction funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(a) and (i).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.71, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HISA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

- (a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;
 - (b) constructed with funds from the LPP;
 - (c) used for Special Day Class or Resource Specialist Programs;
 - (d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;
 - (e) acquired or created for Class Size Reduction purposes;
 - (f) used for preschool programs;
 - (g) converted to any non-classroom purpose including use by others;
 - (h) with Housing and Community Development or Department of Housing insignia;
 - (i) acquired for interim housing for a modernization project;
 - (j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;
 - (k) that have a waiver for continued use by the Board for Field Act exemptions;
 - (l) used for Community School purposes;
 - (m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- (a) abandoned and approved for replacement as a hardship under the provisions of the LPP;
- (b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;
- (c) included in any new construction LPP project that has not received a Phase C apportionment;
- (d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;
- (e) that is a trailer and is transported/towed on its own wheels and axles;
- (f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;
- (g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) owned but leased to another district.

(j) any portable classroom excluded by Education Code Section 17071.30.

(k) that is permanent space and leased for less than five years.

(l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
New subsection (l) filed 1-10-2000; operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).
5. Amendment of section heading filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 01/01).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HSAA, multiply the K-12 pupil capacity within the boundaries of the HSAA by eight percent. When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.41. High School Attendance Area Reporting.

If a district reports enrollment on the basis of one or more HSAA, eligibility for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or HSAA's must be filed on the same basis. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or combined HSAA's, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

Combining two or more HSAA's to determine eligibility is allowed if all the HSAA are adjacent and the facilities constructed will serve pupils in each of those HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numer-

ical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

1859.43. Projecting Special Day Class Enrollment.

he district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/01), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- 6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01).

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), is the initial eligibility of the district or HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 03/01), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

- 1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
- 3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
- 5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
- 8. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- 9. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- 10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
- 11. Amendment of second paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- 12. Certificate of Compliance as to 1-2-2001 order, including amendment of first paragraph, transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
- 13. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
- 14. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.
- (f) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (g) Adjusted as a result of amendments to these Regulations that affect the eligibility.
- (h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).
- (i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the

Board with the exception of those pupils housed or to be housed in a classroom:

- (1) That is a trailer and transportable/towed on its own wheels and axles.
- (2) Of less than 700 interior square feet.
- (3) Excluded pursuant to Education Code Section 17071.30.
- (4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.
- (5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.
- (6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.
- (j) For small school districts, decreased:
 - (1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
 - (2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
 - (k) Adjusted for any change in classroom inventory as a result of a re-organization election.
 - (l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.75, 17071.76 and 17072.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first paragraph, subsections (c) and (i)(5) and new subsection (l) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first paragraph and subsections (i)(5) and (i)(6) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be

transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 03/01), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of district's baseline eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment of section and NOTE; filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

10. Amendment of first and second paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.71.1. New Construction Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

(a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(4) Determine the estimated cost of demolition of the one-story buildings to be replaced. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Cost Publication.

(5) Multiply the square footage of the buildings to be replaced by the Current Replacement Cost.

(6) Multiply the New Construction Grants requested in box 2 of the *Application for Funding*, Form SAB 50-04 (Revised 03/01), by .01775 for Nos. 021 for 7-8 and .02472 for 9-12.

(7) Determine the average appraised value of land per acre, including relocation costs, within the attendance boundaries of the school. The appraisal must be consistent with Section 1859.74.1.

(E) Multiply the sums of the products determined in (C) above by the average appraised value of land per acre determined in (D) above.

(5) The CDE has determined that the replacement of the one-story buildings on the existing site with multilevel building(s) would be the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.

(6) The one-story buildings to be replaced on the existing site may not be leased facilities.

(7) With the exception of portables acquired with Class Size Reduction funds, the one-story buildings to be replaced on the site may not have been funded for either new construction or modernization funds from Proposition 1A funds within the past five years from the date the Approved Application is accepted.

(b) If the criteria in (a) are met, the New Construction Grant will be increased by \$150 per square foot for toilet facilities and by \$75 per square foot for all other facilities included in the one-story buildings to be replaced adjusted for the following:

(1) The amounts shall be adjusted annually in the manner prescribed in Section 1859.71.

(2) The amounts shall be increased by the percentage authorized in Section 1859.73 if the replacement area will be multilevel building(s).

(3) The amounts shall be increased for excessive cost grants as provided pursuant to Section 1859.83(a) and (d).

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the New Construction Grant for the SFP project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.46, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of subsection (a)(4)(C) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(h) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 03/01), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100 percent of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(c) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph and subsection (a)(2) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below:

(a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

- (1) The costs may include the costs for preparation of the RA.
- (2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
- (3) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.3. Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes, the New Construction Grant will be increased for the lesser of one half of the amounts allowed in (a) or (b) below:

(a) The sum of all of the following:

(1) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.

(4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the costs for preparation of the RA.

(B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(C) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.71, 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lesser of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 03/01).

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.76. New Construction Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:
(1) Site clearance including the removal of trees, brush, and debris.
(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for multilevel parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.

(D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 03/01).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. New subsections (a)(11)-(a)(11)(D) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

8. New subsection (a)(12) and amendment of subsections (c) and (c)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

9. Amendment of antepenultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

11. Amendment of section heading and subsection (c)(5) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

13. Amendment of antepenultimate paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

14. Amendment of subsection (c)(5) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.30 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.77.2. Use of New Construction Grant Funds.

New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

Authorization for use of New Construction Grants may be requested as follows:

(a) A district may request new construction grants that do not to exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the district has adopted a school board resolution that includes the following:

(1) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81.

(2) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(3) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(b) A district may utilize new construction grant eligibility determined at a different grade level than the proposed project that do not exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations subject to all of the following:

(1) The district has adopted a school board resolution that includes the following:

(A) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81.

(B) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(C) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(2) The district must use its New Construction Grant eligibility, pursuant to subsections (b) and (d), in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(c) When the priority point mechanism described in Section 1859.91 has not been implemented, a district may request New Construction Grants that exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations provided all the conditions in subsections (a)(1), (a)(2) and (a)(3) are met.

(d) When the priority point mechanism described in Section 1859.91 has not been implemented, a district may utilize new construction grants eligibility determined at a different grade level than the proposed project that exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations provided all the conditions in subsections (b)(1) and (b)(2) are met.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17072.35, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(u) (Register 2000, No. 26).
2. Amendment filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Repealer filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.78.2. Modernization Additional Grant for Project Assistance.

The Modernization Grant will be increased by \$2,000 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 03/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.78.3. Modernization Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for modernization funding:

(a) \$7,158 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$4,788 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any modernization grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading, first paragraph and subsection (b) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of Note filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following.

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the ADA's handicapped access requirements.

(3) The evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined allowed grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and Note, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking a modernization grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 03/01) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 03/01) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including developer fees, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or obligated by a contractual agreement or encumbered for a specific capital outlay purpose shall be deemed available as a matching contribution, unless the district can present satisfactory evidence to the contrary. The analysis is subject to approval by the Board.

If the district's available funds, as determined by the OPSC analysis, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of application submittal for funding, is at least 30 percent of the district's total bonding capacity or within \$900,000 of 30 percent of its total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a registered voter bond election such as a general obligation bond, Mello-Roos Bond or a School Facility Improvement District, within the previous four years, that received at least a 50 percent plus one vote, for an amount that is equal to or greater than the amount needed to fund the district's matching share requirement for that project (not to exceed the bonding capacity of the district) and any other SFP project to date.

(3) It is a County Superintendent of Schools.

(4) The project for which the district is requesting financial hardship meets all of the following:

(A) It has been approved as a health and safety facility hardship pursuant to Section 1859.82(a)(1) or the project was approved as a hardship under the provisions of the LPP.

(B) The district's contribution for the project is less than \$500,000, exclusive of allowable site acquisition cost pursuant to Section 1859.74.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 03/01) under the provisions of financial hardship for a period of six months from the date of the OPSC notification.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 03/01). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 03/01). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application for Funding*, Form SAB 50-04 (Revised 03/01) must be for at least 50 percent of the New Construction Grant or at least 80 percent of the Modernization Grant the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 03/01)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24)
14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major free way, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(c).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demon-

strated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech/Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq. ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 03/01) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

10. Amendment of subsection (c) filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

11. Amendment of subsection (c) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grant, a district is eligible for an additional funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

3. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 03/01), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 03/01), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 03/01), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

(1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(3) All construction activities are at least 50 percent complete.

(4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 59.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be submittal of an Approved Application.

After the Board has received the progress report required in Section 1859.104(b) for items (a) and (b) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a) or (b) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the *Expenditure Report Form, SAB 50-06 (Revised 07/00)*, to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by

5-2-2001 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

- (1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.
- (2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1 and 1859.75.

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of site that was used to determine the New Construction Additional Grant provided for site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.
- (b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from

the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 76).

visions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(l) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 03/01).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 01/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 03/01).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 03/01).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 01/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 03/01).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the pro-

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking a modernization grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 03/01) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 03/01) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

- (a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.
- (b) A facility hardship grant as provided in Section 1859.82.
- (c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution. The analysis is subject to approval by the Board.

From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (a)(7) as follows:

- (1) Determine the current enrollment of the district by grade level as shown on the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Rev. 01/01).
- (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted an *Expenditure Report*, Form SAB 50-06 (Rev. 01/00) indicating that the project is 100 percent complete.
- (3) Subtract (a)(2) from (a)(1).
- (4) Determine the number of classrooms by grade level reported in Part I, Line 8 on the latest *Existing School Building Capacity*, Form SAB 50-02 (Rev. 01/01).
- (5) Multiply the classrooms determined in (a)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
- (6) Subtract the product determined in (a)(5) from the difference determined in (a)(3) by grade level.
- (7) Divide the difference by grade level determined in (a)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the

positive numbers determined in (a)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$3 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district shall be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (b)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the *Application for Funding*, Form SAB 50-04 (Rev. 03/01) that were denied financial hardship status.

(B) Divide the number by grade level determined in (b)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 03/01) under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit an *Application for Funding*, Form SAB 50-04 (Rev. 03/01) under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits an *Application for Funding*, Form SAB 50-04 (Rev. 03/01) within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 71). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding. If the project is eligible for further funding under the SFP, the:

(a) New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsections (a) and (c) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 07/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of form SAB 50-04 (incorporated by reference) and amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.22. SFP Application for Funding on Leased Land.

In addition to meeting the requirements of Sections 1859.20 and 1859.21, a district may receive SFP New Construction or Modernization Grants for facilities that are or will be located on real property leased by the district provided all the following are met:

- (a) The real property is leased from a governmental agency.
- (b) The term of the lease for the land for which the district is requesting SFP funding at the time the Approved Application is accepted is one of the following:

(1) At least 25 years if the lease is for real property owned by the federal government.

(2) At least 40 years if the lease is for real property owned by a governmental agency other than the federal government.

(3) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has certified to all the following:

(A) There are no other educationally adequate sites for new construction available under a 40-year lease.

(B) The cost per year to lease the real property for no less than 30 years is no greater than the cost per year to lease the real property for 40 years.

(4) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has provided other evidence satisfactory to the Board that a shorter lease term is necessary.

A district seeking modernization funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(c).

A district seeking new construction funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(a) and (i).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.71, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Ca-*

capacity, Form SAB 50-02 (Revised 07/01). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(l) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) in a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and tires;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following;

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(4) owned but leased to another district.

(i) any portable classroom excluded by Education Code Section 17013.0.

(k) that is permanent space and leased for less than five years.

(l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. New subsection (i) filed 1-10-2000; operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).

6. Amendment of section heading filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pur-

suant to Section 1859.32. These classrooms shall be reported on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/01).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

10. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district or the HSAA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district or the HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. For a high school district filing on a district-wide basis, multiply the pupil capacity of the district as determined by the results of the calculations in (a) at the time of initial determination of eligibility by six percent or, as an alternative, by eight percent of the K-12 pupil capacity within the boundaries of the district. For a high school district filing on a HSAA, multiply the K-12 pupil capacity within the boundaries of the HSAA by eight percent. When the district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

- or emergency language will be repealed by operation of law on the following day.
- Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
 - New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 - New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 - Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 - Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01). The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

- New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
- Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.41. High School Attendance Area Reporting.

(a) A district may request that its eligibility determination for New Construction Grants be based on a HSAA or Super HSAA basis if it meets all the following criteria:

(1) The district demonstrates that the eligibility determination for New Construction Grants in at least one of the district's HSAA or Super HSAA results in negative eligibility for maximum funding at any grade level within the HSAA or Super HSAA.

(2) The New Construction Grants eligibility determination for the HSAA or Super HSAA is based on the capacity and projected enrollment of the HSAA or Super HSAA as shown in the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01).

(3) The eligibility determination for the HSAA or Super HSAA includes a high school that serves any combination of grades nine through twelve and the high school is not a continuation high school.

(b) If a district meets the criteria in subsection (a) and requests its eligibility determination to be based on an HSAA or Super HSAA, eligibility for future grants, with the exception of community school pupil grants for a county superintendent, in that HSAA or Super HSAA must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility under that HSAA or Super HSAA. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or Super HSAA, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA or Super HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for future grants separately for special education pupils or for community school pupils.

If a district requests to re-file its eligibility determination from HSAA or Super HSAA to district-wide after the five year time period has elapsed, the existing school building capacity in the district will be determined based on classrooms available in the HSAA or Super HSAA at the time of initial request for eligibility determination and the current classrooms in the remaining portion of the district. Once the baseline eligibility has been determined for the district, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

Existing boundaries of a HSAA or Super HSAA may only be changed as a result of Section 1859.51(f).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

- New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01). Eligibility determination for New Construction Grants may be requested on either a district-wide basis or on a HSAA or Super HSAA basis.

If a district requests to have its eligibility determination made on a district-wide basis, eligibility for future grants in the district must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility determined on a district-wide basis.

If a district requests to re-file its eligibility determination from district-wide to HSAA or Super HSAA after the five year time period has elapsed, the existing school building capacity in the HSAA or Super HSAA will be determined based on the classrooms available in the HSAA or Super HSAA at the time of the initial district-wide request for eligibility determination. Once the baseline eligibility has been determined for the HSAA or Super HSAA, it will be adjusted for classrooms

constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

If the district requests to have its eligibility determination made on a HSAA or Super HSAA, it must meet the criteria of Section 1859.41.

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), is the initial eligibility of the district, the HSAA or Super HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 07/01), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (sections 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
8. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of second paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1-2-2001 order, including amendment of first paragraph, transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
13. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
14. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
15. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to

Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

- (1) That is a trailer and transportable/towed on its own wheels and axles.
- (2) Of less than 700 interior square feet.
- (3) Excluded pursuant to Education Code Section 17071.30.
- (4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.
- (5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.
- (6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.

(j) For small school districts, decreased:

- (1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
- (2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.75, 17071.76 and 17072.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

- New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
 7. Amendment of first paragraph, subsections (c) and (i)(5) and new subsection (f) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 9. Amendment of first paragraph and subsections (i)(5) and (i)(6) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
 11. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

- (1) Permanent and at least 25 years old and not previously modernized with State funds.
- (2) Portable and at least 20 years old and not previously modernized with State funds.
- (3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

- (1) Permanent area and at least 25 years old and not previously modernized with State funds.
- (2) Portable classroom area and at least 20 years old and not previously modernized with State funds.
- (3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of first and last paragraphs filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Adjusted for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 07/01), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first and second paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.71.1. New Construction Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

- (a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
- (b) \$11,084 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any new construction grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading and first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.72. New Construction Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs. The district may request an increase in the New Construction Grant for therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The grant amount will be increased by \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

- Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- Amendment of section and NOTE filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 - Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 - Amendment of section heading and section filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 - Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

- New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73.1. New Construction Additional Grant for Project Assistance.

The New Construction Grant will be increased by \$3,750 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

- New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- Amendment of second paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
- Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
- Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
- Amendment of second paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.73.2. Construction Additional Grant for Replaced Facilities.

(a) The New Construction Grant will be increased by the amount(s) in (b) below for the replacement cost of one-story buildings that are demolished at a school in order to increase pupil capacity of that school if all the following conditions are met:

- The school must be on MTYRE at the time the Approved Application is accepted.
- The site size as determined by the CDE for the existing capacity of the school is less than 75 percent of the recommended CDE site size.
- The pupil capacity of the school must be increased by at least the greater of (A) or (B) below:

(A) Twenty percent of the existing pupil capacity (before replacement) of the school. Existing pupil capacity shall be determined by multiplying classrooms intended for grades kindergarten through six by 25, classrooms intended for grades seven through 12 by 27, classrooms intended for Non-Severely Disabled Individuals with Exceptional Needs by 13 and classrooms intended for Severely Disabled Individuals with Exceptional Needs by nine. Classrooms shall not include any classrooms reduced from the Gross Classroom Inventory pursuant to Section 1859.32.

(B) 200 pupils.

(4) The sum of (A) and (B) below is less than the amount determined in (E) below:

(A) Determine the estimated cost of demolition of the one-story buildings to be replaced. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Cost Publication.

(B) Multiply the square footage of the buildings to be replaced by the Current Replacement Cost.

(C) Multiply the New Construction Grants requested in box 2 of the *Application for Funding*, Form SAB 50-04 (Revised 07/01), by .01775 for K-6, .021 for 7-8 and .02472 for 9-12.

(D) Determine the average appraised value of land per acre, including relocation costs, within the attendance boundaries of the school. The appraisal must be consistent with Section 1859.74.1.

(E) Multiply the sums of the products determined in (C) above by the average appraised value of land per acre determined in (D) above.

(5) The CDE has determined that the replacement of the one-story buildings on the existing site with multilevel building(s) would be the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.

(6) The one-story buildings to be replaced on the existing site may not be leased facilities.

(7) With the exception of portables acquired with Class Size Reduction funds, the one-story buildings to be replaced on the site may not have been funded for either new construction or modernization funds from Proposition 1A funds within the past five years from the date the Approved Application is accepted.

(b) If the criteria in (a) are met, the New Construction Grant will be increased by \$150 per square foot for toilet facilities and by \$75 per square foot for all other facilities included in the one-story buildings to be replaced adjusted for the following:

(1) The amounts shall be adjusted annually in the manner prescribed in Section 1859.71.

(2) The amounts shall be increased by the percentage authorized in Section 1859.73 if the replacement area will be multilevel building(s).

(3) The amounts shall be increased for excessive cost grants as provided pursuant to Section 1859.83(a) and (d).

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the New Construction Grant for the SFP project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.46, Education Code.

HISTORY

- New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

2. Amendment of subsection (a)(4)(C) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
3. Amendment of subsection (a)(4)(C) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/01), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation include only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100 percent of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

13. Amendment of first paragraph and subsection (a)(2) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below:

- (a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
- (1) The costs may include the costs for preparation of the RA.
 - (2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
 - (3) The costs may not include continuous operational and maintenance costs associated with the RA.
- (b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.3. Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes, the New Construction Grant will be increased for the lesser of one half of the amounts allowed in (a) or (b) below:

- (a) The sum of all of the following:
- (1) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
 - (2) \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.
 - (3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.
 - (4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
 - (A) The costs may include the costs for preparation of the RA.
 - (B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
 - (C) The costs may not include continuous operational and maintenance costs associated with the RA.
- (b) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.71, 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.74.4. Additional Grant for Hazardous Waste Removal Required on an Existing School Site.

(a) With the exception of projects that received initial site acquisition funds under the SFP, the New Construction Grant may be increased for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the New Construction Grants will be used if all the following are met:

- (1) The New Construction Grant request is for additional school facilities on an existing school site.
 - (2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.
 - (3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.
 - (4) The hazardous material cleanup costs are required by the DTSC.
- (b) If all criteria in subsection (a) are met, the allowable hazardous waste removal cleanup costs shall be one half of all the following:
- (1) The costs for preparation of the POESA, the PEA and the RA.
 - (2) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
 - (A) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
 - (B) The costs may not include continuous operational and maintenance costs associated with the RA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.18, Education Code.

HISTORY

1. New section filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

- (a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,
- (b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:
 - (1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or
 - (2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

- (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lessor of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lessor of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/01).

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment of subsection (b)(4) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.76. New Construction Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

- (a) Service site development cost, within school property lines for:
- (1) Site clearance including the removal of trees, brush, and debris.
 - (2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.
 - (3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for multilevel parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.

(D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 07/01).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a pro-rated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. New subsections (a)(11)-(a)(11)(D) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. New subsection (a)(12) and amendment of subsections (c) and (c)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of antepenultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
0. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of section heading and subsection (c)(5) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

13. Amendment of antepenultimate paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

14. Amendment of subsection (c)(5) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

15. Amendment of subsection (c)(5) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Grant and New Construction Additional Grant pursuant to Sections 1859.72, 1859.73, 1859.74 and 1859.76, plus Excessive Cost Hardship Grants pursuant to Section 1859.83 and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off-set of the alternative fees collected shall be off-set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.30 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.77.2. Use of New Construction Grant Funds.

New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

Authorization for use of New Construction Grants may be requested as follows:

(a) A district may request new construction grants that do not to exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the district has adopted a school board resolution that includes the following:

(1) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81.

(2) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(3) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(b) A district may utilize new construction grant eligibility determined at a different grade level than the proposed project that do not exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations subject to all of the following:

(1) The district has adopted a school board resolution that includes the following:

(A) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81.

(B) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(C) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(2) The district must use its New Construction Grant eligibility, pursuant to subsections (b) and (d), in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(c) When the priority point mechanism described in Section 1859.91 has not been implemented, a district may request New Construction Grants that exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations provided all the conditions in subsections (a)(1), (a)(2) and (a)(3) are met.

(d) When the priority point mechanism described in Section 1859.91 has not been implemented, a district may utilize new construction grants eligibility determined at a different grade level than the proposed project that exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations provided all the conditions in subsections (b)(1) and (b)(2) are met.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17072.35, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.78. Adjustment to the Modernization Grant.

The Modernization Grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.78.1. Additional Grant for an Individual with Exceptional Needs.

NOTE: Authority cited: Sections 17070.35 and 17074.10, Education Code. Reference: Sections 17071.25, 17074.10 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Repealer filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

§ 1859.78.2. Modernization Additional Grant for Project Assistance.

The Modernization Grant will be increased by \$2,000 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost

Index as approved by the Board each January. The base Class B Construction Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/01) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.78.3. Modernization Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for modernization funding:

- (a) \$7,158 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
- (b) \$4,788 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any modernization grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading, first paragraph and subsection (b) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, any increase to the Modernization Grant for additional grants for facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's adjusted grant shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

- (a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or
- (b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:
 - (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.
 - (2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:
 - (1) Replacement, repair or additions to existing site development.
 - (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking a modernization grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 07/01) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 07/01) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
6. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution. The analysis is subject to approval by the Board.

From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (a)(7) as follows:

(1) Determine the current enrollment of the district by grade level as shown on the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Rev. 07/01).

(2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted an *Expenditure Report*, Form SAB 50-06 (Rev. 01/00) indicating that the project is 100 percent complete.

(3) Subtract (a)(2) from (a)(1).

(4) Determine the number of classrooms by grade level reported in Part I, Line 8 on the latest *Existing School Building Capacity*, Form SAB 50-02 (Rev. 07/01).

(5) Multiply the classrooms determined in (a)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.

(6) Subtract the product determined in (a)(5) from the difference determined in (a)(3) by grade level.

(7) Divide the difference by grade level determined in (a)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (a)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$3 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district shall be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (b)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the *Application for Funding*, Form SAB 50-04 (Rev. 07/01) that were denied financial hardship status.

(3) Divide the number by grade level determined in (b)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 07/01) under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit an *Application for Funding*, Form SAB 50-04 (Rev. 07/01) under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits an *Application for Funding*, Form SAB 50-04 (Rev. 07/01) within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an es-

imate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 07/01). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/01). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application for Funding*, Form SAB 50-04 (Revised 07/01) must be for at least 50 percent of the New Construction Grant or at least 80 percent of the Modernization Grant the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 07/01)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities.

Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq.ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq.ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq.ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 07/01) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of subsection (c) filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of subsection (c) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/01), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on

the *Application for Funding*, Form SAB 50-04 (Revised 07/01), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/01), that it has developed an on-going and major maintenance plan in accordance with Education Code Section 17070.75.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17585, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

(1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(3) All construction activities are at least 50 percent complete.

(4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be submittal of an Approved Application.

After the Board has received the progress report required in Section 1859.104(b) for items (a) and (b) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a) or (b) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the *Expenditure Report Form, SAB 50-06 (Revised 07/00)*, to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any amount not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of

Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

- (1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.
- (2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant

and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

(c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(I) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/01).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 07/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/01).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/01).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/01).

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of an *Application for Funding*, Form SAB 50-04 (Revised 07/01). The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New

struction Grants, may re-file on another eligibility determination basis provided it withdraws all previously submitted *Application for Funding, Form SAB 50-04 (Revised 07/01)* requests for New Construction Grants, including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

Subgroup 5.6. Regulations Relating to the Federal School Renovation Program (Federal School Repair and Renovation Program)

Article 1. General Provisions and Definitions

§ 1859.200. Purpose.

These regulations implement the Federal School Repair and Renovation Program, which establish a grant program to administer federal funds to Local Education Agencies authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New subgroup 5.6 (articles 1-5, sections 1859.200-1859.220), article 1 (sections 1859.200-1859.202) and section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.201. Director of General Services.

The Director of General Services, or the Director's legal designee shall perform all acts necessary to carry out the provisions of these regulations except such functions as are reserved to the Board and to other agencies by law or by Sections 1859.200 through 1859.220 inclusive. The acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.202. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the law:

"ADA" means the federal Americans with Disabilities Act of 1990 codified in Section 12101 et seq. Title 42, United States Code.

"Administration Costs" means the costs associated with the preparation and submittal of the Federal Renovation Program application to the State and the costs necessary to assure all state application requirements have been met.

"Apportionment" means a reservation of funds by the Board for eligible Federal Renovation Program applications.

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"CBEDS Report" means the enrollment information provided through the California Basic Education Data System by the Local Educational Agency to the California Department of Education.

"Charter School" means a school established in accordance with the provisions of Education Code Sections 47605 through 47608.

"Community School Pupil" means a pupil meeting one or more of the conditions described in Subdivision (b) of Education Code Section 48662 or any of the conditions described in Education Code Section 1981.

"Deferred Maintenance Program (DMP)" means the state deferred maintenance funding authorized by Education Code Sections 17582 through 17588.

"DMP Critical Hardship Unfunded List" means an information list of critical hardship projects authorized by Education Code Section 17587 approved by the Board.

"Federal Renovation Program (FRP)" means the Federal School Repair and Renovation Program authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

"High Poverty Local Educational Agency" means an LEA that has at least 30 percent of its pupils defined as Poor Children or has at least 10,000 of its pupils defined as Poor Children.

"Impacted LEA" means an LEA that meets the requirements of Section (a)(3) of the United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

"Local Educational Agency" means an entity that meets the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.

"Mello-Roos Bonds" means the bonds that are authorized under the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Government Code Section 53311.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the FRP on behalf of the Director.

"OPSC Deferred Maintenance Program Critical Hardship Workload List" means a list of critical hardship applications authorized by Education Code Section 17587 submitted to the OPSC but not yet included on the DMP Critical Hardship Unfunded List.

"OPSC Modernization Workload List" means a list of SFP modernization projects for which the LEA has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of Forms SAB 50-01, *Enrollment Certification/Projection*, (Revised 01/01); SAB 50-02, *Existing School Building Capacity*, (Revised 01/01); SAB 50-03, *Eligibility Determination*, (Revised 01/01); and SAB 50-04, *Application for Funding*, (Revised 03/01), under the SFP.

"Poor Children" means children five to seventeen years of age who are from families with an income below the poverty line as defined by the federal Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9902(2)].

"Private School" means an entity that has filed an affidavit or statement with the Superintendent of Public Instruction pursuant to Education Code Section 33190.

"Public Law 106-554" means Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001.

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§ 1859.21	§ 1859.81.1
§ 1859.50	§ 1859.82
§ 1859.70	§ 1859.100
§ 1859.74.1	§ 1859.102
§ 1859.75.1	§ 1859.104.1
§ 1859.79.3	§ 1859.104.2
§ 1859.81	§ 1859.104.3
	§ 1859.107

Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.15. Priority Two Modernization.

Districts with Priority Two modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding. If the project is eligible for further funding under the SFP, the:

(a) New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide or HSAA, or modernization projects, an application for *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), which is incorporated by reference.

(b) For new construction projects, either districtwide or HSAA, an *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), which is incorporated by reference.

(c) For new construction projects, an *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).

3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. Amendment of subsections (a) and (c) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

11. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised 09/01), which is incorporated by reference.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

or emergency language will be repealed by operation of law on the following day.

- New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
- New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 1-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of form SAB 50-04 (incorporated by reference) and amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.22. SFP Application for Funding on Leased Land.

In addition to meeting the requirements of Sections 1859.20 and 1859.21, a district may receive SFP New Construction or Modernization Grants for facilities that are or will be located on real property leased by the district provided all the following are met:

- The real property is leased from a governmental agency.
- The term of the lease for the land for which the district is requesting SFP funding at the time the Approved Application is accepted is one of the following:
 - At least 25 years if the lease is for real property owned by the federal government.
 - At least 40 years if the lease is for real property owned by a governmental agency other than the federal government.
 - At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has certified to all the following:
 - There are no other educationally adequate sites for new construction available under a 40-year lease.
 - The cost per year to lease the real property for no less than 30 years is no greater than the cost per year to lease the real property for 40 years.
 - At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has provided other evidence satisfactory to the Board that a shorter lease term is necessary.

A district seeking modernization funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(c).

A district seeking new construction funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(a) and (i).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.71, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/01). Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district or HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

- for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;
- constructed with funds from the LPP;
- used for Special Day Class or Resource Specialist Programs;
- that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;
- acquired or created for Class Size Reduction purposes;
- used for preschool programs;
- converted to any non-classroom purpose including use by others;
- with Housing and Community Development or Department of Housing insignia;
- acquired for interim housing for a modernization project;
- leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;
- that have a waiver for continued use by the Board for Field Act exemptions;

numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(h) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Amendment of first paragraph and subsections (h), (h)(1) and (h)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of first paragraph and subsections (h), (h)(1) and (h)(4) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

tificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01). Eligibility determination for New Construction Grants may be requested on either a district-wide basis or on a HSAA or Super HSAA basis.

If a district requests to have its eligibility determination made on a district-wide basis, eligibility for future grants in the district must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility determined on a district-wide basis.

If a district requests to re-file its eligibility determination from district-wide to HSAA to Super HSAA after the five year time period has elapsed, the existing school building capacity in the HSAA or Super HSAA will be determined based on the classrooms available in the HSAA or Super HSAA at the time of the initial district-wide request for eligibility determination. Once the baseline eligibility has been determined for the HSAA or Super HSAA, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

If the district requests to have its eligibility determination made on a HSAA or Super HSAA, it must meet the criteria of Section 1859.41.

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), is the initial eligibility of the district, the HSAA or Super HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 09/01), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
8. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of second paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1-2-2001 order, including amendment of first paragraph, transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
13. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
14. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
15. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

16. Amendment of penultimate paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) Excluded pursuant to Education Code Section 17071.30.

(4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

(5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.

(6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.

(j) For small school districts, decreased:

(1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(h) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51, 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
7. New subsection (h) and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 09/01), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first and second paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.71.1. New Construction Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

(a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$11,084 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any new construction grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading and first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.

(6) The one-story buildings to be replaced on the existing site may not be leased facilities.

(7) With the exception of portables acquired with Class Size Reduction funds, the one-story buildings to be replaced on the site may not have been funded for either new construction or modernization funds from Proposition 1A funds within the past five years from the date the Approved Application is accepted.

(b) If the criteria in (a) are met, the New Construction Grant will be increased by \$150 per square foot for toilet facilities and by \$75 per square foot for all other facilities included in the one-story buildings to be replaced adjusted for the following:

(1) The amounts shall be adjusted annually in the manner prescribed in Section 1859.71.

(2) The amounts shall be increased by the percentage authorized in Section 1859.73 if the replacement area will be multilevel building(s).

(3) The amounts shall be increased for excessive cost grants as provided pursuant to Section 1859.83(a) and (d).

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the New Construction Grant for the SFP project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.46, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of subsection (a)(4)(C) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
3. Amendment of subsection (a)(4)(C) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
4. Amendment of subsection (a)(4)(C) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation

of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 09/01), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100 percent of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph and subsection (a)(2) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below:

(a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

- (1) The costs may include the costs for preparation of the RA.
- (2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
- (3) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.3. Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes, the New Construction Grant will be increased for the lesser of one half of the amounts allowed in (a) or (b) below:

- (a) The sum of all of the following:
 - (1) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section

6000, et seq. . The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.

(4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

- (A) The costs may include the costs for preparation of the RA.
- (B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
- (C) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.71, 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.74.4. Additional Grant for Hazardous Waste Removal Required on an Existing School Site.

(a) With the exception of projects that received initial site acquisition funds under the SFP, the New Construction Grant may be increased for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the New Construction Grants will be used if all the following are met:

- (1) The New Construction Grant request is for additional school facilities on an existing school site.
- (2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.

(3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.

(4) The hazardous material cleanup costs are required by the DTSC.

(b) If all criteria in subsection (a) are met, the allowable hazardous waste removal cleanup costs shall be one half of all the following:

- (1) The costs for preparation of the POESA, the PEA and the RA.
- (2) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(B) The costs may not include continuous operational and maintenance costs associated with the RA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.18, Education Code.

HISTORY

1. New section filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

- (a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,
- (b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 6). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 71). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and Section 8-59 (Register 99, No. 41).

§ 1859.76.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lesser of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 09/01).

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

4. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

7. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

8. Amendment of subsection (b)(4) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.76. New Construction Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for multilevel parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.

(D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking a modernization grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 09/01) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 09/01) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
6. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
7. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17076.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution. The analysis is subject to approval by the Board.

From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the

manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (a)(7) as follows:

(1) Determine the current enrollment of the district by grade level as shown on the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Rev. 07/01).

(2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted an *Expenditure Report*, Form SAB 50-06 (Rev. 01/00) indicating that the project is 100 percent complete.

(3) Subtract (a)(2) from (a)(1).

(4) Determine the number of classrooms by grade level reported in Part I, Line 8 on the latest *Existing School Building Capacity*, Form SAB 50-02 (Rev. 07/01).

(5) Multiply the classrooms determined in (a)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.

(6) Subtract the product determined in (a)(5) from the difference determined in (a)(3) by grade level.

(7) Divide the difference by grade level determined in (a)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (a)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$3 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district shall be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (b)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the *Application for Funding*, Form SAB 50-04 (Rev. 09/01) that were denied financial hardship status.

(B) Divide the number by grade level determined in (b)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 09/01) under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit an *Application for Funding*, Form SAB 50-04 (Rev. 09/01) under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits an *Application for Funding*, Form SAB 50-04 (Rev. 09/01) within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
14. Amendment of subsection (b)(5)(A)-(B) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 09/01). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 09/01). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application for Funding*, Form SAB 50-04 (Revised 09/01) must be for at least 50 percent of the New Construction Grant or at least 80 percent of the Modernization Grant the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 09/01)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
17. Amendment of last two paragraphs filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include ap-

able site development costs as outlined in Section 1859.76. If the cost remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(c).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$150 per square foot for toilet facilities and \$75 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to

Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$75 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$150 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq.ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq.ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 09/01) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Com-

pliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of subsection (c) filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of subsection (c) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
13. Amendment of subsection (c) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grant, a district is eligible for an additional funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

6. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

8. Amendment of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

10. Amendment of subsections (c)-(c)(2) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.99. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to apportion or the application does not qualify for funding because of the Board's priority point mechanism pursuant to Sections 1859.91 and 1859.92, the Board will continue to accept and process applications for eligibility determination. The Board will also accept and process applications for apportionment for purposes of developing an Unfunded List based on the date the application is Ready for Apportionment.

If after the Executive Officer of the Board, the State Architect, the Director of School Facilities Planning Division within the CDE or the Chief of the School Property Evaluation and Cleanup Division within the Department of Toxic Substances Control certify to the OPSC that the district's application was delayed for a specified number of calendar days in relation to other similar applications submitted to that agency at the same time, the application may, at the discretion of the Board, receive a date on the Unfunded List or receive funding pursuant to Section 1859.91 based on the date the application is Ready for Apportionment, adjusted back in time for the number of calendar days the application was delayed.

Applications for New Construction Adjusted Grants for a project where the site was apportioned pursuant to Section 1859.75.1 shall receive a date on the Unfunded List based on the date the environmental hardship site apportionment was made for the project.

With the exception of financial hardship eligibility, a district with an application included on an Unfunded List shall not be required to re-establish eligibility for that application prior to apportionment.

An application for funding included on an Unfunded List is eligible for reimbursement subject to adjustments in the New Construction Grants amount pursuant to Section 1859.77.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of section and NOTE filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

8. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 09/01), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 09/01), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99

- or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
 7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
 8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
 12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
 13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
 14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
 15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 09/01), that it has developed and implemented an on-going and major maintenance plan in accordance with Education Code Section 17070.75 and 17070.77. In each fiscal year following the fiscal year in which the district received funds as a result of an application funded on or after January 1, 2002, the district shall certify that the plan has been reviewed and updated as required in Education Code Section 17070.77. The certification shall be made on the Deferred Maintenance Five Year Plan, which shall be required annually from those districts receiving such funding.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17070.77, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of section and NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.103. Savings.

A district may expend the savings accrued for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon comple-

on of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104.1. Material Inaccuracy Penalties.

When the Board makes a finding that a Material Inaccuracy occurred for a New Construction or Modernization Project, the district shall be subject to the following penalties:

(a) If the Material Inaccuracy finding occurred prior to the apportionment, the district shall be:

(1) Prohibited from self-certifying New Construction or Modernization Project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(2) Required to file all New Construction and Modernization projects pursuant to Section 1859.104.2 for the time period required in subsection (a)(1).

(3) Subject to the fee prescribed by Section 1859.104.3.

(b) If the Material Inaccuracy finding occurred after the apportionment but no funds have been released for the project:

(1) The Board shall reduce the project apportionment by the additional funding received beyond the amount the district was entitled to for the project.

(2) The school district shall be prohibited from self-certifying New Construction or Modernization Project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy

for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) The school district shall be required to file all New Construction and Modernization Projects pursuant to Section 1859.104.2 for the time period required in subsection (b)(2).

(4) The school district shall be subject to the fee prescribed by Section 1859.104.3.

(c) If the Material Inaccuracy finding occurred after the apportionment and funds were released for the project, the district:

(1) Must repay the additional funding received beyond the amount the district was entitled to for the project with interest within five years from the date the Board made the finding of Material Inaccuracy. Interest shall be assessed as prescribed in Education Code Section 17070.51(b)(1).

(2) Shall be prohibited from self-certifying New Construction or Modernization Project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) Shall be required to file all New Construction and Modernization Projects pursuant to Section 1859.104.2 for the time period required in subsection (c)(2).

(4) Shall be subject to the fee prescribed by Section 1859.104.3.

(d) The Board may direct that adjustments to the school district's New Construction or Modernization baseline eligibility be made pursuant to Sections 1859.51 and 1859.61 based on the determination of Material Inaccuracy.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.104.2. Self-Certification Prohibition.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the OPSC may request supporting documentation as it deems appropriate for any application filed after a finding of material inaccuracy for the time prescribed in 1859.104.1(a)(1), (b)(2) or (c)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.104.3. Self-Certification Prohibition Processing Fee.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the Board shall charge the district an amount of \$100 per hour for the additional hours necessary to process and review the district's applications submitted during the timelines prescribed in 1859.104.2(a)(1), (b)(2) or (c)(2). The maximum hours subject to the fee per application is the greater of 50 hours or one percent of the enrollment of the district as reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C of the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01). The Board will not make a release of funds for any project subject to the fee in this section until the fee has been remitted to the OPSC. All fees collected shall be deposited in the School Facility Fund and available for apportionment as directed by the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

(c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251(b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50(b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards.

Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and Note, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of section and Note filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation 1859.71 or 1859.78 at the time the apportionment is made. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(l) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 09/01).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 07/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 09/01).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section

1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 09/01).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 09/01).

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of an *Application for Funding*, Form SAB 50-04 (Revised 09/01). The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grants, may re-file on another eligibility determination basis provided it withdraws all previously submitted *Application for Funding*, Form SAB 50-04 (Revised 09/01) requests for New Construction Grants, including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17070.63, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Subgroup 5.6. Regulations Relating to the Federal School Renovation Program (Federal School Repair and Renovation Program)

Article 1. General Provisions and Definitions

§ 1859.200. Purpose.

These regulations implement the Federal School Repair and Renovation Program, which establish a grant program to administer federal funds to Local Education Agencies authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New subgroup 5.6 (articles 1-5, sections 1859.200-1859.220), article 1 (sections 1859.200-1859.202) and section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.201. Director of General Services.

The Director of General Services, or the Director's legal designee shall perform all acts necessary to carry out the provisions of these regulations except such functions as are reserved to the Board and to other agencies by law or by Sections 1859.200 through 1859.220 inclusive. The acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.202. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the law:

"ADA" means the federal Americans with Disabilities Act of 1990 codified in Section 12101 et seq. Title 42, United States Code.

"Administration Costs" means the costs associated with the preparation and submittal of the Federal Renovation Program application to the State and the costs necessary to assure all state application requirements have been met.

"Apportionment" means a reservation of funds by the Board for eligible Federal Renovation Program applications.

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"CBEDS Report" means the enrollment information provided through the California Basic Education Data System by the Local Educational Agency to the California Department of Education.

"Charter School" means a school established in accordance with the provisions of Education Code Sections 47605 through 47608.

"Community School Pupil" means a pupil meeting one or more of the conditions described in Subdivision (b) of Education Code Section 48662 or any of the conditions described in Education Code Section 1981.

"Deferred Maintenance Program (DMP)" means the state deferred maintenance funding authorized by Education Code Sections 17582 through 17588.

"DMP Critical Hardship Unfunded List" means an information list of critical hardship projects authorized by Education Code Section 17587 approved by the Board.

"Federal Renovation Program (FRP)" means the Federal School Repair and Renovation Program authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

"High Poverty Local Educational Agency" means an LEA that has at least 30 percent of its pupils defined as Poor Children or has at least 10,000 of its pupils defined as Poor Children.

"Impacted LEA" means an LEA that meets the requirements of Section (a)(3) of the United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

"Local Educational Agency" means an entity that meets the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.

"Mello-Roos Bonds" means the bonds that are authorized under the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Government Code Section 53311.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the FRP on behalf of the Director.

"OPSC Deferred Maintenance Program Critical Hardship Workload List" means a list of critical hardship applications authorized by Education Code Section 17587 submitted to the OPSC but not yet included on the DMP Critical Hardship Unfunded List.

"OPSC Modernization Workload List" means a list of SFP modernization projects for which the LEA has submitted all necessary application

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§ 1859.50	§ 1859.81
§ 1859.70	§ 1859.81.1
§ 1859.72	§ 1859.82
§ 1859.74.1	§ 1859.100
§ 1859.75.1	§ 1859.102
§ 1859.79.3	§ 1859.107

erical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil factor provided on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01).

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Cer-

tificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01).

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01), shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01). Eligibility determination for New Construction Grants may be requested on either a district-wide basis or on a HSAA or Super HSAA basis.

If a district requests to have its eligibility determination made on a district-wide basis, eligibility for future grants in the district must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility determined on a district-wide basis.

If a district requests to re-file its eligibility determination from district-wide to HSAA to Super HSAA after the five year time period has elapsed, the existing school building capacity in the HSAA or Super HSAA will be determined based on the classrooms available in the HSAA or Super HSAA at the time of the initial district-wide request for eligibility determination. Once the baseline eligibility has been determined for the HSAA or Super HSAA, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

If the district requests to have its eligibility determination made on a HSAA or Super HSAA, it must meet the criteria of Section 1859.41.

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), is the initial eligibility of the district, the HSAA or Super HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing an *Application For Funding*, Form SAB 50-04 (Revised 07/02), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (sections 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
8. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of second paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1-2-2001 order, including amendment of first paragraph, transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
13. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
14. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
15. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
16. Amendment of penultimate paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
17. Amendment of penultimate paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Section 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) Excluded pursuant to Education Code Section 17071.30.

(4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

(5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.

(6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.

(j) For small school districts, decreased:

(1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51, 17071.25, 17071.75, 17071.76 and 17072.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first paragraph, subsections (e) and (i)(5) and new subsection (f) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first paragraph and subsections (i)(5) and (i)(6) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
12. New subsection (m) and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01). The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of first and last paragraphs filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(h) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51, 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
7. New subsection (h) and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised 07/02), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

NOTE: Authority cited: Sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-17-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment of section and NOTE filed 6-26-2000, operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

10. Amendment of first and second paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

15. Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.71.1. New Construction Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

(a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$11,084 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any new construction grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Amendment of section heading and first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.71.2. New Construction Additional Grant for Fire Code Requirements.

(a) In addition to the funding provided by Subdivision (a) of Education Code Section 17072.10 and Regulation Section 1859.71.1, the Board shall provide the following grant amounts for each pupil included in an application for new construction if the project includes an automatic fire detection and alarm system as described in Education Code Section 17074.52:

- (1) \$26.82 for each elementary school pupil.
- (2) \$33.65 for each middle school pupil.
- (3) \$25.94 for each high school pupil.
- (4) \$80.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$53.57 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) In addition to the funding provided by Subdivision (a) of Education Code Section 17072.10 and Section 1859.71.1, the Board shall provide the following grant amounts for each pupil included in an application for new construction if the project includes an automatic sprinkler system as required in Education Code Section 17074.52:

- (1) \$83.67 for each elementary school pupil.
- (2) \$99.01 for each middle school pupil.
- (3) \$112.84 for each high school pupil.
- (4) \$273.86 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$183.23 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(c) Pursuant to Subdivision (c) of Education Code Section 17074.56, the Board shall provide the grant amounts shown in (a) and/or (b) above, in addition to the funding provided by Subdivision (a) of Education Code Section 17072.10 and Section 1859.71.1, for each pupil included in an application for new construction if all the following criteria are met:

(1) The final plans for the new construction project were submitted to the Division of the State Architect for review and approval between September 1, 2001 and June 30, 2002.

(2) The final plans for the new construction project included an automatic fire detection and alarm system and/or an automatic sprinkler system as described in Education Code Section 17074.52 or the project will include the system(s) prior to the completion of the project.

(3) The new construction project did not receive the entire New Construction Adjusted Grant apportionment by June 30, 2002.

The amounts shown in (a) and (b) above shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.50, 17074.52, 17074.54 and 17074.56, Education Code.

HISTORY

1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.72. New Construction Additional Grant for an Individual with Exceptional Needs.

The New Construction Grant will be increased for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs. The district may request an increase in the New Construction Grant for therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The grant amount will be increased by \$153.30 per square foot for toilet facilities and \$78.30 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25, 17074.56 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of section and NOTE filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
7. Amendment of section heading and section filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
9. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.73. Additional Grant for Multilevel Construction.

The New Construction Grant will be increased for the additional costs resulting from the need to build multilevel facilities by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.73.1. New Construction Additional Grant for Project Assistance.

The New Construction Grant will be increased by \$3,750 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/02) submitted to the OPSC no later than January 1, 2003.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of second paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be trans-

mitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment of second paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of last paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.73.2. Construction Additional Grant for Replaced Facilities.

(a) The New Construction Grant will be increased by the amount(s) in (b) below for the replacement cost of one-story buildings that are demolished at a school in order to increase pupil capacity of that school if all the following conditions are met:

(1) The school must be on MTYRE at the time the Approved Application is accepted.

(2) The site size as determined by the CDE for the existing capacity of the school is less than 75 percent of the recommended CDE site size.

(3) The pupil capacity of the school must be increased by at least the greater of (A) or (B) below:

(A) Twenty percent of the existing pupil capacity (before replacement) of the school. Existing pupil capacity shall be determined by multiplying classrooms intended for grades kindergarten through six by 25, classrooms intended for grades seven through 12 by 27, classrooms intended for Non-Severely Disabled Individuals with Exceptional Needs by 13 and classrooms intended for Severely Disabled Individuals with Exceptional Needs by nine. Classrooms shall not include any classrooms reduced from the Gross Classroom Inventory pursuant to Section 1859.32.

(B) 200 pupils.

(4) The sum of (A) and (B) below is less than the amount determined in (E) below:

(A) Determine the estimated cost of demolition of the one-story buildings to be replaced. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Cost Publication.

(B) Multiply the square footage of the buildings to be replaced by the Current Replacement Cost.

(C) Multiply the New Construction Grants requested in box 2 of the *Application for Funding*, Form SAB 50-04 (Revised 07/02), by .01775 for K-6, .021 for 7-8 and .02472 for 9-12.

(D) Determine the average appraised value of land per acre, including relocation costs, within the attendance boundaries of the school. The appraisal must be consistent with Section 1859.74.1.

(E) Multiply the sums of the products determined in (C) above by the average appraised value of land per acre determined in (D) above.

(5) The CDE has determined that the replacement of the one-story buildings on the existing site with multilevel building(s) would be the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.

(6) The one-story buildings to be replaced on the existing site may not be leased facilities.

(7) With the exception of portables acquired with Class Size Reduction funds, the one-story buildings to be replaced on the site may not have been funded for either new construction or modernization funds from

Proposition 1A funds within the past five years from the date the Approved Application is accepted.

(b) If the criteria in (a) are met, the New Construction Grant will be increased by \$153.30 per square foot for toilet facilities and by \$78.30 per square foot for all other facilities included in the one-story buildings to be replaced adjusted for the following:

(1) The amounts shall be adjusted annually in the manner prescribed in Section 1859.71.

(2) The amounts shall be increased by the percentage authorized in Section 1859.73 if the replacement area will be multilevel building(s).

(3) The amounts shall be increased for excessive cost grants as provided pursuant to Section 1859.83(a) and (d).

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the New Construction Grant for the SFP project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.46 and 17074.56, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of subsection (a)(4)(C) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
3. Amendment of subsection (a)(4)(C) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
4. Amendment of subsection (a)(4)(C) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
5. Amendment of subsections (a)(4)(C) and (b) and amendment of NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance

or appraisals, escrow, survey, site testing, CDE review/approvals and final preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and Note, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/02), that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100 percent of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSB will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

10. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

13. Amendment of first paragraph and subsection (a)(2) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

15. Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.2. Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the New Construction Grant will be increased for a site acquired for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below;

(a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(1) The costs may include the costs for preparation of the RA.

(2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(3) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.74.3. Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes, the New Construction Grant will be increased for the lesser of one half of the amounts allowed in (a) or (b) below:

(a) The sum of all of the following:

(1) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchas-

ing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.

(4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the costs for preparation of the RA.

(B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(C) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.71, 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

§ 1859.74.4. Additional Grant for Hazardous Waste Removal Required on an Existing School Site.

(a) With the exception of projects that received initial site acquisition funds under the SFP, the New Construction Grant may be increased for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the New Construction Grants will be used if all the following are met:

(1) The New Construction Grant request is for additional school facilities on an existing school site.

(2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.

(3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.

(4) The hazardous material cleanup costs are required by the DTSC.

(b) If all criteria in subsection (a) are met, the allowable hazardous waste removal cleanup costs shall be one half of all the following:

(1) The costs for preparation of the POESA, the PEA and the RA.

(2) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(B) The costs may not include continuous operational and maintenance costs associated with the RA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.18, Education Code.

HISTORY

1. New section filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.75. Alternative District-Owned Site.

In order to receive a New Construction Additional Grant for site acquisition as provided in Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lesser of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/02).

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

- Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 4. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
 6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
 7. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
 8. Amendment of subsection (b)(4) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
 9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
 10. Amendment of last paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.76. New Construction Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

- (a) Service site development cost, within school property lines for:
 - (1) Site clearance including the removal of trees, brush, and debris.
 - (2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.
 - (3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.
 - (4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.
 - (5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.
 - (6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.
 - (7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.
 - (10) Fire code requirements on site that are not a part of the building.
 - (11) Funding for multilevel parking structures on a new construction project when all the following have been met:
 - (A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.
 - (B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.
 - (C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.
 - (D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in section 1859.71.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised 07/02).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

- a) New building area with the exception of the following:
 - (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.
 - (2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:
 - (1) Replacement, repair or additions to existing site development.
 - (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking a modernization grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 07/02) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 07/02) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
6. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
7. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

8. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

- (a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.
- (b) A facility hardship grant as provided in Section 1859.82.
- (c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution. The analysis is subject to approval by the Board.

From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (a)(7) as follows:

- (1) Determine the current enrollment of the district by grade level as shown on the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Rev. 07/01).
- (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted an *Expenditure Report*, Form SAB 50-06 (Rev. 01/00) indicating that the project is 100 percent complete.
- (3) Subtract (a)(2) from (a)(1).

(4) Determine the number of classrooms by grade level reported in Part I, Line 8 on the latest *Existing School Building Capacity*, Form SAB 50-02 (Rev. 07/01).

(5) Multiply the classrooms determined in (a)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.

(6) Subtract the product determined in (a)(5) from the difference determined in (a)(3) by grade level.

(7) Divide the difference by grade level determined in (a)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (a)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$3 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district shall be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (b)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the *Application for Funding*, Form SAB 50-04 (Rev. 07/02) that were denied financial hardship status.

(B) Divide the number by grade level determined in (b)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 07/02) under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit an *Application for Funding*, Form SAB 50-04 (Rev. 07/02) under the provisions of financial hardship within 180

calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits an *Application for Funding*, Form SAB 50-04 (Rev. 07/02) within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
14. Amendment of subsection (b)(5)(A)-(B) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
15. Amendment of subsection (b)(5)(A) and second, third and fourth from last paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 07/02). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/02). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application for Funding*, Form SAB 50-04 (Revised 07/02) must be for at least 50 percent of the New Construction Grant or at least 80 percent of the Modernization Grant the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Rev. 07/02)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20 and 17072.33, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
17. Amendment of last two paragraphs filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
18. Amendment of last two paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(c).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.35(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$153.30 per square foot for toilet facilities and \$78.30 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that would be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced

facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$78.30 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$153.30 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq. ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For Funding*, Form SAB 50-04 (Revised 07/02) for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17074.56, 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99

- or emergency language will be repealed by operation of law on the following day.
- New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
 6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
 10. Amendment of subsection (c) filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
 11. Amendment of subsection (c) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
 12. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
 13. Amendment of subsection (c) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
 14. Amendment of second paragraph following subsection (a)(2), first paragraph following subsection (b)(3), subsection (c) and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.83. Excessive Cost Hardship Grant.

In addition to the SFP New Construction and Modernization Grant, a district is eligible for an additional funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The excessive cost grant shall be based on any of the following:

- (a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for and may request, as part of its application for a SFP new construction or modernization grant, to have the grant amount increased by the indicated percentage factor and funded as an excessive cost hardship.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
7. Amendment of subsections (c)-(c)(2) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to apportion or the application does not qualify for funding because of the Board's priority point mechanism pursuant to Sections 1859.91 and 1859.92, the Board will continue to accept and process applications for eligibility determination. The Board will also accept and process applications for apportionment for purposes of developing an Unfunded List based on the date the application is Ready for Apportionment.

If either the Executive Officer of the Board, the State Architect, the Director of School Facilities Planning Division within the CDE or the Chief of the School Property Evaluation and Cleanup Division within the Department of Toxic Substances Control certify to the OPSC that the district's application was delayed for a specified number of calendar days in relation to other similar applications submitted to that agency at the same time, the application may, at the discretion of the Board, receive a date on the Unfunded List or receive funding pursuant to Section 1859.91 based on the date the application is Ready for Apportionment, adjusted back in time for the number of calendar days the application was delayed.

Applications for New Construction Adjusted Grants for a project where the site was apportioned pursuant to Section 1859.75.1 shall receive a date on the Unfunded List based on the date the environmental hardship site apportionment was made for the project.

With the exception of financial hardship eligibility, a district with an application included on an Unfunded List shall not be required to re-establish eligibility for that application prior to apportionment.

An application for funding included on an Unfunded List is eligible for reimbursement subject to adjustments in the New Construction Grants amount pursuant to Section 1859.77.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/02), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/02), that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.75, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

- emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
 4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
 7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
 8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
 12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
 13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
 14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
 15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
 16. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/02), that it has developed and implemented an on-going and major maintenance plan in accordance with Education Code Section 17070.75 and 17070.77. In each fiscal year following the fiscal year in which the district received funds as a result of an application funded on or after January 1, 2002, the district shall certify that the plan has been reviewed and updated as required in Education Code Section 17070.77. The certification shall be made on the Deferred Maintenance Five Year Plan, which shall be required annually from those districts receiving such funding.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75 and 17070.77, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of section and NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.63, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section

and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

(1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.

(2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

(c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended *Application for Funding*, Form SAB 50-04 (Revised 07/02). The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unrunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended *Ap-*

ion for Funding Form SAB 50-04 (Revised 07/02). The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(f) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 07/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of an *Application for Funding*, Form SAB 50-04 (Revised 07/02). The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grants, may re-file on another eligibility determination basis provided it withdraws all previously submitted *Application for Funding*, Form SAB 50-04 (Revised 07/02) requests for New Construction Grants, including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63 and 17074.56, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.108. Extension of Fire Code Requirements Exemption.

A portable building that has received a three-year exemption by the Division of the State Architect from the fire code requirements described in Education Code Sections 17074.50 and 17074.52 may receive up to an additional three-year extension of that exemption provided all the following criteria are met:

(a) The portable was acquired or leased with SFP modernization funds.

(b) The portable was used solely for interim housing during the construction of a SFP modernization project.

(c) The portable building meets the definition outlined in Subdivision (c) of Education Code Section 17074.54.

(d) The district has presented acceptable evidence to the Board that the portable building continues to be needed to house pupils as a result of the SFP modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.54, Education Code.

HISTORY

1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

Subgroup 5.6. Regulations Relating to the Federal School Renovation Program (Federal School Repair and Renovation Program)

Article 1. General Provisions and Definitions

§ 1859.200. Purpose.

These regulations implement the Federal School Repair and Renovation Program, which establish a grant program to administer federal funds to Local Education Agencies authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New subgroup 5.6 (articles 1-5, sections 1859.200-1859.220), article 1 (sections 1859.200-1859.202) and section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.
2. New subgroup 5.6 (articles 1-5, sections 1859.200-1859.220), article 1 (sections 1859.200-1859.202) and section refiled 7-11-2002 as an emergency; operative 7-11-2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-8-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.201. Director of General Services.

The Director of General Services, or the Director's legal designee shall perform all acts necessary to carry out the provisions of these regulations except such functions as are reserved to the Board and to other agencies by law or by Sections 1859.200 through 1859.220 inclusive. The acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-11-2002 as an emergency; operative 7-11-2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-8-2002 or emergency language will be repealed by operation of law on the following day.

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3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (b) filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).

§ 1859.104.1. Material Inaccuracy Penalties.

When the Board makes a finding that a Material Inaccuracy occurred for a New Construction or Modernization Project, the district shall be subject to the following penalties:

(a) If the Material Inaccuracy finding occurred prior to the apportionment, the district shall be:

(1) Prohibited from self-certifying New Construction or Modernization Project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(2) Required to file all New Construction and Modernization projects pursuant to Section 1859.104.2. for the time period required in subsection (a)(1).

(3) Subject to the fee prescribed by Section 1859.104.3.

(b) If the Material Inaccuracy finding occurred after the apportionment but no funds have been released for the project:

(1) The Board shall reduce the project apportionment by the additional funding received beyond the amount the district was entitled to for the project.

(2) The school district shall be prohibited from self-certifying New Construction or Modernization Project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) The school district shall be required to file all New Construction and Modernization Projects pursuant to Section 1859.104.2 for the time period required in subsection (b)(2).

(4) The school district shall be subject to the fee prescribed by Section 1859.104.3.

(c) If the Material Inaccuracy finding occurred after the apportionment and funds were released for the project, the district:

(1) Must repay the additional funding received beyond the amount the district was entitled to for the project with interest within five years from the date the Board made the finding of Material Inaccuracy. Interest shall be assessed as prescribed in Education Code Section 17070.51(b)(1).

(2) Shall be prohibited from self-certifying New Construction or Modernization Project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) Shall be required to file all New Construction and Modernization Projects pursuant to Section 1859.104.2 for the time period required in subsection (c)(2).

(4) Shall be subject to the fee prescribed by Section 1859.104.3.

(d) The Board may direct that adjustments to the school district's New Construction or Modernization baseline eligibility be made pursuant to Sections 1859.51 and 1859.61 based on the determination of Material Inaccuracy.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.104.2. Self-Certification Prohibition.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the OPSC may request supporting documentation as it deems appropriate for any application filed after a finding of material inaccuracy for the time prescribed in 1859.104.1(a)(1), (b)(2) or (c)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

.. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.104.3. Self-Certification Prohibition Processing Fee.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the Board shall charge the district an amount of \$100 per hour for the additional hours necessary to process and review the district's applications submitted during the timelines prescribed in 1859.104.2(a)(1), (b)(2) or (c)(2). The maximum hours subject to the fee per application is the greater of 50 hours or one percent of the enrollment of the district as reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C of the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01). The Board will not make a release of funds for any project subject to the fee in this section until the fee has been remitted to the OPSC. All fees collected shall be deposited in the School Facility Fund and available for apportionment as directed by the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds pursuant to Section 1859.70, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

- (1) At least 75 percent of all site development work that is necessary to building construction activity is complete.
- (2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.
- (3) All construction activities are at least 50 percent complete.
- (4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81.1(c) the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be any of the following:

- (1) An Approved New Construction or Modernization Adjusted Grant Application; or
- (2) A school district certification that the final building plans for the project have been submitted to and accepted by the DSA for review and approval; or
- (3) An approved separate site funding application pursuant to Section 1859.81.1(a) or an approved environmental hardship funding application pursuant to Section 1859.75.1; or
- (4) Other evidence satisfactory to the Board detailing the reason(s) that plans have not been completed and accepted by the DSA. If the Board determines that substantial progress has been made pursuant to Education Code Section 17076.10(b), the Board shall condition its finding of

substantial progress upon the district's commitment to complete and submit an Approved New Construction or Modernization Adjusted Grant Application within a period not to exceed 18 months from the date of the Board's determination of substantial progress.

After the Board has received the progress report required in Section 1859.104(b) for items (a), (b), and (c) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a), (b), and (c) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the *Expenditure Report Form*, SAB 50-06 (Revised 07/00), to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

11. Amendment of subsection (c), new subsections (c)(1)-(4) and amendment of antepenultimate and penultimate paragraphs filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

- (1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.
- (2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from

the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

(c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on *Expenditure Report*, Form SAB 50-06 (Revised 01/00), an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

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

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended *Application for Funding*, Form SAB 50-04 (Revised 07/02). The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC. School districts that have already received a site apportionment under Section 1859.81.1(a) may withdraw the application and file as an environmental hardship pursuant to Section 1859.75.1 without forfeiting their original site apportionment, provided that the new application does not exceed the amount already apportioned.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended *Application for Funding* Form SAB 50-04 (Revised 07/02). The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(l) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing Building Capacity*, Form SAB 50-02 (Revised 07/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Any application for modernization eligibility determination that has received an approval must be amended to conform to the *Eligibility*

Determination, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of an *Application for Funding*, Form SAB 50-04 (Revised 07/02). The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grants, may re-file on another eligibility determination basis provided it withdraws all previously submitted *Application for Funding*, Form SAB 50-04 (Revised 07/02) requests for New Construction Grants, including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63 and 17074.56, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment of second paragraph filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).

§ 1859.108. Extension of Fire Code Requirements Exemption.

A portable building that has received a three-year exemption by the Division of the State Architect from the fire code requirements described in Education Code Sections 17074.50 and 17074.52 may receive up to an additional three-year extension of that exemption provided all the following criteria are met:

(a) The portable was acquired or leased with SFP modernization funds.

(b) The portable was used solely for interim housing during the construction of a SFP modernization project.

(c) The portable building meets the definition outlined in Subdivision (c) of Education Code Section 17074.54.

(d) The district has presented acceptable evidence to the Board that the portable building continues to be needed to house pupils as a result of the SFP modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.54, Education Code.

HISTORY

1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

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§ 1859.79.3

§ 1859.81.1

§ 1859.107

10. Amendment of last paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.78.3. Modernization Additional Grant for Individuals with Exceptional Needs.

The Board shall provide the following amounts for each pupil included in an approved project for modernization funding:

(a) \$7,158 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$4,788 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The additional grant is eligible for any modernization grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
3. Amendment of section heading, first paragraph and subsection (b) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.78.4. Modernization Additional Grant for Fire Code Requirements.

(a) In addition to the funding provided by Subdivision (a) of Education Code Section 17074.10 and Section 1859.78.3, the Board shall provide the following grant amounts for each pupil included in an application for modernization if the project includes an automatic fire detection and alarm system as described in Education Code Section 17074.52 or the fire detection and alarm system is deferred as authorized by Subdivision (b) of Education Code Section 17074.50:

- (1) \$104.93 for each elementary school pupil.
- (2) \$129.95 for each middle school pupil.
- (3) \$127.40 for each high school pupil.

(4) \$335.71 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$224.61 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) Pursuant to Subdivision (c) of Education Code Section 17074.56, the Board shall provide the grant amounts shown in (a) above, in addition to the funding provided by Subdivision (a) of Education Code Section 17074.10 and Section 1859.78.3, for each pupil included in an application for modernization if all the following criteria are met:

(1) The final plans for the modernization project were submitted to the Division of the State Architect for review and approval between September 1, 2001 and June 30, 2002.

(2) The final plans for the modernization project included an automatic fire detection and alarm system as described in Education Code Section 17074.52 or the project will include the system prior to the completion of the project.

(3) The modernization project did not receive the entire Modernization Adjusted Grant apportionment by June 30, 2002.

The amounts shown in (a) above shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.50, 17074.52, 17074.54 and 17074.56, Education Code.

HISTORY

1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by

12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, a district matching share for a modernization project shall be required as follows:

(a) If the Approved Application is received on or before March 15, 2002, any increase to the Modernization Grant for Modernization Additional Grants, facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 20 percent of the total project cost which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

(b) If the Approved Application is received after March 15, 2002, any increase to the Modernization Grant for Modernization Additional Grants, facility hardships as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83 shall require a district matching share equal to at least 40 percent of the total project cost which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

ertificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

With the exception of Approved Applications that meet the requirements of Section 1859.107(a), districts seeking a Modernization Grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 07/02) for at least 101 grants, or the remaining modernization eligibility the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 07/02), requesting Modernization Grant funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
6. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
7. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
8. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed

available as a matching contribution. The analysis is subject to approval by the Board.

From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (a)(7) as follows:

(1) Determine the current enrollment of the district by grade level as shown on the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Rev. 07/01).

(2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted an *Expenditure Report*, Form SAB 50-06 (Rev. 01/00) indicating that the project is 100 percent complete.

(3) Subtract (a)(2) from (a)(1).

(4) Determine the number of classrooms by grade level reported in Part I, Line 8 on the latest *Existing School Building Capacity*, Form SAB 50-02 (Rev. 07/01).

(5) Multiply the classrooms determined in (a)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.

(6) Subtract the product determined in (a)(5) from the difference determined in (a)(3) by grade level.

(7) Divide the difference by grade level determined in (a)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (a)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$3 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district shall be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period. The number of classrooms eligible for the

\$2,000 rental payments shall be the sum of the numbers determined in (b)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the *Application for Funding*, Form SAB 50-04 (Rev. 07/02) that were denied financial hardship status.

(B) Divide the number by grade level determined in (b)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 07/02) under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit an *Application for Funding*, Form SAB 50-04 (Rev. 07/02) under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits an *Application for Funding*, Form SAB 50-04 (Rev. 07/02) within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
14. Amendment of subsection (b)(5)(A)-(B) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Amendment of subsection (b)(5)(A) and second, third and fourth from last paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:

(1) If the Approved Application is received on or before March 15, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

(2) If the Approved Application is received after March 15, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 07/02). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/02). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The *Application for Funding*, Form SAB 50-04 (Revised 07/02), that is subsequently submitted for the New Construction Adjusted Grant must

be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The *Application for Funding*, Form SAB 50-04 (Revised 07/02), that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before March 15, 2002.

The *Application for Funding*, Form SAB 50-04 (Revised 07/02), that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after March 15, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Revised 07/02)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20, 17072.33, 17074.15 and 17074.16, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
17. Amendment of last two paragraphs filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
18. Amendment of last two paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
19. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be trans-

mitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83(e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant

as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$153.30 per square foot for toilet facilities and \$78.30 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$78.30 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$153.30 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

159.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application, with the exception of funding applications identified in Subsection (a) below, that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Regulation Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended *Application for Funding*, Form SAB 50-04 (Revised 07/02). The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC. School districts that have already received a site apportionment under Section 1859.81.1(a) may withdraw the application and file as an environmental hardship pursuant to Section 1859.75.1 without forfeiting their original site apportionment, provided that the new application does not exceed the amount already apportioned.

A funding application, with the exception of funding applications identified in Subsection (a) below, submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended *Application for Funding* Form SAB 50-04 (Revised 07/02). The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

(a) A district that submitted an Approved Application request for either a Modernization Adjusted Grant or a Separate Design Apportionment for a modernization project pursuant to Section 1859.81.1 that meets the criteria in (1) and (2) below must submit a new *Application for Funding*, Form SAB 50-04 (Revised 07/02), that meets the criteria in Subsections (b) or (c) no later than 60 calendar days after the effective date (September 16, 2002) of this Subsection:

(1) The Approved Application was received by the OPSC after March 15, 2002 but no later than the date this Subsection becomes effective (September 16, 2002).

(2) The Approved Application has not received an approval or has received an approval pursuant to Section 1859.95, but has not received an apportionment.

(b) The new *Application for Funding*, Form SAB 50-04 (Revised 07/02), identifies the same number of pupils assigned to the original project or a lesser amount that is not less than 37.5 percent of the pupils originally assigned to the project (round up). In this case, the district will be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b). If the project was approved as a financial hardship project under the provisions of Section 1859.81, the project shall maintain its financial hardship status, however, the district will be subject to a financial review pursuant to

Section 1859.81(a) to determine if there are additional district funds available for the project.

(c) The new *Application for Funding*, Form SAB 50-04 (Revised 07/02), identifies a lesser number of pupils assigned to the project that does not exceed an amount determined by multiplying the pupils assigned to the original project by 37.5 percent (round down). In this case, the district will not be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b).

(d) If a new *Application for Funding*, Form SAB 50-04 (Revised 07/02), is submitted under the provisions of subsection (b), the Architect of Record or Design Professional certification made on the original *Application for Funding*, Form SAB 50-04 (Revised 07/01 or 09/01), will be accepted as satisfying the requirements of the new *Application for Funding*, Form SAB 50-04 (Revised 07/02).

(e) Any Approved Application request that meets the requirements of Subsection (a) will be withdrawn 60 calendar days after the date Subsection (a) becomes effective (September 16, 2002), if the district does not submit a new *Application for Funding*, Form SAB 50-04 (Revised 07/02), conforming to either Subsections (b) or (c).

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51 (l) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61 (g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised 07/02).

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of an *Application for Funding*, Form SAB 50-04 (Revised 07/02). The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grants, may re-file on another eligibility determination basis provided it withdraws all previously submitted *Application for Funding*, Form SAB 50-04 (Revised 07/02) requests for New Construction Grants, including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17074.15, 17074.16 and 17074.56, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment of second paragraph filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
12. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.108. Extension of Fire Code Requirements Exemption.

A portable building that has received a three-year exemption by the Division of the State Architect from the fire code requirements described in Education Code Sections 17074.50 and 17074.52 may receive up to an additional three-year extension of that exemption provided all the following criteria are met:

- (a) The portable was acquired or leased with SFP modernization funds.
- (b) The portable was used solely for interim housing during the construction of a SFP modernization project.
- (c) The portable building meets the definition outlined in Subdivision (c) of Education Code Section 17074.54.
- (d) The district has presented acceptable evidence to the Board that the portable building continues to be needed to house pupils as a result of the SFP modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.54, Education Code.

HISTORY

1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

Subgroup 5.6. Regulations Relating to the Federal School Renovation Program (Federal School Repair and Renovation Program)

Article 1. General Provisions and Definitions

§ 1859.200. Purpose.

These regulations implement the Federal School Repair and Renovation Program, which establish a grant program to administer federal funds to Local Education Agencies authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New subgroup 5.6 (articles 1-5, sections 1859.200-1859.220), article 1 (sections 1859.200-1859.202) and section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.
2. New subgroup 5.6 (articles 1-5, sections 1859.200-1859.220), article 1 (sections 1859.200-1859.202) and section refiled 7-11-2002 as an emergency; operative 7-11-2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-8-2002 or emergency language will be repealed by operation of law on the following day.

§ 1859.201. Director of General Services.

The Director of General Services, or the Director's legal designee shall perform all acts necessary to carry out the provisions of these regulations except such functions as are reserved to the Board and to other agencies by law or by Sections 1859.200 through 1859.220 inclusive. The acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-11-2002 as an emergency; operative 7-11-2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-8-2002 or emergency language will be repealed by operation of law on the following day.

[The next page is 234.37.]

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4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

Modernization Grant funds shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(4) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

With the exception of Approved Applications that meet the requirements of Section 1859.107(a), districts seeking a Modernization Grant must submit an *Application for Funding*, Form SAB 50-04 (Revised 07/02) for at least 101 grants, or the remaining modernization eligibility for the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised 07/02), requesting Modernization Grant funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

6. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

7. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

8. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

9. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility hardship grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.
- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period. The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

The financial hardship analysis is subject to approval by the Board.

(b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:

- (1) Determine the current enrollment of the district by grade level as shown on the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 07/01).
- (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted an *Expenditure Report*, Form SAB 50-06 (Revised 01/00) indicating that the project is 100 percent complete.
- (3) Subtract (b)(2) from (b)(1).
- (4) Determine the number of classrooms by grade level reported in Part I, Line 8 on the latest *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/01).
- (5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
- (6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
- (7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

- (1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation

which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$3 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

- (A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the *Application for Funding*, Form SAB 50-04 (Revised 07/02) that were denied financial hardship status.
- (B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised 07/02) under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit an *Application for Funding*, Form SAB 50-04 (Revised 07/02) under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits an *Application for Funding*, Form SAB 50-04 (Revised 07/02) within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17075.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

- * Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- o. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
14. Amendment of subsection (b)(5)(A)-(B) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
15. Amendment of subsection (b)(5)(A) and second, third and fourth from last paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
16. Amendment filed 10-4-2002; operative 10-4-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 40).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:

(1) If the Approved Application is received on or before March 15, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

(2) If the Approved Application is received after March 15, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised 07/02). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised 07/02). If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The *Application for Funding*, Form SAB 50-04 (Revised 07/02), that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The *Application for Funding*, Form SAB 50-04 (Revised 07/02), that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before March 15, 2002.

The *Application for Funding*, Form SAB 50-04 (Revised 07/02), that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after March 15, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Revised 07/02)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20, 17072.33, 17074.15 and 17074.16, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

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§ 1859.20	§ 1859.75.1
§ 1859.21	§ 1859.79
§ 1859.22	§ 1859.79.2
§ 1859.30	§ 1859.79.3
§ 1859.31	§ 1859.81
§ 1859.32	§ 1859.81.1
§ 1859.33	§ 1859.82
§ 1859.35	§ 1859.90
§ 1859.40	§ 1859.100
§ 1859.41	§ 1859.102
§ 1859.50	§ 1859.104
§ 1859.60	§ 1859.104.1
§ 1859.70	§ 1859.104.3
§ 1859.72	§ 1859.105
§ 1859.74.1	§ 1859.106
§ 1859.75	§ 1859.107

to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 1, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-14-99 order transmitted to OAL 8-31-99 and filed 10-13-99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding. If the project is eligible for further funding under the SFP, the:

(a) New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A district seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide, HSA, or Super HSA, or for modernization projects, the Form SAB 50-03.

(b) For new construction projects, either districtwide, HSA or Super HSA, the Form SAB 50-01.

(c) For new construction projects, the Form SAB 50-02.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25 and 17073.10, Education Code.

HISTORY

1. New article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsections (a) and (c) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
12. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the Form SAB 50-04.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99

emergency language will be repealed by operation of law on the following day.

Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of form SAB 50-04 (incorporated by reference) and amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.22. SFP Application for Funding on Leased Land.

In addition to meeting the requirements of Sections 1859.20 and 1859.21 or 1859.120, a district may receive SFP funds for facilities that will be located on real property leased by the district provided all following are met:

- (a) The real property is leased from a governmental agency.
- (b) The term of the lease for the land for which the district is requesting SFP funding at the time the Approved Application is accepted is one of the following:

(1) At least 25 years if the lease is for real property owned by the federal government.

(2) At least 40 years if the lease is for real property owned by a governmental agency other than the federal government.

(3) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has certified to all the following:

(A) There are no other educationally adequate sites for new construction available under a 40-year lease.

(B) The cost per year to lease the real property for no less than 30 years is no greater than the cost per year to lease the real property for 40 years.

(4) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has provided other evidence satisfactory to the Board that a shorter lease term is necessary.

A district seeking modernization funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(c).

A district seeking new construction funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(a) and (i).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.71, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
- Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the Form SAB 50-02. Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
11. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district, the HSAA or Super HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non-classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(l) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) owned but leased to another district.

(j) any portable classroom excluded by Education Code Section 17071.30.

(k) that is permanent space and leased for less than five years.

(l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

(m) that was acquired with joint-use funds specifically available for that purpose.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17052, 17071.25, 17071.30 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. New subsection (l) filed 1-10-2000; operative 1-7-2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).

6. Amendment of section heading filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

7. New subsection (m) and amendment of NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K-6, 7-8 or 9-12, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the Form SAB 50-02,

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

10. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

11. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) Multiply the number of available classrooms in the district, the HSA or the Super HSA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K-6 pupil capacity of the elementary district, the unified district, the HSAA or the Super HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. When the elementary or unified district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero. For High School Districts, the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3-10-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
Amendment of subsection (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsections (a)-(b) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the Form SAB 50-01. The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40-1859.43) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40-1859.43) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 1859.40-1859.43) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by

5-2-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.41. High School Attendance Area Reporting.

(a) A district may request that its eligibility determination for a New Construction Grant be based on a HSAA or Super HSAA basis if it meets all the following criteria:

(1) The district demonstrates that the eligibility determination for a New Construction Grant in at least one of the district's HSAA or Super HSAA results in negative eligibility for maximum funding at any grade level within the HSAA or Super HSAA.

(2) The New Construction Grant eligibility determination for the HSAA or Super HSAA is based on the existing boundaries of the HSAA or Super HSAA and the capacity and projected enrollment of the HSAA or Super HSAA as shown in the Form SAB 50-03.

(3) The eligibility determination for the HSAA or Super HSAA includes a currently operated high school that serves any combination of grades nine through twelve and that high school is not a continuation high school or a community school.

(b) If a district meets the criteria in subsection (a) and requests its eligibility determination to be based on a HSAA or Super HSAA, eligibility for a future New Construction Grant, with the exception of community school pupil grants for a county superintendent, in that HSAA or Super HSAA must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility under that HSAA or Super HSAA. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or Super HSAA, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA or Super HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for a future New Construction Grant separately for special education pupils or for community school pupils.

If a district requests to re-file its eligibility determination from HSAA or Super HSAA to district-wide after the five year time period has elapsed, the existing school building capacity in the district will be determined based on classrooms available in the HSAA or Super HSAA at the time of initial request for eligibility determination and the current classrooms in the remaining portion of the district. Once the baseline eligibility has been determined for the district, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

Existing boundaries of a HSAA or Super HSAA may only be changed as a result of Section 1859.51(f).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

6. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.42. Projecting Non-Special Day Class Enrollment.

The district enrollment, as reported on the Form SAB 50-01, shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five-year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on Form SAB 50-01, that will reside in dwelling units included in an approved subdivision map or valid tentative subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on Form SAB 50-01, for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one-year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the subdivision by the pupil yield factor provided on the Form SAB 50-01.

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA or Super HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA or Super HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA or Super HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

9. Amendment of first paragraph and subsections (b), (b)(1), (b)(4) and (c) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the Form SAB 50-01, shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five-year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on Form SAB 50-01.

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the current year to the previous year; determine the percentage change in total Special Day Class enrollment in the previous year to the second previous year; determine the percentage change in total Special Day Class enrollment in the second previous year to the third previous year. To determine the average annual increase, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on Form SAB 50-01, shall be adjusted by the average annual percentage change in (1) for each year until the five-year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

9. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

Amendment of first paragraph and subsections (a) and (b)(2) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the Form SAB 50-03. Eligibility determination for New Construction Grant(s) may be requested on either a district-wide basis, a HSAA or Super HSAA basis.

If a district requests to have its eligibility determination made on a district-wide basis, eligibility for future grants in the district must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility determined on a district-wide basis.

If a district requests to re-file its eligibility determination from district-wide to HSAA to Super HSAA after the five year time period has elapsed, the existing school building capacity in the HSAA or Super HSAA will be determined based on the classrooms available in the HSAA or Super HSAA at the time of the initial district-wide request for eligibility determination. Once the baseline eligibility has been determined for the HSAA or Super HSAA, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

If the district requests to have its eligibility determination made on a district-wide or Super HSAA, it must meet the criteria of Section 1859.41.

The calculated eligibility on the Form SAB 50-03, is the initial eligibility of the district, the HSAA or Super HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing Form SAB 50-04, for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (sections 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by

11-14-2000 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of second paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1-2-2001 order, including amendment of first paragraph, transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
13. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
14. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
15. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
16. Amendment of penultimate paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
17. Amendment of penultimate paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
18. Amendment of first and fourth paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the Form SAB 50-03, will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project and by the number of pupils that received a Preliminary Apportionment pursuant to Section 1859.140.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90 and 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) Excluded pursuant to Education Code Section 17071.30.

(4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

(5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.

(6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pu-

pil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.

(7) That was acquired with joint-use funds specifically available for that purpose.

(j) For small school districts, decreased:

(1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

(n) Increased by the number of pupils that received a Preliminary Apportionment that was rescinded pursuant to Section 1859.148.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first paragraph, subsections (e) and (i)(5) and new subsection (f) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first paragraph and subsections (i)(5) and (i)(6) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
12. New subsection (m) and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

13. Amendment of first paragraph and subsection (a), new subsections (i)(7) and (n) and amendment of NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the Form SAB 50-03. The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the Form SAB 50-03, shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

Amendment of first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

11. Amendment of first and last paragraphs filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

12. Amendment of first and last paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the C.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(h) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51, 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

New subsection (h) and amendment of NOTE filed 5-2-2002; operative 5-1-2002 (Register 2002, No. 18).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file Form SAB 50-04, after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the Form SAB 50-03, or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

10. Amendment of first and second paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

15. Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

17. Amendment of first and second paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.70.1. Available Funding for Energy Efficiency.

(a) The Board shall set aside \$20 million pursuant to Education Code Section 100620(e) and \$20 million pursuant to Education Code Section 100820(c) for energy conservation adjustments authorized by Education Code Section 17077.35. The \$20 million from each set aside shall be transferred to the Energy Efficiency Account from the following sources:

(1) \$14.2 million each from the funds made available by Education Code Section 100620(a)(1) and 100820(a)(1), as appropriate.

(2) \$5.8 million each from the funds made available by Education Code Section 100620(a)(2) and 100820(a)(2), as appropriate.

(b) The funds from each set aside in (a) shall be apportioned for the following:

(1) \$14.2 million for a New Construction Additional Grant for Energy Efficiency authorized by Section 1859.71.3.

(2) \$5.8 million for a Modernization Additional Grant for Energy Efficiency authorized by Section 1859.78.5.

If the Board makes a finding that the funds are not needed for the purposes of Sections 1859.71.3 or 1859.78.5, the Board shall transfer the funds back to the original funding source(s) identified in (a)(1) and (a)(2) above.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17077.35, 100620 and 100820, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction per-unhoused-pupil grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.71.1. New Construction Grant for Individuals with Exceptional Needs.

In lieu of the funding provided in Subdivision (a) of Education Code Section 17072.10, the Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

(a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$11,084 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The grant is eligible for any new construction

grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

3. Amendment of section heading and first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

5. Amendment of section heading and first and last paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.71.2. New Construction Additional Grant for Fire Code Requirements.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the following grant amounts for each pupil included in an application for new construction if the project includes an automatic fire detection and alarm system as described in Education Code Section 17074.52:

(1) \$26.82 for each elementary school pupil.

(2) \$33.65 for each middle school pupil.

(3) \$25.94 for each high school pupil.

(4) \$80.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$53.57 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) In addition to the funding provided by Subdivision (a) of Education Code Section 17072.10 and Section 1859.71.1, the Board shall provide the following grant amounts for each pupil included in an application for new construction if the project includes an automatic sprinkler system as required in Education Code Section 17074.52:

(1) \$83.67 for each elementary school pupil.

(2) \$99.01 for each middle school pupil.

(3) \$112.84 for each high school pupil.

(4) \$273.86 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$183.23 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(c) Pursuant to Subdivision (c) of Education Code Section 17074.56, the Board shall provide the grant amounts shown in (a) and/or (b) above, in addition to any other funding authorized by these Regulations, for each pupil included in an application for new construction if all the following criteria are met:

(1) The final plans for the new construction project were submitted to the Division of the State Architect for review and approval between September 1, 2001 and June 30, 2002.

(2) The final plans for the new construction project included an automatic fire detection and alarm system and/or an automatic sprinkler system as described in Education Code Section 17074.52 or the project will include the system(s) prior to the completion of the project.

(3) The new construction project did not receive the entire New Construction Adjusted Grant apportionment by June 30, 2002.

The amounts shown in (a) and (b) above shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.50, 17074.52, 17074.54 and 17074.56, Education Code.

HISTORY

1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

Amendment of subsections (a) and (c) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.71.3. New Construction Additional Grant for Energy Efficiency.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the grant amounts identified in (b) if all the following are met:

(1) The project includes energy efficiency components that conform to Subdivision (b) of Education Code Section 17077.35.

(2) The proposed facilities in the project exceed the nonresidential building energy efficiency standards specified in Part 6 of Title 24 of the California Code of Regulations by at least 15 percent as determined by EnergyPro 3.1 or a similar computer program approved by the CEC.

(3) The DSA has reviewed the proposed project and concurs with the percentage of energy efficiency that exceeds the nonresidential building energy efficiency standards specified in Part 6 of Title 24 of the California Code of Regulations.

(4) No portion of the project will be funded with funds made available from the Renewable Energy Program administered by the CEC.

(5) There are funds remaining in the Energy Efficiency Fund as prescribed in Section 1859.70.1 to apportion some or the entire additional grant provided in (b).

(b) An amount equal to the lesser of the following:

(1) The New Construction Grant multiplied by:

(A) One percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is at least 15 percent but less than 17.5 percent.

(B) Two percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is at least 17.5 percent but less than 20 percent.

(C) Three percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is at least 20 percent but less than 22.5 percent.

(D) Four percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is at least 22.5 percent but less than 25 percent.

(E) Five percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is at least 25 percent.

(2) The funds available in the Energy Efficiency Account set aside for this Section.

If there are no funds remaining in the Energy Efficiency Account or the funds remaining in the Energy Efficiency Account are insufficient to fully fund the additional grant authorized in (b)(1), the district may either withdraw its application and resubmit it when additional funds are available in the Energy Efficiency Account or continue with the new construction project and accept a full and final apportionment without the additional grant authorized by (b)(1) or the lesser apportionment authorized by (b)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17077.35, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.72. New Construction Additional Grant for an Individual with Exceptional Needs.

In addition to any other funding authorized by these Regulations, the Board shall provide an additional grant for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs.

The district may request funding for therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs.

The amount shall be determined by multiplying the eligible square feet by \$173.30 per square foot for Toilet Facilities and \$96.30 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Sections 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25, 17074.56 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of section and NOTE filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

7. Amendment of section heading and section filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

9. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

10. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.73. New Construction Additional Grant for Multilevel Construction.

In addition to any other funding authorized by these Regulations, the Board shall provide an additional grant for the additional costs resulting from the need to build multilevel facilities. The additional funding is determined by multiplying the New Construction Grant by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of section heading and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.73.1. New Construction Additional Grant for Project Assistance.

Excluding Joint-Use Projects, the Board shall provide, in addition to any other funding authorized by these Regulations, \$3,750 for Small School Districts for the cost necessary for project assistance.

For Type III Joint-Use Projects, the Board shall provide, in addition to any other funding authorized by these Regulations, \$3,750 for Small School Districts for the cost necessary for project assistance.

The amount(s) shown will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.37 and the first adjustment shall be January 2001.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of second paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment of second paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of last paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.73.2. New Construction Additional Grant for Replaced Facilities.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide funding for the amount(s) in (b) below for the replacement cost of one-story buildings that are demolished at a school in order to increase pupil capacity of that school if all the following conditions are met:

(1) The school must be on MTYRE at the time the Approved Application is accepted.

(2) The site size as determined by the CDE for the existing capacity of the school is less than 75 percent of the recommended CDE site size.

(3) The pupil capacity of the school must be increased by at least the greater of (A) or (B) below:

(A) Twenty percent of the existing pupil capacity (before replacement) of the school. Existing pupil capacity shall be determined by multiplying classrooms intended for grades kindergarten through six by 25, classrooms intended for grades seven through 12 by 27, classrooms intended for Non-Severely Disabled Individuals with Exceptional Needs by 13 and classrooms intended for Severely Disabled Individuals with Exceptional Needs by nine. Classrooms shall not include any classrooms reduced from the Gross Classroom Inventory pursuant to Section 1859.32.

(B) 200 pupils.

(4) The sum of (A) and (B) below is less than the amount determined in (E) below:

(A) Determine the estimated cost of demolition of the one-story buildings to be replaced. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Cost Publication.

(B) Multiply the square footage of the buildings to be replaced by the Current Replacement Cost.

(C) Multiply the New Construction Grants requested in box 2a. of the Form SAB 50-04, by .01775 for K-6, .021 for 7-8 and .02472 for 9-12. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-04 as either K-6, 7-8 or 9-12 based on the type of project selected by the district on Form SAB 50-04.

(D) Determine the average appraised value of land per acre, including relocation costs, within the attendance boundaries of the school. The appraisal must be consistent with Section 1859.74.1.

(E) Multiply the sums of the products determined in (C) above by the average appraised value of land per acre determined in (D) above.

(5) The CDE has determined that the replacement of the one-story buildings on the existing site with multilevel building(s) would be the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.

(6) The one-story buildings to be replaced on the existing site may not be leased facilities.

(7) With the exception of portables acquired with Class Size Reduction funds, the one-story buildings to be replaced on the site may not have been funded for either new construction or modernization funds from Proposition 1A funds within the past five years from the date the Approved Application is accepted.

(b) If the criteria in (a) are met, the additional funding is determined by multiplying \$173.30 per square foot for Toilet Facilities and by \$96.30 per square foot for all other facilities included in the one-story buildings to be replaced adjusted for the following:

(1) The amounts shall be adjusted annually in the manner prescribed in Section 1859.71.

(2) The amounts shall be increased by the percentage authorized in Section 1859.73 if the replacement area will be multilevel building(s).

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the SFP project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.46 and 17074.56, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of subsection (a)(4)(C) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
3. Amendment of subsection (a)(4)(C) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
4. Amendment of subsection (a)(4)(C) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
5. Amendment of subsections (a)(4)(C) and (b) and amendment of NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.74. New Construction Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the Board shall provide funding, in addition to any other funding authorized by these Regulations, for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The rea-

reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section heading and first paragraph: filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.1. Site Acquisition Guidelines.

To receive the funding authorized by Section 1859.74, the district must certify on the Form SAB 50-04, that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site free of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 25, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, de-

fining as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100 percent of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph and subsection (a)(2) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.2. New Construction Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the SFP, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below:

(a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(1) The costs may include the costs for preparation of the RA.

(2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(3) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

2. Amendment of section heading and first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.3. New Construction Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the lesser of one half of the amounts allowed in (a) or (b) below:

(a) The sum of all of the following:

(1) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) \$50,000. This amount shall provide an allowance for any appraisal, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.

(4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the costs for preparation of the RA.

(B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(C) The costs may not include continuous operational and maintenance costs associated with the RA.

(h) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.71, 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

2. Amendment of section heading and first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.4. New Construction Additional Grant for Hazardous Waste Removal Required on an Existing School Site.

(a) With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide a funding, in addition to any other funding authorized by these Regulations for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the New Construction Grants will be used if all the following are met:

(1) The New Construction Grant request is for additional school facilities on an existing school site.

(2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.

(3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.

(4) The hazardous material cleanup costs are required by the DTSC.

(b) If all criteria in subsection (a) are met, the allowable hazardous waste removal cleanup costs shall be one half of all the following:

(1) The costs for preparation of the POESA, the PEA and the RA.

(2) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(B) The costs may not include continuous operational and maintenance costs associated with the RA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.18, Education Code.

HISTORY

1. New section filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

2. Amendment of section heading and first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.75. Alternative District-Owned Site.

In order to receive funding authorized by Section 1859.74, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

ertificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and 10-8-99 (Register 99, No. 41).

Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

(1) The lesser of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit Form SAB 50-04.
NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment of subsection (b)(4) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

10. Amendment of last paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

11. Amendment of subsection (b)(3) and last paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.76. New Construction Additional Grant for Site Development Costs.

In addition to any other funding authorized by these Regulations, the Board shall provide funding equal to 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for multilevel parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.

(D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(2) Sewage: Replacement or repair of main sewer line between the utility company connection and to five feet of the 50 years or older building(s) on the site and connection fees, if applicable. Replacement or repair of sewage appurtenances (i.e., treatment/disposal system) as needed for the proper operation of the system and a main disposal line from the treatment system to five feet of the 50 years or older building(s) on the site.

(3) Gas: Replacement or repair of main gas service line between the utility company connection and to five feet of the 50 years or older building(s) on the site, connection fee (if applicable), meter (if not provided by serving utility) or replacement or repair of gas service appurtenances (i.e., liquefied petroleum system and tank) as needed for proper operation of the system and a new main supply line from the tank to five feet of the 50 years or older building(s) on the site.

(4) Electric: Replacement or repair of electrical service between the utility company connection and the building main switchboard. Primary electric service runs between the utility company's point of connection and the transformer. Secondary electric service runs between the transformer and the main switchboard. Connection fee, transformer pads and protective devices (i.e., bollards) as required by the utility company.

(5) Communication systems (i.e., cable television and telephone): Replacement or repair of service between the utility company connection and the nearest distribution center.

(b) Twenty percent of the funding authorized by Section 1859.78.6.

The district must submit a detailed cost estimate and appropriate DSA approved plans with Form SAB 50-04 for all requests for the site development work. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the modernization of the 50 years or older building(s) that will be modernized as part of the project.

The Board will approve reasonable and appropriate site development (utilities) work that meets common engineering practices and industry standards and are consistent with the specific site conditions, if the site development costs are consistent with the most current edition of the Saylor Remodeling/Repair Construction Costs. The design professional must certify that the site development (utilities) work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the 50 year or older permanent building(s). NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.26, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, a district matching share for a modernization project shall be required as follows:

(a) If the Approved Application is received on or before March 15, 2002, any Modernization Grant plus any other funding provided by these Regulations shall require a district matching share equal to at least 20 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

(b) If the Approved Application is received after March 15, 2002, any Modernization Grant, plus any other funding authorized by these Regulations shall require a district matching share equal to at least 40 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

- (b) New site development items with the exception of:
 - Replacement, repair or additions to existing site development.
- (c) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section 17070.35, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

With the exception of Approved Applications that meet the requirements of Section 1859.107(a), districts seeking a Modernization Grant must submit Form SAB 50-04 for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Form SAB 50-04 requesting Modernization Grant funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
6. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
7. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
8. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 11-10-2002 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be trans-

mitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.

10. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility Hardship Grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.
- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.

(4) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period. The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

The financial hardship analysis is subject to approval by the Board.

(b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:

(1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.

(2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.

(3) Subtract (b)(2) from (b)(1).

(4) Determine the number of classrooms by grade level reported in Part I, Line 8 on Form SAB 50-02.

(5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.

(6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.

(7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are

available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.

(B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
14. Amendment of subsection (b)(5)(A)-(B) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

ment of subsection (b)(5)(A) and second, third and fourth from last paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

16. Amendment filed 10-4-2002; operative 10-4-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 40).

17. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:

(1) If the Approved Application is received on or before March 15, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

(2) If the Approved Application is received after March 15, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits Form SAB 50-04. A district seeking a separate apportionment for site acquisition or design costs shall submit Form SAB 50-04. If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The Form SAB 50-04 that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before March 15, 2002.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after March 15, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20, 17072.33, 17074.15 and 17074.16, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).

8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

17. Amendment of last two paragraphs filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

18. Amendment of last two paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

19. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.

20. Amendment of last five paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17079.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.82. Facility Hardship.

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83(e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the fa-

cility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$173.30 per square foot for Toilet Facilities and \$96.30 per square foot for all other facilities. Additional funding may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a), (b) or (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73 and project assistance pursuant to Section 1859.73.1. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district, the HSAA or Super HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$96.30 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$173.30 per square foot for Toilet Facilities. A New Construction Additional Grant may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a) and (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73 and project assistance pursuant to Section 1859.73.1. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose (includes food service)	5.3 sq. ft. per pupil minimum 4,000 sq. ft.	5.3 sq. ft. per pupil minimum 5,000 sq. ft.	6.3 sq. ft. per pupil minimum 8,200 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium (includes shower/locker)	N/A	12.9 sq. ft. per pupil minimum 6,828 sq. ft.	15.3 sq. ft. per pupil minimum 8,380 sq. ft. maximum 18,000 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + plus 600 sq. ft.	3.3 sq. ft. per pupil + plus 600 sq. ft.	4.3 sq. ft. per pupil + plus 600 sq. ft.

y facilities eligible for facility hardship not shown in the above shall be eligible for replacement square footage equal to the facilities replaced.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit **Form SAB 50-04** for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17074.56, 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

10. Amendment of subsection (c) filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

11. Amendment of subsection (c) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

12. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

13. Amendment of subsection (c) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

14. Amendment of second paragraph following subsection (a)(2), first paragraph following subsection (b)(3), subsection (c) and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

15. Amendment of section heading and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.83. Excessive Cost Hardship Grant.

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

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for the sum of the Excessive Cost Hardship Grant(s) determined by multiplying the indicated percentage factor shown in the Geographic Percentage Chart below by each of the following amounts:

(1) The New Construction Grant and the Modernization Grant.

(2) The funding provided by Sections 1859.71.2, 1859.71.3, 1859.72, 1859.73, 1859.73.2, 1859.78.4, 1859.78.5, 1859.82(a) and (b), 1859.83(b), (c), (d) and (f) and 1859.125(a).

Construction Excessive Cost Hardship Grant is equal to 15 percent of the New Construction Grant and 15 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c). The Modernization Excessive Cost Hardship Grant is equal to 15 percent of the Modernization Grant and 15 percent of the funding authorized by Section 1859.83(b).

(C) less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Excessive Cost Hardship Grant is equal to 50 percent of the New Construction Grant and 50 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c).

(D) less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The Modernization Excessive Cost Hardship Grant is equal to 25 percent of the Modernization Grant and 25 percent of the funding authorized by Section 1859.83(b).

(2) For Joint-Use Projects, the district is eligible for an Excessive Cost Hardship Grant if the proposed useable site acreage of the Qualifying SFP New Construction Project pursuant to Section 1859.123 and any existing useable site acreage, if applicable, is:

(A) at least 50 percent but less than 75 percent of the site size recommended by the CDE for the master planned project capacity. The Excessive Cost Hardship Grant is equal to eight percent of the funding provided by Section 1859.125(a).

(B) at least 30 percent but less than 50 percent of the site size recommended by the CDE for the master planned project capacity. The Excessive Cost Hardship Grant is equal to 15 percent of the funding provided by Section 1859.125(a).

(C) less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The Excessive Cost Hardship Grant is equal to 50 percent of the funding provided by Section 1859.125(a).

(e) Excessive Cost for rehabilitation of facilities the Board has determined are a health and safety risk to the pupils pursuant to Section 1859.82(a)(1) and the cost/benefit analysis to mitigate the problem and the main in the facility is less than 50 percent of the Current Replacement Cost of the facility. If the district qualifies, the district is eligible for funding of rehabilitation costs as a modernization project. If the Approved Application is received on or before March 15, 2002, the grant amount provided is 80 percent of the amount of the cost estimate required in Section 1859.82(a)(1) that has been reviewed by the OPSC and approved by the Board. If the Approved Application is received after March 15, 2002, the grant amount provided is 60 percent of the amount of the cost estimate required in Section 1859.82(a)(1) that has been reviewed by the OPSC and approved by the Board.

(f) Excessive cost due to handicapped access and fire code requirements:

(1) The district is eligible for a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant for handicapped access and fire code requirements.

(2) The district is eligible for a Modernization Excessive Cost Hardship Grant of:

(A) \$80,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received on or before March 15, 2002.

(B) \$60,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received after March 15, 2002.

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

(3) The district is eligible for a Modernization Excessive Cost Hardship Grant of:

(A) \$14,400 for each additional stop of the new elevator required in (2) above if the Approved Application was received on or before March 15, 2002.

(B) \$10,800 for each additional stop of the new elevator required in (2) above if the Approved Application was received after March 15, 2002.

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

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Amendment adding second paragraph following the table in subsection (c) filed 4-5-2001; operative 4-5-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 14).
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Section 1859.81.1(c), the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the Form SAB 50-05. With the exception of an apportionment made for a Type III Joint-Use Project pursuant to Article 12 of these Regulations, a district must submit the Form SAB 50-05, within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction Adjusted Grant, Modernization Adjusted Grant or Type I or II Joint-Use Project apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

If the apportionment was made for a Type III Joint-Use Project pursuant to Article 12 of these Regulations, the district must submit Form SAB 50-05 within 18 months of the date the plans and specifications for the Joint-Use Project that have been approved by the DSA and the CDE are submitted to the OPSC or the apportionment shall be rescinded without further Board action.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.30, 17074.15, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

This Regulation shall only apply to Approved Applications for New Construction Grants funded with the proceeds of state bonds approved by the voters prior to January 1, 2002.

(a) The OPSC shall report to the Board on a monthly basis the amount of funds available for New Construction Grants and Modernization Grants and the estimated amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned. The Board shall implement a priority point mechanism described in (b) for New Construction Grants requests when either of the following occur:

(1) The amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned exceed the funds available for New Construction Grants and Modernization Grants.

(2) The funds available for New Construction Grants are \$300 million or less.

(b) Once either (1) or (2) in (a) occurs, the Board shall approve and apportion the funds available for New Construction Grants requests based on the following priority point mechanism:

(1) From the funds available for New Construction Grants, the Board shall establish a final allotment equal to the lesser of \$450 million or the balance of the funds available for New Construction Grants, to be apportioned in accordance with (2) below. After deducting the final allotment, the Board shall divide the remaining funds into seven equal allotments, to be apportioned on a quarterly basis, commencing with the last quarter of calendar year 2000 and ending the second quarter of calendar year 2002. Quarterly apportionments are subject to the following:

(A) The Board shall apportion Approved Applications for New Construction Grants requests received prior to the beginning of the quarter that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (d), until the funds available for New Construction Grants for that quarter are exhausted. New Construction Grants requests eligible for an apportionment shall be apportioned in the following order:

1. To projects that meet the criteria of subsection (d) where the Approved Application date adjusted back in time would have qualified the project for an apportionment.

2. To projects exempt from priority points pursuant to Section 1859.92(e).

3. To projects having the greatest number of priority points.

(B) If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(C) No New Construction Grants request will be recommended for apportionment unless the project can be entirely apportioned from the funds available for that quarter.

(D) If the Approved Applications for New Construction Grants received prior to the quarter that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List prior to the quarter and New Construction Grants requests that meet the criteria of subsection (d) are less than the quarterly allotment, plus any funds remaining from the previous quarter(s), the excess funds shall be added to the next quarterly allotment.

(E) If the Approved Applications for New Construction Grants requests received prior to the quarter that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List prior to the quarter and New Construction Grants requests that meet the criteria of subsection (d) are greater than the quarterly allotment, plus any funds remaining from the previous quarter(s), any New Construction Grants requests not apportioned by the Board shall be placed on an Unfunded List.

(F) All New Construction Grants requests, as described in (A) above, that are Ready for Apportionment in a quarter shall not be apportioned before the last regularly scheduled Board meeting for that quarter with the exception of New Construction Grants requests that meet the criteria of subsection (b)(1)(A)(1) or (2). Any New Construction Grants request that is Ready for Apportionment in a quarter that meets the criteria of subsection (b)(1)(A)(1) or (2) may be apportioned at any of the regularly scheduled Board meetings during that quarter.

(2) The final allotment shall be apportioned subject to the following:

(A) The Board shall apportion Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (e), until the final allotment, plus any funds remaining from the previous quarters are exhausted. New Construction Grants requests eligible for an apportionment shall be apportioned in the following order:

1. To projects that meet the criteria of subsection (e) where the Approved Application date adjusted back in time would have qualified the project for an apportionment.

2. To projects exempt from priority points pursuant to Section 1859.92(e).

3. To projects having the greatest number of priority points.

(B) If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(C) If the Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (e) are greater than the final allotment, plus any remaining funds from the previous quarter(s), any New Construction Grants requests not apportioned by the Board shall be placed on an Unfunded List.

(D) All New Construction Grants requests, as described in (A) above, that are Ready for Apportionment shall be apportioned at the regularly scheduled Board meeting in August 2002 with the exception of New Construction Grants requests that meet the criteria of subsection (b)(2)(A)(1) or (2). Any New Construction Grants request that is Ready for Apportionment that meets the criteria of subsection (b)(2)(A)(1) or (2) may be apportioned at either the regularly scheduled Board meeting in July or August 2002.

(E) If the Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment, all New Construction Grants requests that were included on

vant to Sections 1859.91 and 1859.92, the Board will continue to accept and process applications for eligibility determination. The Board will also accept and process applications for apportionment for purposes of developing an Unfunded List based on the date the application is Ready for Apportionment.

If either the Executive Officer of the Board, the State Architect, the Director of School Facilities Planning Division within the CDE or the Chief of the School Property Evaluation and Cleanup Division within the Department of Toxic Substances Control certify to the OPSC that the district's application was delayed for a specified number of calendar days in relation to other similar applications submitted to that agency at the same time, the application may, at the discretion of the Board, receive a date on the Unfunded List or receive funding pursuant to Section 1859.91 based on the date the application is Ready for Apportionment, adjusted back in time for the number of calendar days the application was delayed.

Applications for New Construction Adjusted Grants for a project where the site was apportioned pursuant to Section 1859.75.1 shall receive a date on the Unfunded List based on the date the environmental hardship site apportionment was made for the project.

With the exception of financial hardship eligibility, a district with an application included on an Unfunded List shall not be required to re-establish eligibility for that application prior to apportionment.

An application for funding included on an Unfunded List is eligible for reimbursement subject to adjustments in the New Construction Grants amount pursuant to Section 1859.77.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the Form SAB 50-04, the Form SAB 50-07 or the Form SAB 50-08, that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75, 17077.40 and 17078.10, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section refiled 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Com-

pliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the Form SAB 50-04, the Form SAB 50-07 or the Form SAB 50-08, that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75, 17077.40 and 17078.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).

7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of section and NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.102. Maintenance Plan.

A district shall certify on the Form SAB 50-04, the Form SAB 50-07 or the Form SAB 50-08, that it has developed and implemented an ongoing and major maintenance plan in accordance with Education Code Section 17070.75 and 17070.77. In each fiscal year following the fiscal year in which the district received funds as a result of an application funded on or after January 1, 2002, the district shall certify that the plan has been reviewed and updated as required in Education Code Section 17070.77. The certification shall be made on the Deferred Maintenance Five Year Plan, which shall be required annually from those districts receiving such funding.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75, 17070.77 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of section and NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of first paragraph and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project or a Joint-Use Project and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.63 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of second paragraph and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

- (a) An expenditure report from the district on the Form SAB 50-06.

The program reporting requirements are as follows:

- (1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section

1859.104.1. Upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.7 and may contain other evidence of reasonable effort to substantialize progress towards acquiring the site for purposes of an extension of site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (b) filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
8. Amendment of subsection (a) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.104.1. Material Inaccuracy Penalties.

When the Board makes a finding that a Material Inaccuracy occurred for an SFP Project, the district shall be subject to the following penalties:

If the Material Inaccuracy finding occurred prior to the apportionment, the district shall be:

(1) Prohibited from self-certifying the project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of proj-

ect information may be less than five years as determined on a case-by-case basis by the Board.

(2) Required to file all projects pursuant to Section 1859.104.2, for the time period required in subsection (a)(1).

(3) Subject to the fee prescribed by Section 1859.104.3.

(b) If the Material Inaccuracy finding occurred after the apportionment but no funds have been released for the project:

(1) The Board shall reduce the project apportionment by the additional funding received beyond the amount the district was entitled to for the project.

(2) The school district shall be prohibited from self-certifying project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) The school district shall be required to file all projects pursuant to Section 1859.104.2 for the time period required in subsection (b)(2).

(4) The school district shall be subject to the fee prescribed by Section 1859.104.3.

(c) If the Material Inaccuracy finding occurred after the apportionment and funds were released for the project, the district:

(1) Must repay the additional funding received beyond the amount the district was entitled to for the project with interest within five years from the date the Board made the finding of Material Inaccuracy. Interest shall be assessed as prescribed in Education Code Section 17070.51(b)(1).

(2) Shall be prohibited from self-certifying project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) Shall be required to file all projects pursuant to Section 1859.104.2 for the time period required in subsection (c)(2).

(4) Shall be subject to the fee prescribed by Section 1859.104.3.

(d) The Board may direct that adjustments to the school district's New Construction or Modernization baseline eligibility be made pursuant to Sections 1859.51 and 1859.61 based on the determination of Material Inaccuracy.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51 and 17077.40, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
2. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.104.2. Self-Certification Prohibition.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the OPSC may request supporting documentation as it deems appropriate for any application filed after a finding of material inaccuracy for the time prescribed in 1859.104.1(a)(1), (b)(2) or (c)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.104.3. Self-Certification Prohibition Processing Fee.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the Board shall charge the district an amount of \$100 per hour for the additional hours necessary to process and review the district's applications submitted during the timelines prescribed in 1859.104.2(a)(1), (b)(2) or (c)(2). The maximum hours subject to the fee per application is the greater of 50 hours or one percent of the enrollment of the district as reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C of Form SAB 50-01. The Board will not make a release of funds for any project subject to the fee in this section until the fee has been remitted to the OPSC. All

fees collected shall be deposited in the School Facility Fund and available for apportionment as directed by the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
2. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds for a SFP project, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

- (1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.
- (2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.
- (3) All construction activities are at least 50 percent complete.
- (4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be any of the following:

- (1) An Approved New Construction or Modernization Adjusted Grant Application; or
- (2) A school district certification that the final building plans for the project have been submitted to and accepted by the DSA for review and approval; or
- (3) An approved separate site funding application pursuant to Section 1859.81.1(a) or an approved environmental hardship funding application pursuant to Section 1859.75.1; or
- (4) Other evidence satisfactory to the Board detailing the reason(s) that plans have not been completed and accepted by the DSA. If the Board determines that substantial progress has been made pursuant to Education Code Section 17076.10(b), the Board shall condition its finding of substantial progress upon the district's commitment to complete and submit an Approved New Construction or Modernization Adjusted Grant Application within a period not to exceed 18 months from the date of the Board's determination of substantial progress.

After the Board has received the progress report required in Section 1859.104(b) for items (a), (b), and (c) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days

of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a), (b), and (c) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the Form SAB 50-06, to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17076.10 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of subsection (c), new subsections (c)(1)-(4) and amendment of antepenultimate and penultimate paragraphs filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
12. Amendment of subsection (a), penultimate paragraph and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress

towards acquisition of the site pursuant to Education Code Section 2.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptance criteria for approval of an extension are any of the following:

(1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.

(2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.131 for Joint-Use Projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or

(c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on Form SAB 50-06, an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP and Joint-Use projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint-Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.131 for Joint-Use Projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
8. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section

17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application, with the exception of funding applications identified in Subsection (a) below, that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC. School districts that have already received a site apportionment under Section 1859.81.1(a) may withdraw the application and file as an environmental hardship pursuant to Section 1859.75.1 without forfeiting their original site apportionment, provided that the new application does not exceed the amount already apportioned.

A funding application, with the exception of funding applications identified in Subsection (a) below, submitted to the OPSC that has received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

(a) A district that submitted an Approved Application request for either a Modernization Adjusted Grant or a Separate Design Apportionment for a modernization project pursuant to Section 1859.81.1 that meets the criteria in (1) and (2) below must submit a new Form SAB 50-04, that meets the criteria in Subsections (b) or (c) no later than 60 calendar days after the effective date (September 16, 2002) of this Subsection:

(1) The Approved Application was received by the OPSC after March 15, 2002 but no later than the date this Subsection becomes effective (September 16, 2002).

(2) The Approved Application has not received an approval or has received an approval pursuant to Section 1859.95, but has not received an apportionment.

(b) The new Form SAB 50-04 identifies the same number of pupils assigned to the original project or a lesser amount that is not less than 37.5 percent of the pupils originally assigned to the project (round up). In this case, the district will be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b). If the project was approved as a financial hardship project under the provisions of Section 1859.81, the project shall maintain its financial hardship status, however, the district will be subject to

a financial review pursuant to Section 1859.81(a) to determine if there are additional district funds available for the project.

(c) The new Form SAB 50-04 identifies a lesser number of pupils assigned to the project that does not exceed an amount determined by multiplying the pupils assigned to the original project by 37.5 percent (round down). In this case, the district will not be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b).

(d) If a new Form SAB 50-04 is submitted under the provisions of subsection (b), the Architect of Record or Design Professional certification made on the original Form SAB 50-04 will be accepted as satisfying the requirements of the new Form SAB 50-04.

(e) Any Approved Application request that meets the requirements of Subsection (a) will be withdrawn 60 calendar days after the date Subsection (a) becomes effective (September 16, 2002), if the district does not submit a new Form SAB 50-04 conforming to either Subsections (b) or (c).

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(I) prior to submittal of Form SAB 50-04.

Any application for new construction eligibility determination that has not received an approval must be amended to conform to Form SAB 50-02 and Form SAB 50-03 prior to submittal of Form SAB 50-04.

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an Form SAB 50-04.

Any application for modernization eligibility determination that has not received an approval must be amended to conform to Form SAB 50-03 prior to submittal of an Form SAB 50-04.

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of Form SAB 50-04. The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grant(s), may re-file on another eligibility determination basis provided it withdraws all previously submitted Form SAB 50-04 requests for New Construction Grant(s), including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17074.15, 17074.16 and 17074.56, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

- 7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
- 8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
- 9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
- 10. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
- 11. Amendment of second paragraph filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
- 12. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
- 13. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.108. Extension of Fire Code Requirements Exemption.

A portable building that has received a three-year exemption by the Division of the State Architect from the fire code requirements described in Education Code Sections 17074.50 and 17074.52 may receive up to an additional three-year extension of that exemption provided all the following criteria are met:

- (a) The portable was acquired or leased with SFP modernization funds.
- (b) The portable was used solely for interim housing during the construction of a SFP modernization project.
- (c) The portable building meets the definition outlined in Subdivision (c) of Education Code Section 17074.54.
- (d) The district has presented acceptable evidence to the Board that the portable building continues to be needed to house pupils as a result of the modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.54, Education Code.

HISTORY

- 1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

Article 12. Joint-Use Project Grant Determination

§ 1859.120. General (Joint-Use Project Funding).

A district seeking Joint-Use Project funding pursuant to the provisions of Education Code Section 17077.40, shall complete and file Form SAB 50-07.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17077.40, Education Code.

HISTORY

- 1. New article 12 (sections 1859.120-1859.130) and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.121. Joint-Use Project Application Submittals and Apportionments.

The Board shall accept Approved Applications for Joint-Use Funding on a yearly basis as follows:

- (a) For any funding made available for this purpose by May 31, 2003, applications will be accepted from November 5, 2002 through May 31, 2003. The Board will apportion the funding made available by May 31, 2003 at the July 2003 Board meeting.
- (b) For any additional funding that is made available for this purpose beginning June 1, 2003 and thereafter, the Board will accept applications from June 1 of the prior calendar year through May 31 of the current calendar year for any funding made available for this purpose by May 31 of each year. The Board will apportion the funding made available by May 31 of each year at the following July Board meeting.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

- 1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.122. Type I Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type I Joint-Use Project may submit Form SAB 50-07 to the OPSC if all the following criteria are met:

- (a) The plans and specifications for the Type I Joint-Use Project are included in the plans and specifications for a new school or an addition to an existing public school for which the district has requested SFP new construction funding.
- (b) The Type I Joint-Use Project will be located on the same site where the SFP new construction project is located.
- (c) The Type I Joint-Use Project will provide facilities to be used for any of the following:
 - (1) To improve pupil Academic Achievement.
 - (2) To provide Teacher Education.
 - (3) To provide Childcare Facilities.
- (d) At least one of the Joint-Use Partner(s) is an institution of Higher Education. Other Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.
- (e) The district has entered into a Joint-Use Agreement that meets the criteria in Education Code Section 17077.42.
- (f) The district has joint-use square footage eligibility pursuant to Section 1859.124(a).
- (g) The construction contract for the Type I Joint-Use Project was not executed prior to April 29, 2002.
- (h) The plans and specifications for the Type I Joint-Use Project have been approved by the DSA.
- (i) The plans for the Type I Joint-Use project have been approved by the CDE.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

- 1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.122.1. Type II Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type II Joint-Use Project may submit a Form SAB 50-07 to the OPSC if all the following criteria are met:

- (a) The plans and specifications for the Type II Joint-Use Project are included in the plans and specifications for a new school or an addition to an existing public school for which the district has requested SFP new construction funding.
- (b) The Type II Joint-Use Project will be located on the same site where the SFP new construction project is located.
- (c) The Type II Joint-Use Project will increase the square footage and/or Extra Cost of any of the following proposed facilities included in the SFP new construction project:
 - (1) A multipurpose room.
 - (2) A gymnasium.
 - (3) A childcare facility.
 - (4) A library.
- (d) At least one of the Joint-Use Partner(s) is a governmental agency, an institution of Higher Education or a Non-Profit Organization. The Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.

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§ 1859.50	§ 1859.81
§ 1859.70	§ 1859.81.1
§ 1859.72	§ 1859.82
§ 1859.74.1	§ 1859.100
§ 1859.75.1	§ 1859.102
§ 1859.79.3	§ 1859.107

- Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
- Amendment of first paragraph and subsections (a) and (b)(2) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

Article 6. New Construction Eligibility Determination

Section 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the Form SAB 50-03. Eligibility determination for New Construction Grants may be requested on either a district-wide basis, a HSAA or Super HSAA basis.

If a district requests to have its eligibility determination made on a district-wide basis, eligibility for future grants in the district must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility determined on a district-wide basis.

If a district requests to re-file its eligibility determination from district-wide to HSAA or Super HSAA after the five year time period has elapsed, the existing school building capacity in the HSAA or Super HSAA will be determined based on the classrooms available in the HSAA or Super HSAA at the time of the initial district-wide request for eligibility determination. Once the baseline eligibility has been determined for the HSAA or Super HSAA, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

If a district requests to have its eligibility determination made on a HSAA or Super HSAA, it must meet the criteria of Section 1859.41.

The calculated eligibility on the Form SAB 50-03, is the initial eligibility of the district, the HSAA or Super HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing Form SAB 50-04, for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (sections 1859.50-1859.51) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50-1859.51) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50-1859.51) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
7. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
8. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of second paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1-2-2001 order, including amendment of first paragraph, transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
13. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
14. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
15. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
16. Amendment of penultimate paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
17. Amendment of penultimate paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
18. Amendment of first and fourth paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the Form SAB 50-03, will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project and by the number of pupils that received a Preliminary Apportionment pursuant to Section 1859.140.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90 and 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) Excluded pursuant to Education Code Section 17071.30.

(4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

(5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Apportionment date for funding of the classrooms included in the contract.

(6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number

of pupils receiving a new construction grant (rounded up) for the SFP project.

(7) That was acquired with joint-use funds specifically available for that purpose.

(j) For small school districts, decreased:

(1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

(n) Increased by the number of pupils that received a Preliminary Apportionment that was rescinded pursuant to Section 1859.148.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first paragraph, subsections (e) and (i)(5) and new subsection (f) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first paragraph and subsections (i)(5) and (i)(6) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
12. New subsection (m) and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
13. Amendment of first paragraph and subsection (a), new subsections (i)(7) and (n) and amendment of NOTE filed 11-4-2002 as an emergency; operative

11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its eligibility by completion of the Form SAB 50-03. The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old and not previously modernized with State funds.

(2) Portable and at least 20 years old and not previously modernized with State funds.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old and not previously modernized with State funds.

(2) Portable classroom area and at least 20 years old and not previously modernized with State funds.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall be based on the date the district submitted the application for an eligibility determination to the OPSC. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the Form SAB 50-03, shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60-1859.61) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60-1859.61) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60-1859.61) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first and last paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be

transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of first and last paragraphs filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
12. Amendment of first and last paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.
- (c) Increased by changes in projected enrollment in subsequent enrollment reporting years.
- (d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Section 1859.105.
- (e) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.
- (g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
- (h) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51, 17071.25, 17073.15 and 17073.20, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
7. New subsection (h) and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file Form SAB 50-04, after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the Form SAB 50-03, or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first and second paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of first and second paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

18. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.70.1. Available Funding for Energy Efficiency.

(a) The Board shall set aside \$20 million pursuant to Education Code Section 100620(c) and \$20 million pursuant to Education Code Section 100820(e) for energy conservation adjustments authorized by Education Code Section 17077.35. The \$20 million from each set aside shall be transferred to the Energy Efficiency Account from the following sources:

(1) \$14.2 million each from the funds made available by Education Code Section 100620(a)(1) and 100820(a)(1), as appropriate.

(2) \$5.8 million each from the funds made available by Education Code Section 100620(a)(2) and 100820(a)(2), as appropriate.

(b) The funds from each set aside in (a) shall be apportioned for the following:

(1) \$14.2 million for a New Construction Additional Grant for Energy Efficiency authorized by Section 1859.71.3.

(2) \$5.8 million for a Modernization Additional Grant for Energy Efficiency authorized by Section 1859.78.5.

If the Board makes a finding that the funds are not needed for the purposes of Sections 1859.71.3 or 1859.78.5, the Board shall transfer the funds back to the original funding source(s) identified in (a)(1) and (a)(2) above.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17077.35, 100620 and 100820, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.71. Adjustment to the New Construction Grant.

The new construction per-unhoused-pupil grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.71.1. New Construction Grant for Individuals with Exceptional Needs.

In lieu of the funding provided in Subdivision (a) of Education Code Section 17072.10, the Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

(a) \$16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) \$11,084 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The grant is eligible for any new construction grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

3. Amendment of section heading and first and last paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

5. Amendment of section heading and first and last paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.71.2. New Construction Additional Grant for Fire Code Requirements.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the following grant amounts for each pupil included in an application for new construction if the project includes an automatic fire detection and alarm system as described in Education Code Section 17074.52:

(1) \$26.82 for each elementary school pupil.

(2) \$33.65 for each middle school pupil.

(3) \$25.94 for each high school pupil.

(4) \$80.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$53.57 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) In addition to the funding provided by Subdivision (a) of Education Code Section 17072.10 and Section 1859.71.1, the Board shall provide the following grant amounts for each pupil included in an application for new construction if the project includes an automatic sprinkler system as required in Education Code Section 17074.52:

(1) \$83.67 for each elementary school pupil.

(2) \$99.01 for each middle school pupil.

(3) \$112.84 for each high school pupil.

(4) \$273.86 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$183.23 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(c) Pursuant to Subdivision (c) of Education Code Section 17074.56, the Board shall provide the grant amounts shown in (a) and (b) above, if applicable, in addition to any other funding authorized by these Regulations, for each pupil included in an application for new construction if all the following criteria are met:

(1) The final plans for the new construction project were submitted to the Division of the State Architect for review and approval between September 1, 2001 and June 30, 2002.

(2) The final plans for the new construction project included an automatic fire detection and alarm system and/or an automatic sprinkler system as described in Education Code Section 17074.52 or the project will include the system(s) prior to the completion of the project.

(3) The new construction project did not receive the entire New Construction Adjusted Grant apportionment by June 30, 2002.

The amounts shown in (a) and (b) above shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.50, 17074.52, 17074.54 and 17074.56, Education Code.

HISTORY

New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

2. Amendment of subsections (a) and (c) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 8-12-2002 order, including amendment of subsection (c), transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.71.3. New Construction Additional Grant for Energy Efficiency.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the grant amounts identified in (b) if all the following are met:

(1) The project includes energy efficiency components that conform to Subdivision (b) of Education Code Section 17077.35.

(2) The proposed facilities in the project exceed the nonresidential building energy efficiency standards specified in Part 6 of Title 24 of the California Code of Regulations by at least 15 percent as determined by EnergyPro 3.1 or a similar computer program approved by the CEC.

(3) The DSA has reviewed the proposed project and concurs with the percentage of energy efficiency that exceeds the nonresidential building energy efficiency standards specified in Part 6 of Title 24 of the California Code of Regulations.

(4) No portion of the project will be funded with funds made available from the Renewable Energy Program administered by the CEC.

(5) There are funds remaining in the Energy Efficiency Fund as prescribed in Section 1859.70.1 to apportion some or the entire additional grant provided in (b).

(b) An amount equal to the lesser of the following:

(1) The New Construction Grant multiplied by:

(A) One percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is at least 15 percent but less than 17.5 percent.

(B) Two percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is at least 17.5 percent but less than 20 percent.

(C) Three percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is at least 20 percent but less than 22.5 percent.

(D) Four percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is at least 22.5 percent but less than 25 percent.

(E) Five percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is at least 25 percent.

(2) The funds available in the Energy Efficiency Account set aside for this Section.

If there are no funds remaining in the Energy Efficiency Account or the funds remaining in the Energy Efficiency Account are insufficient to fully fund the additional grant authorized in (b)(1), the district may either withdraw its application and resubmit it when additional funds are available in the Energy Efficiency Account or continue with the new construction project and accept a full and final apportionment without the additional grant authorized by (b)(1) or the lesser apportionment authorized by (b)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17077.35, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.72. New Construction Additional Grant for an Individual with Exceptional Needs.

In addition to any other funding authorized by these Regulations, the Board shall provide an additional grant for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs. The district may request funding for therapy area, not to exceed 3,000

square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The amount shall be determined by multiplying the eligible square feet by \$173.30 per square foot for Toilet Facilities and \$96.30 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Sections 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25, 17074.56 and 56026, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of section and NOTE filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

7. Amendment of section heading and section filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

9. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

10. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.73. New Construction Additional Grant for Multilevel Construction.

In addition to any other funding authorized by these Regulations, the Board shall provide an additional grant for the additional costs resulting from the need to build multilevel facilities. The additional funding is determined by multiplying the New Construction Grant by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of section heading and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by

11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.73.1. New Construction Additional Grant for Project Assistance.

Excluding Joint-Use Projects, the Board shall provide, in addition to any other funding authorized by these Regulations, \$3,750 for Small School Districts for the cost necessary for project assistance.

For Type III Joint-Use Projects, the Board shall provide, in addition to any other funding authorized by these Regulations, \$3,750 for Small School Districts for the cost necessary for project assistance.

The amount(s) shown will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.37 and the first adjustment shall be January 2001.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of second paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of second paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of second paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment of second paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of last paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.73.2. New Construction Additional Grant for Replaced Facilities.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide funding for the amount(s) in (b) below for the replacement cost of one-story buildings that are demolished at a school in order to increase pupil capacity of that school if all the following conditions are met:

(1) The school must be on MTYRE at the time the Approved Application is accepted.

(2) The site size as determined by the CDE for the existing capacity of the school is less than 75 percent of the recommended CDE site size.

(3) The pupil capacity of the school must be increased by at least the greater of (A) or (B) below:

(A) Twenty percent of the existing pupil capacity (before replacement) of the school. Existing pupil capacity shall be determined by multiplying classrooms intended for grades kindergarten through six by 25, classrooms intended for grades seven through 12 by 27, classrooms intended for Non-Severely Disabled Individuals with Exceptional Needs by 13 and classrooms intended for Severely Disabled Individuals with Exceptional Needs by nine. Classrooms shall not include any classrooms reduced from the Gross Classroom Inventory pursuant to Section 1859.32.

(B) 200 pupils.

(4) The sum of (A) and (B) below is less than the amount determined in (E) below:

(A) Determine the estimated cost of demolition of the one-story buildings to be replaced. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Cost Publication.

(B) Multiply the square footage of the buildings to be replaced by the Current Replacement Cost.

(C) Multiply the New Construction Grants requested in box 2a. of the Form SAB 50-04, by .01775 for K-6, .021 for 7-8 and .02472 for 9-12. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-04 as either K-6, 7-8 or 9-12 based on the type of project selected by the district on Form SAB 50-04.

(D) Determine the average appraised value of land per acre, including relocation costs, within the attendance boundaries of the school. The appraisal must be consistent with Section 1859.74.1.

(E) Multiply the sums of the products determined in (C) above by the average appraised value of land per acre determined in (D) above.

(5) The CDE has determined that the replacement of the one-story buildings on the existing site with multilevel building(s) would be the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.

(6) The one-story buildings to be replaced on the existing site may not be leased facilities.

(7) With the exception of portables acquired with Class Size Reduction funds, the one-story buildings to be replaced on the site may not have been funded for either new construction or modernization funds from Proposition 1A funds within the past five years from the date the Approved Application is accepted.

(b) If the criteria in (a) are met, the additional funding is determined by multiplying \$173.30 per square foot for Toilet Facilities and by \$96.30 per square foot for all other facilities included in the one-story buildings to be replaced adjusted for the following:

(1) The amounts shall be adjusted annually in the manner prescribed in Section 1859.71.

(2) The amounts shall be increased by the percentage authorized in Section 1859.73 if the replacement area will be multilevel building(s).

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the SFP project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.46 and 17074.56, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of subsection (a)(4)(C) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
3. Amendment of subsection (a)(4)(C) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
4. Amendment of subsection (a)(4)(C) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
5. Amendment of subsections (a)(4)(C) and (b) and amendment of NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.74. New Construction Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP, the Board shall provide funding, in addition to any other funding authorized by these Regulations, for the lesser of one half of the

actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section heading and first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.1. Site Acquisition Guidelines.

To receive the funding authorized by Section 1859.74, the district must certify on the Form SAB 50-04, that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100 percent of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

13. Amendment of first paragraph and subsection (a)(2) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.74.2. New Construction Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable costs shall be the lesser of one half of (a) or (b) below:

- (a) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
- (1) The costs may include the costs for preparation of the RA.
 - (2) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
 - (3) The costs may not include continuous operational and maintenance costs associated with the RA.
- (b) The difference in the amounts determined pursuant to Section 1859.74(a) and (b).

In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of section heading and first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.3. New Construction Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the lesser of one half of the amounts allowed in (a) or (b) below:

- (a) The sum of all of the following:
- (1) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
 - (2) \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.
 - (3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.
 - (4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

- (A) The costs may include the costs for preparation of the RA.
- (B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
- (C) The costs may not include continuous operational and maintenance costs associated with the RA.

(b) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.71, 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of section heading and first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.74.4. New Construction Additional Grant for Hazardous Waste Removal Required on an Existing School Site.

(a) With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide an funding, in addition to any other funding authorized by these Regulations for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the New Construction Grants will be used if all the following are met:

- (1) The New Construction Grant request is for additional school facilities on an existing school site.
- (2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.
- (3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.
- (4) The hazardous material cleanup costs are required by the DTSC.

(b) If all criteria in subsection (a) are met, the allowable hazardous waste removal cleanup costs shall be one half of all the following:

- (1) The costs for preparation of the POESA, the PEA and the RA.
- (2) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(B) The costs may not include continuous operational and maintenance costs associated with the RA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.18, Education Code.

HISTORY

1. New section filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
2. Amendment of section heading and first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.75. Alternative District-Owned Site.

In order to receive funding authorized by Section 1859.74, the district must:

- (a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,
- (b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize the lesser of:

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) one-half of the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74, whichever is the lesser.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

- (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
- (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
- (3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.
- (4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:

- (1) The lessor of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.
- (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
- (3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.
- (4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit Form SAB 50-04.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment of subsection (b)(4) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of last paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (b)(3) and last paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.76. New Construction Additional Grant for Site Development Costs.

In addition to any other funding authorized by these Regulations, the Board shall provide funding equal to 50 percent of the following approved site development and applicable design costs:

- (a) Service site development cost, within school property lines for:
 - (1) Site clearance including the removal of trees, brush, and debris.
 - (2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.
 - (3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.
 - (4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.
 - (5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.
 - (6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.
 - (7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.
 - (10) Fire code requirements on site that are not a part of the building.
 - (11) Funding for multilevel parking structures on a new construction project when all the following have been met:
 - (A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

HISTORY

- New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal American with Disabilities (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

With the exception of Approved Applications that meet the requirements of Section 1859.107(a), districts seeking a Modernization Grant must submit Form SAB 50-04 for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Form SAB 50-04 requesting Modernization Grant funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
6. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
7. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
8. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
10. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

Article 9. Hardship Assistance**§ 1859.80. General.**

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility Hardship Grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section

17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.
- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period. The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

The financial hardship analysis is subject to approval by the Board.

(b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:

- (1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
- (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
- (3) Subtract (b)(2) from (b)(1).
- (4) Determine the number of classrooms by grade level reported in Part I, Line 8 on Form SAB 50-02.
- (5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
- (6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
- (7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the cur-

rently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.

(B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2, No. 15).
14. Amendment of subsection (b)(5)(A)-(B) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
15. Amendment of subsection (b)(5)(A) and second, third and fourth from last paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
16. Amendment filed 10-4-2002; operative 10-4-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 40).
17. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all of the following requirements are met:

- (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
- (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
- (3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(i) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or

the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:

(1) If the Approved Application is received on or before March 15, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

(2) If the Approved Application is received after March 15, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits Form SAB 50-04. A district seeking a separate apportionment for site acquisition or design costs shall submit Form SAB 50-04. If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The Form SAB 50-04 that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before March 15, 2002.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after March 15, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.20, 17072.33, 17074.15 and 17074.16, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99

- or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
 4. New section filed 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
 7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
 8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
 9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
 11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
 14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
 15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
 16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
 17. Amendment of last two paragraphs filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
 18. Amendment of last two paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
 19. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
 20. Amendment of last five paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
 21. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.82. Facility Hardship.

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and

transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83(c).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$173.30 per square foot for Toilet Facilities and \$96.30 per square foot for all other facilities. Additional funding may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a), (b) or (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73 and project assistance pursuant to Section 1859.73.1. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district, the HSAA or Super HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$96.30 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$173.30 per square foot for Toilet Facilities. A New Construction Additional Grant may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section

1859.83(a) and (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73 and project assistance pursuant to Section 1859.73.1. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71. Any grants provided pursuant to (b) above, shall be reduced by fifty

percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities. The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	Elementary School Pupils	Middle School Pupils	High School Pupils
Multi-Purpose (includes food service)	5.3 sq. ft. per pupil minimum 4,000 sq. ft.	5.3 sq. ft. per pupil minimum 5,000 sq. ft.	6.3 sq. ft. per pupil minimum 8,200 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium (includes shower/locker)	N/A	12.9 sq. ft. per pupil minimum 6,828 sq. ft. maximum 16,000 sq. ft.	15.3 sq. ft. per pupil minimum 8,380 sq. ft. maximum 18,000 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + plus 600 sq. ft.	3.3 sq. ft. per pupil + plus 600 sq. ft.	4.3 sq. ft. per pupil + plus 600 sq. ft.

Any facilities eligible for facility hardship not shown in the above chart shall be eligible for replacement square footage equal to the facilities replaced.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit Form SAB 50-04 for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17074.56, 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a)(2) and new subsections (c)-(c)(2) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of subsection (c) and last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of subsection (c) filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of subsection (c) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
13. Amendment of subsection (c) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
14. Amendment of second paragraph following subsection (a)(2), first paragraph following subsection (b)(3), subsection (c) and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
15. Amendment of section heading and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 8-12-2002 order, including amendment of table within subsection (b)(3), transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.83. Excessive Cost Hardship Grant.

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

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for the sum of the Excessive Cost Hardship Grant(s) determined by multiplying the indicated percentage factor shown in the Geographic Percentage Chart below by each of the following amounts:

(1) The New Construction Grant and the Modernization Grant.

(2) The funding provided by Sections 1859.71.2, 1859.71.3, 1859.72, 1859.73, 1859.73.2, 1859.78.4, 1859.78.5, 1859.82(a) and (b), 1859.83(b), (c), (d) and (f) and 1859.125(a).

suant to Sections 1859.91 and 1859.92, the Board will continue to accept and process applications for eligibility determination. The Board will also accept and process applications for apportionment for purposes of developing an Unfunded List based on the date the application is Ready for Apportionment.

If either the Executive Officer of the Board, the State Architect, the Director of School Facilities Planning Division within the CDE or the Chief of the School Property Evaluation and Cleanup Division within the Department of Toxic Substances Control certify to the OPSC that the district's application was delayed for a specified number of calendar days in relation to other similar applications submitted to that agency at the same time, the application may, at the discretion of the Board, receive a date on the Unfunded List or receive funding pursuant to Section 1859.91 based on the date the application is Ready for Apportionment, adjusted back in time for the number of calendar days the application was delayed.

Applications for New Construction Adjusted Grants for a project where the site was apportioned pursuant to Section 1859.75.1 shall receive a date on the Unfunded List based on the date the environmental hardship site apportionment was made for the project.

With the exception of financial hardship eligibility, a district with an application included on an Unfunded List shall not be required to re-establish eligibility for that application prior to apportionment.

An application for funding included on an Unfunded List is eligible for reimbursement subject to adjustments in the New Construction Grants amount pursuant to Section 1859.77.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Section 17070.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On-Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the Form SAB 50-04, the Form SAB 50-07 or the Form SAB 50-08, that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

TE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75, 17077.40 and 17078.10, Education Code.

HISTORY

1. New article 11 (sections 1859.100-1859.106) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Com-

pliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New article 11 (sections 1859.100-1859.106) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100-1859.106) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the Form SAB 50-04, the Form SAB 50-07 or the Form SAB 50-08, that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75, 17077.40 and 17078.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.102. Maintenance Plan.

A district shall certify on the Form SAB 50-04, the Form SAB 50-07 or the Form SAB 50-08, that it has developed and implemented an on-going and major maintenance plan in accordance with Education Code Section 17070.75 and 17070.77. In each fiscal year following the fiscal year in which the district received funds as a result of an application funded on or after January 1, 2002, the district shall certify that the plan has been reviewed and updated as required in Education Code Section 17070.77. The certification shall be made on the Deferred Maintenance Five Year Plan, which shall be required annually from those districts receiving such funding.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75, 17070.77 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of section and NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of first paragraph and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project or a Joint-Use Project and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.63 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of second paragraph and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the Form SAB 50-06. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (b) filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
8. Amendment of subsection (a) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.104.1. Material Inaccuracy Penalties.

When the Board makes a finding that a Material Inaccuracy occurred for a SFP Project, the district shall be subject to the following penalties:

(a) If the Material Inaccuracy finding occurred prior to the apportionment, the district shall be:

(1) Prohibited from self-certifying the project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(2) Required to file all projects pursuant to Section 1859.104.2. for the time period required in subsection (a)(1).

(3) Subject to the fee prescribed by Section 1859.104.3.

(b) If the Material Inaccuracy finding occurred after the apportionment but no funds have been released for the project:

(1) The Board shall reduce the project apportionment by the additional funding received beyond the amount the district was entitled to for the project.

(2) The school district shall be prohibited from self-certifying project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) The school district shall be required to file all projects pursuant to Section 1859.104.2 for the time period required in subsection (b)(2).

(4) The school district shall be subject to the fee prescribed by Section 1859.104.3.

(c) If the Material Inaccuracy finding occurred after the apportionment and funds were released for the project, the district:

(1) Must repay the additional funding received beyond the amount the district was entitled to for the project with interest within five years from the date the Board made the finding of Material Inaccuracy. Interest shall be assessed as prescribed in Education Code Section 17070.51(b)(1).

(2) Shall be prohibited from self-certifying project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) Shall be required to file all projects pursuant to Section 1859.104.2 for the time period required in subsection (c)(2).

(4) Shall be subject to the fee prescribed by Section 1859.104.3.

(d) The Board may direct that adjustments to the school district's New Construction or Modernization baseline eligibility be made pursuant to Sections 1859.51 and 1859.61 based on the determination of Material Inaccuracy.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51 and 17077.40, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
2. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.104.2. Self-Certification Prohibition.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the OPSC may request supporting documentation as it deems appropriate for any application filed after a finding of material inaccuracy for the time prescribed in 1859.104.1(a)(1), (b)(2) or (c)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.104.3. Self-Certification Prohibition Processing Fee.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the Board shall charge the district an amount of \$100 per hour for the additional hours necessary to process and review the district's applications submitted during the timelines prescribed in 1859.104.2(a)(1), (b)(2) or (c)(2). The maximum hours subject to the fee

per application is the greater of 50 hours or one percent of the enrollment of the district as reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C of Form SAB 50-01. The Board will not make a release of funds for any project subject to the fee in this section until the fee has been remitted to the OPSC. All fees collected shall be deposited in the School Facility Fund and available for apportionment as directed by the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
2. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds for a SFP project, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

- (1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.
- (2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.
- (3) All construction activities are at least 50 percent complete.
- (4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

(c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be any of the following:

- (1) An Approved New Construction or Modernization Adjusted Grant Application; or
- (2) A school district certification that the final building plans for the project have been submitted to and accepted by the DSA for review and approval; or
- (3) An approved separate site funding application pursuant to Section 1859.81.1(a) or an approved environmental hardship funding application pursuant to Section 1859.75.1; or
- (4) Other evidence satisfactory to the Board detailing the reason(s) that plans have not been completed and accepted by the DSA. If the Board determines that substantial progress has been made pursuant to Education Code Section 17076.10(b), the Board shall condition its finding of substantial progress upon the district's commitment to complete and submit an Approved New Construction or Modernization Adjusted Grant Application within a period not to exceed 18 months from the date of the Board's determination of substantial progress.

After the Board has received the progress report required in Section 1859.104(b) for items (a), (b), and (c) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within

60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a), (b), and (c) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the Form SAB 50-06, to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17076.10 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of subsection (c), new subsections (c)(1)-(4) and amendment of antepenultimate and penultimate paragraphs filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
12. Amendment of subsection (a), penultimate paragraph and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

1859.103.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

- (1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.
- (2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.131 for Joint-Use Projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.
- (b) For 50 percent of any insurance proceeds collectable by the district displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).
- (c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous

Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on Form SAB 50-06, an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP and Joint-Use projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint-Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.131 for Joint-Use Projects and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40 and 17251, Education Code.

HISTORY

- 1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
- 5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
- 6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
- 7. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

8. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application, with the exception of funding applications identified in Subsection (a) below, that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC. School districts that have already received a site apportionment under Section 1859.81.1(a) may withdraw the application and file as an environmental hardship pursuant to Section 1859.75.1 without forfeiting their original site apportionment, provided that the new application does not exceed the amount already apportioned.

A funding application, with the exception of funding applications identified in Subsection (a) below, submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

(a) A district that submitted an Approved Application request for either a Modernization Adjusted Grant or a Separate Design Apportionment for a modernization project pursuant to Section 1859.81.1 that meets the criteria in (1) and (2) below must submit a new Form SAB 50-04, that meets the criteria in Subsections (b) or (c) no later than 60 calendar days after the effective date (September 16, 2002) of this Subsection:

(1) The Approved Application was received by the OPSC after March 15, 2002 but no later than the date this Subsection becomes effective (September 16, 2002).

(2) The Approved Application has not received an approval or has received an approval pursuant to Section 1859.95, but has not received an apportionment.

(b) The new Form SAB 50-04 identifies the same number of pupils assigned to the original project or a lesser amount that is not less than 37.5 percent of the pupils originally assigned to the project (round up). In this case, the district will be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b). If the project was approved as a financial hardship project under the provisions of Section 1859.81, the project shall maintain its financial hardship status, however, the district will be subject to

a financial review pursuant to Section 1859.81(a) to determine if there are additional district funds available for the project.

(c) The new Form SAB 50-04 identifies a lesser number of pupils assigned to the project that does not exceed an amount determined by multiplying the pupils assigned to the original project by 37.5 percent (round down). In this case, the district will not be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b).

(d) If a new Form SAB 50-04 is submitted under the provisions of subsection (b), the Architect of Record or Design Professional certification made on the original Form SAB 50-04 will be accepted as satisfying the requirements of the new Form SAB 50-04.

(e) Any Approved Application request that meets the requirements of Subsection (a) will be withdrawn 60 calendar days after the date Subsection (a) becomes effective (September 16, 2002), if the district does not submit a new Form SAB 50-04 conforming to either Subsections (b) or (c).

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(i) prior to submittal of Form SAB 50-04.

Any application for new construction eligibility determination that has not received an approval must be amended to conform to Form SAB 50-02 and Form SAB 50-03 prior to submittal of Form SAB 50-04.

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of a Form SAB 50-04.

Any application for modernization eligibility determination that has not received an approval must be amended to conform to Form SAB 50-03 prior to submittal of a Form SAB 50-04.

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of Form SAB 50-04. The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grant(s), may re-file on another eligibility determination basis provided it withdraws all previously submitted Form SAB 50-04 requests for New Construction Grant(s), including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17074.15, 17074.16 and 17074.56, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

- 7. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
- 9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
- 10. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
- 11. Amendment of second paragraph filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
- 12. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
- 13. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
- 14. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.108. Extension of Fire Code Requirements Exemption.

A portable building that has received a three-year exemption by the Division of the State Architect from the fire code requirements described in Education Code Sections 17074.50 and 17074.52 may receive up to an additional three-year extension of that exemption provided all the following criteria are met:

- (a) The portable was acquired or leased with SFP modernization funds.
- (b) The portable was used solely for interim housing during the construction of a SFP modernization project.
- (c) The portable building meets the definition outlined in Subdivision (c) of Education Code Section 17074.54.
- (d) The district has presented acceptable evidence to the Board that the portable building continues to be needed to house pupils as a result of the SFP modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.54, Education Code.

HISTORY

- 1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
- 2. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

Article 12. Joint-Use Project Grant Determination

§ 1859.120. General (Joint-Use Project Funding).

A district seeking Joint-Use Project funding pursuant to the provisions of Education Code Section 17077.40, shall complete and file Form SAB 50-07.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17077.40, Education Code.

HISTORY

- 1. New article 12 (sections 1859.120-1859.130) and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.121. Joint-Use Project Application Submittals and Apportionments.

The Board shall accept Approved Applications for Joint-Use Funding on a yearly basis as follows:

- (a) For any funding made available for this purpose by May 31, 2003, applications will be accepted from November 5, 2002 through May 31, 2003. The Board will apportion the funding made available by May 31, 2003 at the July 2003 Board meeting.
- (b) For any additional funding that is made available for this purpose beginning June 1, 2003 and thereafter, the Board will accept applications from June 1 of the prior calendar year through May 31 of the current cal-

endar year for any funding made available for this purpose by May 31 of each year. The Board will apportion the funding made available by May 31 of each year at the following July Board meeting.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

- 1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.122. Type I Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type I Joint-Use Project may submit Form SAB 50-07 to the OPSC if all the following criteria are met:

- (a) The plans and specifications for the Type I Joint-Use Project are included in the plans and specifications for a new school or an addition to an existing public school for which the district has requested SFP new construction funding.
- (b) The Type I Joint-Use Project will be located on the same site where the SFP new construction project is located.
- (c) The Type I Joint-Use Project will provide facilities to be used for any of the following:
 - (1) To improve pupil Academic Achievement.
 - (2) To provide Teacher Education.
 - (3) To provide Childcare Facilities.
- (d) At least one of the Joint-Use Partner(s) is an institution of Higher Education. Other Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.
- (e) The district has entered into a Joint-Use Agreement that meets the criteria in Education Code Section 17077.42.
- (f) The district has joint-use square footage eligibility pursuant to Section 1859.124(a).
- (g) The construction contract for the Type I Joint-Use Project was not executed prior to April 29, 2002.
- (h) The plans and specifications for the Type I Joint-Use Project have been approved by the DSA.
- (i) The plans for the Type I Joint-Use project have been approved by the CDE.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

- 1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.122.1. Type II Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type II Joint-Use Project may submit a Form SAB 50-07 to the OPSC if all the following criteria are met:

- (a) The plans and specifications for the Type II Joint-Use Project are included in the plans and specifications for a new school or an addition to an existing public school for which the district has requested SFP new construction funding.
- (b) The Type II Joint-Use Project will be located on the same site where the SFP new construction project is located.
- (c) The Type II Joint-Use Project will increase the square footage and/or Extra Cost of any of the following proposed facilities included in the SFP new construction project:
 - (1) A multipurpose room.
 - (2) A gymnasium.
 - (3) A childcare facility.
 - (4) A library.
- (d) At least one of the Joint-Use Partner(s) is a governmental agency, an institution of Higher Education or a Non-Profit Organization. The Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.

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lowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.

(B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be trans-

mitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
14. Amendment of subsection (b)(5)(A)-(B) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
15. Amendment of subsection (b)(5)(A) and second, third and fourth from last paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
16. Amendment filed 10-4-2002; operative 10-4-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 40).
17. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition, with the exception of site acquisition funding authorized by Section 1859.81.2, when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:

(1) If the Approved Application is received on or before March 15, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

(2) If the Approved Application is received after March 15, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits Form SAB 50-04. A district seeking a separate apportionment for site acquisition or design costs shall submit Form SAB 50-04. If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The Form SAB 50-04 that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before March 15, 2002.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after March 15, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.12, 17072.20, 17072.33, 17074.15 and 17074.16, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
Amendment of subsection (c) and amendment of penultimate paragraph filed 12-2-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
17. Amendment of last two paragraphs filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
18. Amendment of last two paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
19. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
20. Amendment of last five paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
22. Amendment of subsection (a) and amendment of NOTE filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.81.2. Separate Apportionment for District-Owned Site Acquisition Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) A separate apportionment for district-owned site acquisition cost authorized by Section 1859.74.5 when all the following are met:

(1) The district has eligibility for new construction grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) All the criteria in Section 1859.74.5(a)(1) through (1)(7) are met.

(b) If the conditions in (a) are met, the Board will apportion one half of the value of the district-owned site as determined in Section 1859.74.5(b).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12, 17072.13 and 17072.20, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.81.3. Use of District-Owned Site Acquisition Apportionment.

Any funds authorized by Sections 1859.74.5 or 1859.81.2 shall be expended in accordance with Education Code Section 17072.35 and may also be used for the relocation of district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12, 17072.20 and 17072.35, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.82. Facility Hardship.

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the

(A) \$80,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received on or before March 15, 2002.

(B) \$60,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received after March 15, 2002.

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

(3) The district is eligible for a Modernization Excessive Cost Hardship Grant of:

(A) \$14,400 for each additional stop of the new elevator required in (2) above if the Approved Application was received on or before March 15, 2002.

(B) \$10,800 for each additional stop of the new elevator required in (2) above if the Approved Application was received after March 15, 2002.

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

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Amendment adding second paragraph following the table in subsection (c) filed 4-5-2001; operative 4-5-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 14).
7. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
8. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Sections 1859.81.1(c) or 1859.81.2, the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the Form SAB 50-05. With the exception of an apportionment made for a Type III Joint-Use Project pursuant to Article 12 of these Regulations, a district must submit the Form SAB 50-05, within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction Adjusted Grant, Modernization Adjusted Grant or Type I or II Joint-Use Project apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district's baseline eligibility. The district may refile a

new application for the project subject to district eligibility and priority funding at the time of resubmittal.

If the apportionment was made for a Type III Joint-Use Project pursuant to Article 12 of these Regulations, the district must submit Form SAB 50-05 within 18 months of the date the plans and specifications for the Joint-Use Project that have been approved by the DSA and the CDE are submitted to the OPSC or the apportionment shall be rescinded without further Board action.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12, 17072.30, 17074.15, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New article 10 (sections 1859.90-1859.95) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90-1859.95) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90-1859.95) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
11. Amendment of first paragraph and amendment of NOTE filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.91. Implementation of Priority Points Due to Insufficient State Funds.

This Regulation shall only apply to Approved Applications for New Construction Grants funded with the proceeds of state bonds approved by the voters prior to January 1, 2002.

(a) The OPSC shall report to the Board on a monthly basis the amount of funds available for New Construction Grants and Modernization Grants and the estimated amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned. The Board shall implement a priority point mechanism described in (b) for New Construction Grants requests when either of the following occur:

(1) The amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned exceed the funds available for New Construction Grants and Modernization Grants.

(2) The funds available for New Construction Grants are \$300 million or less.

(b) Once either (1) or (2) in (a) occurs, the Board shall approve and apportion the funds available for New Construction Grants requests based on the following priority point mechanism:

(1) From the funds available for New Construction Grants, the Board shall establish a final allotment equal to the lesser of \$450 million or the balance of the funds available for New Construction Grants, to be appor-

- or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 3. Amendment of first paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
 4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
 7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
 8. Amendment of first paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
 12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
 13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
 14. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
 15. Amendment of section and NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
 16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
 17. Amendment of first paragraph and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
 18. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district including the relocation or district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

With the exception of savings attributable to a site apportionment made pursuant to Sections 1859.74.5 or 1859.81.2, the State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project or a Joint-Use Project and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.63, 17072.12 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New third paragraph filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of second paragraph and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

- (a) An expenditure report from the district on the Form SAB 50-06.

The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

(d) If an apportionment was made for a district-owned site pursuant to Section 1859.74.5, a certification that the non-school function currently taking place on the district-owned site has been discontinued or

relocated. The certification must be submitted to the OPSC no later than the following dates:

(1) If the project is for an elementary school, 66 months from the date of the site apportionment.

(2) For all other projects, 78 months from the date of the site apportionment.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.12, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (b) filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
8. Amendment of subsection (a) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
9. New subsections (d)-(d)(2) and amendment of NOTE filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 1859.104.1. Material Inaccuracy Penalties.

When the Board makes a finding that a Material Inaccuracy occurred for a SFP Project, the district shall be subject to the following penalties:

(a) If the Material Inaccuracy finding occurred prior to the apportionment, the district shall be:

(1) Prohibited from self-certifying the project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(2) Required to file all projects pursuant to Section 1859.104.2. for the time period required in subsection (a)(1).

(3) Subject to the fee prescribed by Section 1859.104.3.

(b) If the Material Inaccuracy finding occurred after the apportionment but no funds have been released for the project:

(1) The Board shall reduce the project apportionment by the additional funding received beyond the amount the district was entitled to for the project.

(2) The school district shall be prohibited from self-certifying project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) The school district shall be required to file all projects pursuant to Section 1859.104.2 for the time period required in subsection (b)(2).

(4) The school district shall be subject to the fee prescribed by Section 1859.104.3.

(c) If the Material Inaccuracy finding occurred after the apportionment and funds were released for the project, the district:

(1) Must repay the additional funding received beyond the amount the district was entitled to for the project with interest within five years from the date the Board made the finding of Material Inaccuracy. Interest shall be assessed as prescribed in Education Code Section 17070.51(b)(1).

(2) Shall be prohibited from self-certifying project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.

(3) Shall be required to file all projects pursuant to Section 1859.104.2 for the time period required in subsection (c)(2).

(4) Shall be subject to the fee prescribed by Section 1859.104.3.

(d) The Board may direct that adjustments to the school district's New Construction or Modernization baseline eligibility be made pursuant to Sections 1859.51 and 1859.61 based on the determination of Material Inaccuracy.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51 and 17077.40, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
2. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.104.2. Self-Certification Prohibition.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the OPSC may request supporting documentation as it deems appropriate for any application filed after a finding of material inaccuracy for the time prescribed in 1859.104.1(a)(1), (b)(2) or (c)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

§ 1859.104.3. Self-Certification Prohibition Processing Fee.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the Board shall charge the district an amount of \$100 per hour for the additional hours necessary to process and review the district's applications submitted during the timelines prescribed in 1859.104.2(a)(1), (b)(2) or (c)(2). The maximum hours subject to the fee per application is the greater of 50 hours or one percent of the enrollment of the district as reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C of Form SAB 50-01. The Board will not make a release of funds for any project subject to the fee in this section until the fee has been remitted to the OPSC. All fees collected shall be deposited in the School Facility Fund and available for apportionment as directed by the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
2. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds for a SFP project, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

(1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(3) All construction activities are at least 50 percent complete.

(4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has

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- (1) \$3,120 for each elementary pupil.
- (2) \$3,300 for each middle school pupil.
- (3) \$4,320 for each high school pupil.
- (4) \$9,944 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$6,650 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) If the application includes the modernization of permanent buildings both over and under 50 years old, the number of pupils housed in 50 years or older permanent buildings, for purposes of (a) above, shall be determined by either of the following, at the district's option:

(1) A percentage of permanent classrooms in the application that are 50 years or older to the total classrooms in the application determined as follows:

(A) Calculate the total number of classroom(s) to be modernized as part of the project that were included in the Gross Classroom Inventory pursuant to Section 1859.31 and were not previously modernized under the LPP, the SFP or with Proposition 1A funds.

(B) Calculate the total number of permanent classrooms to be modernized as part of the project that are at least 50 years old.

(C) Divide the classrooms calculated in (b)(1)(B) by the total classrooms calculated in (b)(1)(A). Round up to the nearest one tenth of one percent.

(D) Multiply the percentage determined in (b)(1)(C) by the number of pupils assigned to the project on Form SAB 50-04, for each grade group. Round up.

(2) A percentage of the permanent building area Square Footage in the application that is 50 years or older to the total Square Footage in the application determined as follows:

(A) Calculate the total Square Footage building area to be modernized as part of the project that was included in the Gross Classroom Inventory pursuant to Section 1859.31 and was not previously modernized under the LPP, the SFP or with Proposition 1A funds.

(B) Calculate the total permanent Square Footage of building area to be modernized as part of the project that is at least 50 years old.

(C) Divide the Square Footage of building area calculated in (b)(2)(B) by the total Square Footage of building area calculated in (b)(2)(A). Round up to the nearest one tenth of one percent.

(D) Multiply the percentage determined in (b)(2)(C) by the number of pupils assigned to the project on Form SAB 50-04, for each grade group. Round up.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.78. The grant is eligible for any modernization grant augmentation for which the project is otherwise eligible under the law and regulations.

For purposes of determining the age of the building, the 20 year, 25 year and the 50 year period shall begin 12 months after the original plans for the construction of the building were approved by the DSA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.26, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.78.7. Modernization Additional Grant for Site Development Necessary for 50 Years or Older Permanent Buildings.

In addition to any other funding authorized by these Regulations, the Board shall provide funding for upgrading existing site development (utilities) work as necessary for the modernization of 50 years or older permanent buildings equal to the lesser of (a) or (b):

(a) 60 percent of the costs necessary to upgrade utility service to 50 years or older permanent building(s) on the site as follows:

(1) Water: Replacement or repair of main water service line(s) between the utility company connection and to five feet of the 50 years or

older building(s) on the site, connection fees if applicable, meter (if not provided by the serving utility), and replacement or repair of a domestic water appurtenances (i.e., well, pump, tank) as needed for the proper operation of the system.

(2) Sewage: Replacement or repair of main sewer line between the utility company connection and to five feet of the 50 years or older building(s) on the site and connection fees, if applicable. Replacement or repair of sewage appurtenances (i.e., treatment/disposal system) as needed for the proper operation of the system and a main disposal line from the treatment system to five feet of the 50 years or older building(s) on the site.

(3) Gas: Replacement or repair of main gas service line between the utility company connection and to five feet of the 50 years or older building(s) on the site, connection fee (if applicable), meter (if not provided by serving utility) or replacement or repair of gas service appurtenances (i.e., liquefied petroleum system and tank) as needed for proper operation of the system and a new main supply line from the tank to five feet of the 50 years or older building(s) on the site.

(4) Electric: Replacement or repair of electrical service between the utility company connection and the building main switchboard. Primary electric service runs between the utility company's point of connection and the transformer. Secondary electric service runs between the transformer and the main switchboard. Connection fee, transformer pads and protective devices (i.e., bollards) as required by the utility company.

(5) Communication systems (i.e., cable television and telephone): Replacement or repair of service between the utility company connection and the nearest distribution center.

(b) Twenty percent of the funding authorized by Section 1859.78.6.

The district must submit a detailed cost estimate and appropriate DSA approved plans with Form SAB 50-04 for all requests for the site development work. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the modernization of the 50 years or older building(s) that will be modernized as part of the project.

The Board will approve reasonable and appropriate site development (utilities) work that meets common engineering practices and industry standards and are consistent with the specific site conditions, if the site development costs are consistent with the most current edition of the Saylor Remodeling/Repair Construction Costs. The design professional must certify that the site development (utilities) work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the 50 year or older permanent building(s).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.26, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, a district matching share for a modernization project shall be required as follows:

(a) If the Approved Application is received on or before March 15, 2002, any Modernization Grant plus any other funding provided by these Regulations shall require a district matching share equal to at least 20 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

(b) If the Approved Application is received after March 15, 2002, any Modernization Grant, plus any other funding authorized by these Regulations shall require a district matching share equal to at least 40 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education

Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 9-16-2002 order transmitted to OAL 1-7-2003 and filed 2-19-2003 (Register 2003, No. 8).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

- (a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or
- (b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:

- (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

- (2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

- (b) New site development items with the exception of:

- (1) Replacement, repair or additions to existing site development.

- (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

With the exception of Approved Applications that meet the requirements of Section 1859.107(a), districts seeking a Modernization Grant must submit Form SAB 50-04 for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Form SAB 50-04 requesting Modernization Grant funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
6. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
7. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).

- R. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 2-10-2002 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
10. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
12. Certificate of Compliance as to 9-16-2002 order transmitted to OAL 1-7-2003 and filed 2-19-2003 (Register 2003, No. 8).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility Hardship Grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be

deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

(1) Approved interim housing expenditures.

(2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.

(3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.

(4) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period. The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

The financial hardship analysis is subject to approval by the Board.

(b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:

(1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.

(2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.

(3) Subtract (b)(2) from (b)(1).

(4) Determine the number of classrooms by grade level reported in Part I, Line 8 on Form SAB 50-02.

(5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.

(6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.

(7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount al-

lowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.

(B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be trans-

mitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (c)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
14. Amendment of subsection (b)(5)(A)-(B) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
15. Amendment of subsection (b)(5)(A) and second, third and fourth from last paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
16. Amendment filed 10-4-2002; operative 10-4-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 40).
17. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition, with the exception of site acquisition funding authorized by Section 1859.81.2, when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:

(1) If the Approved Application is received on or before March 15, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

(2) If the Approved Application is received after March 15, 2002, 25 percent of the modernization grant less any district funds available for the object pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits Form SAB 50-04. A district seeking a separate apportionment for site acquisition or design costs shall submit Form SAB 50-04. If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The Form SAB 50-04 that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before March 15, 2002.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after March 15, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.12, 17072.20, 17072.33, 17074.15 and 17074.16, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 Amendment of subsection (c) and amendment of penultimate paragraph filed 12-2-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).

12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
17. Amendment of last two paragraphs filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
18. Amendment of last two paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
19. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
20. Amendment of last five paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
22. Amendment of subsection (a) and amendment of NOTE filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
23. Certificate of Compliance as to 9-16-2002 order transmitted to OAL 1-7-2003 and filed 2-19-2003 (Register 2003, No. 8).

§ 1859.81.2. Separate Apportionment for District-Owned Site Acquisition Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

- (a) A separate apportionment for district-owned site acquisition cost authorized by Section 1859.74.5 when all the following are met:
 - (1) The district has eligibility for new construction grants that equal at least 50 percent of the CDE master plan capacity of the site.
 - (2) All the criteria in Section 1859.74.5(a)(1) through (1)(7) are met.
- (b) If the conditions in (a) are met, the Board will apportion one half of the value of the district-owned site as determined in Section 1859.74.5(b).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12, 17072.13 and 17072.20, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.81.3. Use of District-Owned Site Acquisition Apportionment.

Any funds authorized by Sections 1859.74.5 or 1859.81.2 shall be expended in accordance with Education Code Section 17072.35 and may also be used for the relocation of district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12, 17072.20 and 17072.35, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.82. Facility Hardship.

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

- (a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:
 - (1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the

Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

(1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.

(2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105.2. Program Accountability for District-Owned Site Acquisition Cost.

When the district has received funds pursuant to Section 1859.74.5 for a district-owned site and has not submitted the certification required pursuant to Section 1859.104(d), the site apportionment is subject to the provisions of material inaccuracy as prescribed in Education Code Section 17070.51.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51 and 17072.12, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.106. Program Accountability Expenditure Audit.

Projects will be audited to assure that the expenditures incurred for the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

(c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on Form SAB 50-06, an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP, Charter School, and Joint-Use projects for a period of not less than four years from the date the notice of completion is filed for the project

in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint-Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

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

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
8. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 2-13-2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2-13-2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-13-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application, with the exception of funding applications identified in Subsection (a) below, that has received an approval pursuant

to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC. School districts that have already received a site apportionment under Section 1859.81.1(a) may withdraw the application and file as an environmental hardship pursuant to Section 1859.75.1 without forfeiting their original site apportionment, provided that the new application does not exceed the amount already apportioned.

A funding application, with the exception of funding applications identified in Subsection (a) below, submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

(a) A district that submitted an Approved Application request for either a Modernization Adjusted Grant or a Separate Design Apportionment for a modernization project pursuant to Section 1859.81.1 that meets the criteria in (1) and (2) below must submit a new Form SAB 50-04, that meets the criteria in Subsections (b) or (c) no later than 60 calendar days after the effective date (September 16, 2002) of this Subsection:

(1) The Approved Application was received by the OPSC after March 15, 2002 but no later than the date this Subsection becomes effective (September 16, 2002).

(2) The Approved Application has not received an approval or has received an approval pursuant to Section 1859.95, but has not received an apportionment.

(b) The new Form SAB 50-04 identifies the same number of pupils assigned to the original project or a lesser amount that is not less than 37.5 percent of the pupils originally assigned to the project (round up). In this case, the district will be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b). If the project was approved as a financial hardship project under the provisions of Section 1859.81, the project shall maintain its financial hardship status, however, the district will be subject to a financial review pursuant to Section 1859.81(a) to determine if there are additional district funds available for the project.

(c) The new Form SAB 50-04 identifies a lesser number of pupils assigned to the project that does not exceed an amount determined by multiplying the pupils assigned to the original project by 37.5 percent (round down). In this case, the district will not be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b).

(d) If a new Form SAB 50-04 is submitted under the provisions of subsection (b), the Architect of Record or Design Professional certification

made on the original Form SAB 50-04 will be accepted as satisfying the requirements of the new Form SAB 50-04.

(c) Any Approved Application request that meets the requirements of Subsection (a) will be withdrawn 60 calendar days after the date Subsection (a) becomes effective (September 16, 2002), if the district does not submit a new Form SAB 50-04 conforming to either Subsections (b) or (c).

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(i) prior to submittal of Form SAB 50-04.

Any application for new construction eligibility determination that has not received an approval must be amended to conform to Form SAB 50-02 and Form SAB 50-03 prior to submittal of Form SAB 50-04.

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of a Form SAB 50-04.

Any application for modernization eligibility determination that has not received an approval must be amended to conform to Form SAB 50-03 prior to submittal of a Form SAB 50-04.

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of Form SAB 50-04. The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grant(s), may re-file on another eligibility determination basis provided it withdraws all previously submitted Form SAB 50-04 requests for New Construction Grant(s), including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17074.15, 17074.16 and 17074.56, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment of second paragraph filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
12. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be trans-

...tuted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.

amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

- 14. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
- 15. Certificate of Compliance as to 9-16-2002 order transmitted to OAL 1-7-2003 and filed 2-19-2003 (Register 2003, No. 8).

§ 1859.108. Extension of Fire Code Requirements Exemption.

A portable building that has received a three-year exemption by the Division of the State Architect from the fire code requirements described in Education Code Sections 17074.50 and 17074.52 may receive up to an additional three-year extension of that exemption provided all the following criteria are met:

- (a) The portable was acquired or leased with SFP modernization funds.
- (b) The portable was used solely for interim housing during the construction of a SFP modernization project.
- (c) The portable building meets the definition outlined in Subdivision (c) of Education Code Section 17074.54.
- (d) The district has presented acceptable evidence to the Board that the portable building continues to be needed to house pupils as a result of the SFP modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.54, Education Code.

HISTORY

- 1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
- 2. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 3-2002 and filed 1-16-2003 (Register 2003, No. 3).

Article 12. Joint-Use Project Grant Determination

§ 1859.120. General (Joint-Use Project Funding).

A district seeking Joint-Use Project funding pursuant to the provisions of Education Code Section 17077.40, shall complete and file Form SAB 50-07.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17077.40, Education Code.

HISTORY

- 1. New article 12 (sections 1859.120-1859.130) and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.121. Joint-Use Project Application Submittals and Apportionments.

The Board shall accept Approved Applications for Joint-Use Funding on a yearly basis as follows:

- (a) For any funding made available for this purpose by May 31, 2003, applications will be accepted from November 5, 2002 through May 31, 2003. The Board will apportion the funding made available by May 31, 2003 at the July 2003 Board meeting.
- (b) For any additional funding that is made available for this purpose beginning June 1, 2003 and thereafter, the Board will accept applications from June 1 of the prior calendar year through May 31 of the current calendar year for any funding made available for this purpose by May 31 of each year. The Board will apportion the funding made available by May 31 of each year at the following July Board meeting.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

- 1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of

Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.122. Type I Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type I Joint-Use Project may submit Form SAB 50-07 to the OPSC if all the following criteria are met:

- (a) The plans and specifications for the Type I Joint-Use Project are included in the plans and specifications for a new school or an addition to an existing public school for which the district has requested SFP new construction funding.
- (b) The Type I Joint-Use Project will be located on the same site where the SFP new construction project is located.
- (c) The Type I Joint-Use Project will provide facilities to be used for any of the following:

- (1) To improve pupil Academic Achievement.
- (2) To provide Teacher Education.
- (3) To provide Childcare Facilities.

(d) At least one of the Joint-Use Partner(s) is an institution of Higher Education. Other Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.

(e) The district has entered into a Joint-Use Agreement that meets the criteria in Education Code Section 17077.42.

(f) The district has joint-use square footage eligibility pursuant to Section 1859.124(a).

(g) The construction contract for the Type I Joint-Use Project was not executed prior to April 29, 2002.

(h) The plans and specifications for the Type I Joint-Use Project have been approved by the DSA.

(i) The plans for the Type I Joint-Use project have been approved by the CDE.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

- 1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.122.1. Type II Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type II Joint-Use Project may submit a Form SAB 50-07 to the OPSC if all the following criteria are met:

(a) The plans and specifications for the Type II Joint-Use Project are included in the plans and specifications for a new school or an addition to an existing public school for which the district has requested SFP new construction funding.

(b) The Type II Joint-Use Project will be located on the same site where the SFP new construction project is located.

(c) The Type II Joint-Use Project will increase the square footage and/or Extra Cost of any of the following proposed facilities included in the SFP new construction project:

- (1) A multipurpose room.
- (2) A gymnasium.
- (3) A childcare facility.
- (4) A library.

(d) At least one of the Joint-Use Partner(s) is a governmental agency, an institution of Higher Education or a Non-Profit Organization. The Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.

(e) The district has entered into a Joint-Use Agreement that meets the criteria in Education Code Section 17077.42.

(f) The district has demonstrated it has joint-use square footage eligibility pursuant to Section 1859.124(b) or that it will incur Extra Cost pursuant to Section 1859.125.1.

(g) The construction contract for the Type II Joint-Use Project was not executed prior to April 29, 2002.

(h) The plans and specifications for the Type II Joint-Use Project have been approved by the DSA.

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§ 1859.20

§ 1859.21

§ 1859.75

§ 1859.75.1

§ 1859.79

§ 1859.81.1

§ 1859.107

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

E. Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A School District seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide, HSAA, or Super HSAA, or for modernization projects, the Form SAB 50-03.

(b) For new construction projects, either districtwide, HSAA or Super HSAA, the Form SAB 50-01.

(c) For new construction projects, the Form SAB 50-02.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25, 17073.10 and 17073.25, Education Code.

HISTORY

- with article 3 (sections 1859.20-1859.21) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
 3. New article 3 (sections 1859.20-1859.21) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
 4. New article 3 (sections 1859.20-1859.21) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
 5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
 6. Amendment of subsections (a)-(c) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
 7. Amendment of subsections (a) and (c) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
 8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
 9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
 10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
 11. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
 12. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
 13. Amendment of first paragraph and amendment of NOTE filed 2-27-2003 as an emergency; operative 2-27-2003 (Register 2003, No. 9). A Certificate of Com-

pliance must be transmitted to OAL by 6-27-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.21. SFP Application for Funding.

A School District seeking funding for a modernization or new construction project shall complete and file with the OPSC, the Form SAB 50-04.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30, 17073.25 and 17074.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of form SAB 50-04 (incorporated by reference) and amendment of section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
17. Amendment of section and NOTE filed 2-27-2003 as an emergency; operative 2-27-2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-27-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.22. SFP Application for Funding on Leased Land.

In addition to meeting the requirements of Sections 1859.20 and 1859.21 or 1859.120, a district may receive SFP funds for facilities that are or will be located on real property leased by the district provided all the following are met:

(a) The real property is leased from a governmental agency.

(b) The term of the lease for the land for which the district is requesting SFP funding at the time the Approved Application is accepted is one of the following:

(1) At least 25 years if the lease is for real property owned by the federal government.

(2) At least 40 years if the lease is for real property owned by a governmental agency other than the federal government.

(3) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has certified to all the following:

(A) There are no other educationally adequate sites for new construction available under a 40-year lease.

(B) The cost per year to lease the real property for no less than 30 years is no greater than the cost per year to lease the real property for 40 years.

(4) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has provided other evidence satisfactory to the Board that a shorter lease term is necessary.

A district seeking modernization funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(c).

A district seeking new construction funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(a) and (i).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.71, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one-time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the Form SAB 50-02. Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30-1859.35) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30-1859.35) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30-1859.35) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Com-

pliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
11. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district, the HSAA or Super HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

- (a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;
- (b) constructed with funds from the LPP;
- (c) used for Special Day Class or Resource Specialist Programs;
- (d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;
- (e) acquired or created for Class Size Reduction purposes;
- (f) used for preschool programs;
- (g) converted to any non-classroom purpose including use by others;
- (h) with Housing and Community Development or Department of Housing insignia;
- (i) acquired for interim housing for a modernization project;
- (j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;
- (k) that have a waiver for continued use by the Board for Field Act exemptions;
- (l) used for Community School purposes;

{The next page is 234.7.}

(A) The relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance. Do not include relocation expenses applicable to the relocation of district personnel, district buildings/furnishings or district equipment.

(B) Four percent of the appraised value determined in (a)(1), but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(C) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(2) Determine the estimated current site development cost that would be necessary on the district-owned site if it were to be used as a school site pursuant to Section 1859.76. Estimated cost for demolition of existing buildings on the site may be included as a site development cost.

(3) Add the amount determined in (a)(1) to the amount determined in (a)(2).

(b) Current Estimated Value of Alternative Site.

(1) The district must identify an alternative site within the boundaries of the district that meet all the following:

(A) The alternative site is an approvable site by the CDE.

(B) The alternative site is located no more than three miles from the district owned site if the project is for a high school, no more than two miles from the district owned site if the project is for a middle school and no more than one mile from the district owned site if the project is for an elementary school.

(2) Determine the value of the alternative site selected in (b)(1) by a preliminary appraisal or an appraisal made or updated no more than six months prior to submittal of the Approved Application to the OPSC. The appraisal shall include any buildings on the alternative site and shall be made using the guidelines in Section 1859.74.1. The appraised value shall be increased for the following:

(A) The relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(B) Four percent of the appraised value determined in (b)(2), but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(C) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(D) The estimated current site development cost that would be necessary on the alternative site if it were to be used as a school site pursuant to Section 1859.76. Estimated cost for demolition of existing buildings on the alternative site may be included as a site development cost.

(3) Determine the average appraised value per acre by dividing the appraised value of the alternative site determined in (b)(2) by the number of acres of the alternative site.

(4) Multiply the average appraised value per acre of the alternative site determined in (b)(3) by the number of acres of the district-owned site identified in (a).

(5) Multiply the quotient determined in (b)(4) by 110 percent.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.75. Alternative District-Owned Site.

In order to receive funding authorized by Sections 1859.74 or 1859.74.2, the district must:

(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize either (1) or (2);

(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) fifty percent of one and one-half times value of the site purchased for the project as determined in Section 1859.74.2.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

6. Amendment of section and NOTE filed 2-27-2003 as an emergency; operative 2-27-2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-27-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RA, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate site apportionment not to exceed 50 percent of one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (b)(1) and (b)(4) plus the additional costs included in (b)(2) and (b)(3). The costs included in (b)(2) and (b)(3) are in addition to 50 percent of one and one half times the appraisal value cap.

(1) The cost of the site as determined in Section 1859.74.1 and the amount the district reasonably expects to pay for any hazardous materials/waste removal and/or remediation costs for the site.

(2) Fifty percent of the estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Fifty percent of four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site

acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than 50 percent of \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit Form SAB 50-04.

(c) The limitation of 50 percent of one and one half times the value of an appraisal for costs in subsections (b), (b)(1) and (b)(4) may be exceeded when the Board finds that unforeseen circumstances exist, and when both of the following exist:

(1) CDE determines that the site is the best available site for meeting the educational and safety needs of the School District.

(2) Substantiation that the costs are limited to minimum required to complete the evaluation and RA approved by the DTSC.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
Amendment of subsection (b)(4) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of last paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of last paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (b)(3) and last paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
13. Amendment of subsections (a)(4) and (b)-(b)(3) and new subsections (c)-(c)(2) filed 2-27-2003 as an emergency; operative 2-27-2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-27-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.76. New Construction Additional Grant for Site Development Costs.

In addition to any other funding authorized by these Regulations, the Board shall provide funding equal to 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.

(D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(E) The parking structure is any of the following:

1. It is multilevel and has at least two floors of parking space.

2. It is single level with site development above the single level parking space.

3. It is single level that is subterranean or below ground level with site development above the single level parking space.

4. It is single level with buildings above the single level parking space.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed \$50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

§ 1859.78.7. Modernization Additional Grant for Site Development Necessary for 50 Years or Older Permanent Buildings.

In addition to any other funding authorized by these Regulations, the Board shall provide funding for upgrading existing site development (utilities) work as necessary for the modernization of 50 years or older permanent buildings equal to the lesser of (a) or (b):

(a) 60 percent of the costs necessary to upgrade utility service to 50 year or older permanent building(s) on the site as follows:

(1) Water: Replacement or repair of main water service line(s) between the utility company connection and to five feet of the 50 years or older building(s) on the site, connection fees if applicable, meter (if not provided by the serving utility), and replacement or repair of a domestic water appurtenances (i.e., well, pump, tank) as needed for the proper operation of the system.

(2) Sewage: Replacement or repair of main sewer line between the utility company connection and to five feet of the 50 years or older building(s) on the site and connection fees, if applicable. Replacement or repair of sewage appurtenances (i.e., treatment/disposal system) as needed for the proper operation of the system and a main disposal line from the treatment system to five feet of the 50 years or older building(s) on the site.

(3) Gas: Replacement or repair of main gas service line between the utility company connection and to five feet of the 50 years or older building(s) on the site, connection fee (if applicable), meter (if not provided by serving utility) or replacement or repair of gas service appurtenances (i.e., liquefied petroleum system and tank) as needed for proper operation of the system and a new main supply line from the tank to five feet of the 50 years or older building(s) on the site.

(4) Electric: Replacement or repair of electrical service between the utility company connection and the building main switchboard. Primary electric service runs between the utility company's point of connection and the transformer. Secondary electric service runs between the transformer and the main switchboard. Connection fee, transformer pads and protective devices (i.e., bollards) as required by the utility company.

(5) Communication systems (i.e., cable television and telephone): Replacement or repair of service between the utility company connection and the nearest distribution center.

(b) Twenty percent of the funding authorized by Section 1859.78.6.

The district must submit a detailed cost estimate and appropriate DSA approved plans with Form SAB 50-04 for all requests for the site development work. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the modernization of the 50 years or older building(s) that will be modernized as part of the project.

The Board will approve reasonable and appropriate site development (utilities) work that meets common engineering practices and industry standards and are consistent with the specific site conditions, if the site development costs are consistent with the most current edition of the Saylor Remodeling/Repair Construction Costs. The design professional must certify that the site development (utilities) work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the 50 year or older permanent building(s).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.26, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81, a district matching share for a modernization project shall be required as follows:

(a) If the Approved Application is received on or before April 29, 2002, any Modernization Grant plus any other funding provided by these Regulations shall require a district matching share equal to at least 20 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

(b) If the Approved Application is received after April 29, 2002, any Modernization Grant, plus any other funding authorized by these Regulations shall require a district matching share equal to at least 40 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16 and 17077.10, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. New second paragraph and amendment of NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

6. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.

7. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 9-16-2002 order transmitted to OAL 1-7-2003 and filed 2-19-2003 (Register 2003, No. 8).

9. Amendment of subsections (a) and (b) filed 2-27-2003 as an emergency; operative 2-27-2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-27-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year-Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).

5. Amendment of first paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25 and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:
 - (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.
 - (2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:
 - (1) Replacement, repair or additions to existing site development.
 - (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of first paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

With the exception of Approved Applications that meet the requirements of Section 1859.107(a), districts seeking a Modernization Grant must submit Form SAB 50-04 for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Form SAB 50-04 requesting Modernization Grant funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
4. Amendment filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
6. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
7. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
8. Amendment filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
10. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
12. Certificate of Compliance as to 9-16-2002 order transmitted to OAL 1-7-2003 and filed 2-19-2003 (Register 2003, No. 8).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

- (a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.
- (b) A facility Hardship Grant as provided in Section 1859.82.
- (c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80-1859.83) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80-1859.83) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80-1859.83) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b) filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records

maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.
- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period. The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

The financial hardship analysis is subject to approval by the Board.

(b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:

- (1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
- (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
- (3) Subtract (b)(2) from (b)(1).
- (4) Determine the number of classrooms by grade level reported in Part I, Line 8 on Form SAB 50-02.
- (5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
- (6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
- (7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

- (1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.
- (2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).
- (3) It is a County Superintendent of Schools.
- (4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.
- (5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

- (A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.
- (B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10 and 17075.15, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)-(B) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
14. Amendment of subsection (b)(5)(A)-(B) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
15. Amendment of subsection (b)(5)(A) and second, third and fourth from last paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
amendment filed 10-4-2002; operative 10-4-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 40).
17. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

- (a) For a new construction project, a separate apportionment for site acquisition, with the exception of site acquisition funding authorized by Section 1859.81.2, when all of the following requirements are met:
 - (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
 - (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
 - (3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.
- (b) If the conditions in (a) are met on a site that does not require a RA, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):
 - (1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.
 - (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any

improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) If the conditions in (a) are met on a site that will require a RA, the district is eligible for a separate site apportionment not to exceed 50 percent of one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (c)(1) and (c)(4) plus the additional costs included in (c)(2) and (c)(3). The costs included in (c)(2) and (c)(3) are in addition to 50 percent of one and one half times the appraisal value cap.

(1) The cost of the site as determined in Section 1859.74.1 and the amount the district reasonably expects to pay for any hazardous materials/waste removal and/or remediation costs for the site.

(2) Fifty percent of the estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Fifty percent of four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than 50 percent of \$50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

(d) The limitation of 50 percent of one and one half times the value of an appraisal for costs in subsections (c), (c)(1) and (c)(4) may be exceeded when the Board finds that unforeseen circumstances exist, and when both of the following exist:

(1) CDE determines that the site is the best available site for meeting the educational and safety needs of the School District.

(2) Substantiation that the costs are limited to the minimum required to complete the evaluation and RA approved by the DTSC.

(e) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:

(1) If the Approved Application is received on or before April 29, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

(2) If the Approved Application is received after April 29, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits Form SAB 50-04. A district seeking a separate apportionment for site acquisition or design costs shall submit Form SAB 50-04. If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The Form SAB 50-04 that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before April 29, 2002.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after April 29, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.12, 17072.20, 17072.33, 17074.15 and 17074.16, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
17. Amendment of last two paragraphs filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
18. Amendment of last two paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
19. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
20. Amendment of last five paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by

11-4-2003 or emergency language will be repealed by operation of law on the following day.

21. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
22. Amendment of subsection (a) and amendment of NOTE filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
23. Certificate of Compliance as to 9-16-2002 order transmitted to OAL 1-7-2003 and filed 2-19-2003 (Register 2003, No. 8).
24. Amendment of subsection (b), new subsections (c)-(d)(2), subsection relettering, and amendment of newly designated subsections (c)(1)-(2) filed 2-27-2003 as an emergency; operative 2-27-2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-27-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.81.2. Separate Apportionment for District-Owned Site Acquisition Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) A separate apportionment for district-owned site acquisition cost authorized by Section 1859.74.5 when all the following are met:

(1) The district has eligibility for new construction grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) All the criteria in Section 1859.74.5(a)(1) through (1)(7) are met.

(b) If the conditions in (a) are met, the Board will apportion one half of the value of the district-owned site as determined in Section 1859.74.5(b).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12, 17072.13 and 17072.20, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.81.3. Use of District-Owned Site Acquisition Apportionment.

Any funds authorized by Sections 1859.74.5 or 1859.81.2 shall be expended in accordance with Education Code Section 17072.35 and may also be used for the relocation of district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12, 17072.20 and 17072.35, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.82. Facility Hardship.

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization

dures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
8. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 2-13-2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2-13-2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-13-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application, with the exception of funding applications identified in Subsection (a) below, that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC. School districts that have already received a site apportionment under Section 1859.81.1(a) may withdraw the application and file as an environmental hardship pursuant to Section 1859.75.1 without forfeiting their original site apportionment, provided that the new application does not exceed the amount already apportioned.

A funding application, with the exception of funding applications identified in Subsection (a) below, submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resub-

mitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

(a) A district that submitted an Approved Application request for either a Modernization Adjusted Grant or a Separate Design Apportionment for a modernization project pursuant to Section 1859.81.1 that meets the criteria in (1) and (2) below must submit a new Form SAB 50-04, that meets the criteria in Subsections (b) or (c) no later than 60 calendar days after the effective date (September 16, 2002) of this Subsection:

(1) The Approved Application was received by the OPSC after April 29, 2002 but no later than the date this Subsection becomes effective (September 16, 2002).

(2) The Approved Application has not received an approval or has received an approval pursuant to Section 1859.95, but has not received an apportionment.

(b) The new Form SAB 50-04 identifies the same number of pupils assigned to the original project or a lesser amount that is not less than 37.5 percent of the pupils originally assigned to the project (round up). In this case, the district will be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b). If the project was approved as a financial hardship project under the provisions of Section 1859.81, the project shall maintain its financial hardship status, however, the district will be subject to a financial review pursuant to Section 1859.81(a) to determine if there are additional district funds available for the project.

(c) The new Form SAB 50-04 identifies a lesser number of pupils assigned to the project that does not exceed an amount determined by multiplying the pupils assigned to the original project by 37.5 percent (round down). In this case, the district will not be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b).

(d) If a new Form SAB 50-04 is submitted under the provisions of subsection (b), the Architect of Record or Design Professional certification made on the original Form SAB 50-04 will be accepted as satisfying the requirements of the new Form SAB 50-04.

(e) Any Approved Application request that meets the requirements of Subsection (a) will be withdrawn 60 calendar days after the date Subsection (a) becomes effective (September 16, 2002), if the district does not submit a new Form SAB 50-04 conforming to either Subsections (b) or (c).

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(f) prior to submittal of Form SAB 50-04.

Any application for new construction eligibility determination that has not received an approval must be amended to conform to Form SAB 50-02 and Form SAB 50-03 prior to submittal of Form SAB 50-04.

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an Form SAB 50-04.

Any application for modernization eligibility determination that has not received an approval must be amended to conform to Form SAB 50-03 prior to submittal of an Form SAB 50-04.

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of Form SAB 50-04.

The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grant(s), may re-file on another eligibility determination basis provided it withdraws all previously submitted Form SAB 50-04 requests for New Construction Grant(s), including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17074.15, 17074.16 and 17074.56, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment of second paragraph filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
12. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
13. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
15. Certificate of Compliance as to 9-16-2002 order transmitted to OAL 1-7-2003 and filed 2-19-2003 (Register 2003, No. 8).
16. Amendment of subsection (a)(1) filed 2-27-2003 as an emergency; operative 2-27-2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-27-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.108. Extension of Fire Code Requirements Exemption.

A portable building that has received a three-year exemption by the Division of the State Architect from the fire code requirements described in Education Code Sections 17074.50 and 17074.52 may receive up to an additional three-year extension of that exemption provided all the following criteria are met:

- (a) The portable was acquired or leased with SFP modernization funds.
- (b) The portable was used solely for interim housing during the construction of a SFP modernization project.
- (c) The portable building meets the definition outlined in Subdivision (c) of Education Code Section 17074.54.
- (d) The district has presented acceptable evidence to the Board that the portable building continues to be needed to house pupils as a result of the SFP modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.54, Education Code.

HISTORY

1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).

Article 12. Joint-Use Project Grant Determination

§ 1859.120. General (Joint-Use Project Funding).

A district seeking Joint-Use Project funding pursuant to the provisions of Education Code Section 17077.40, shall complete and file Form SAB 50-07.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17077.40, Education Code.

HISTORY

1. New article 12 (sections 1859.120-1859.130) and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.121. Joint-Use Project Application Submittals and Apportionments.

The Board shall accept Approved Applications for Joint-Use Funding on a yearly basis as follows:

(a) For any funding made available for this purpose by May 31, 2003, applications will be accepted from November 5, 2002 through May 31, 2003. The Board will apportion the funding made available by May 31, 2003 at the July 2003 Board meeting.

(b) For any additional funding that is made available for this purpose beginning June 1, 2003 and thereafter, the Board will accept applications from June 1 of the prior calendar year through May 31 of the current calendar year for any funding made available for this purpose by May 31 of each year. The Board will apportion the funding made available by May 31 of each year at the following July Board meeting.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.122. Type I Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type I Joint-Use Project may submit Form SAB 50-07 to the OPSC if all the following criteria are met:

(a) The plans and specifications for the Type I Joint-Use Project are included in the plans and specifications for a new school or an addition to an existing public school for which the district has requested SFP new construction funding.

(b) The Type I Joint-Use Project will be located on the same site where the SFP new construction project is located.

(c) The Type I Joint-Use Project will provide facilities to be used for any of the following:

- (1) To improve pupil Academic Achievement.
- (2) To provide Teacher Education.
- (3) To provide Childcare Facilities.

(d) At least one of the Joint-Use Partner(s) is an institution of Higher Education. Other Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.

(e) The district has entered into a Joint-Use Agreement that meets the criteria in Education Code Section 17077.42.

(f) The district has joint-use square footage eligibility pursuant to Section 1859.124(a).

(g) The construction contract for the Type I Joint-Use Project was not executed prior to April 29, 2002.

(h) The plans and specifications for the Type I Joint-Use Project have been approved by the DSA.

(i) The plans for the Type I Joint-Use project have been approved by the CDE.

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§ 1859.104.3. Self-Certification Prohibition Processing Fee.

the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the Board shall charge the district an amount of \$100 per hour for the additional hours necessary to process and review the district's applications submitted during the timelines prescribed in 1859.104.2(a)(1), (b)(2) or (c)(2). The maximum hours subject to the fee per application is the greater of 50 hours or one percent of the enrollment of the district as reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C of Form SAB 50-01. The Board will not make a release of funds for any project subject to the fee in this section until the fee has been remitted to the OPSC. All fees collected shall be deposited in the School Facility Fund and available for apportionment as directed by the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
2. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds for a SFP project, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

- (1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.
- (2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.
- (3) All construction activities are at least 50 percent complete.
- (4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
 - (2) Completed all California Environmental Quality Act requirements.
 - (3) Obtained final approval of the site by the CDE.
 - (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.
- (c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be any of the following:

(1) An Approved New Construction or Modernization Adjusted Grant Application; or

(2) A school district certification that the final building plans for the project have been submitted to and accepted by the DSA for review and approval; or

(3) An approved separate site funding application pursuant to Section 1859.81.1(a) or an approved environmental hardship funding application pursuant to Section 1859.75.1 or an approved Preliminary Apportionment pursuant to Section 1859.140, that met the criteria of Section 1859.142(b); or

- (4) Other evidence satisfactory to the Board detailing the reason(s) that plans have not been completed and accepted by the DSA. If the Board

determines that substantial progress has been made pursuant to Education Code Section 17076.10(b), the Board shall condition its finding of substantial progress upon the district's commitment to complete and submit an Approved New Construction or Modernization Adjusted Grant Application within a period not to exceed 18 months from the date of the Board's determination of substantial progress.

After the Board has received the progress report required in Section 1859.104(b) for items (a), (b), and (c) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a), (b), and (c) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the Form SAB 50-06, to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17076.10 and 17077.40, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of subsection (c), new subsections (c)(1)-(4) and amendment of antepenultimate and penultimate paragraphs filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
12. Amendment of subsection (a), penultimate paragraph and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsections (c) and (c)(4) filed 5-1-2003 as an emergency; operative 5-1-2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

(1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.

(2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105.2. Program Accountability for District-Owned Site Acquisition Cost.

When the district has received funds pursuant to Section 1859.74.5 for a district-owned site and has not submitted the certification required pursuant to Section 1859.104(d), the site apportionment is subject to the provisions of material inaccuracy as prescribed in Education Code Section 17070.51.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51 and 17072.12, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

(c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on Form SAB 50-06, an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP, Charter School, and Joint-Use projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint-Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

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

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251(b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50(b), the

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

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
8. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 2-13-2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2-13-2003 (Register 2003, No. 4). A Certificate of Compliance must be transmitted to OAL by 6-13-2003 or emergency language will be repealed by operation of law on the following day.
10. Amendment of first paragraph and penultimate paragraph filed 5-1-2003 as an emergency; operative 5-1-2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application, with the exception of funding applications identified in Subsection (a) below, that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC. School districts that have already received a site apportionment under Section 1859.81.1(a) may withdraw the application and file as an environmental hardship pursuant to Section 1859.75.1 without forfeiting

their original site apportionment, provided that the new application does not exceed the amount already apportioned.

A funding application, with the exception of funding applications identified in Subsection (a) below, submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

(a) A district that submitted an Approved Application request for either a Modernization Adjusted Grant or a Separate Design Apportionment for a modernization project pursuant to Section 1859.81.1 that meets the criteria in (1) and (2) below must submit a new Form SAB 50-04, that meets the criteria in Subsections (b) or (c) no later than 60 calendar days after the effective date (September 16, 2002) of this Subsection:

(1) The Approved Application was received by the OPSC after April 29, 2002 but no later than the date this Subsection becomes effective (September 16, 2002).

(2) The Approved Application has not received an approval or has received an approval pursuant to Section 1859.95, but has not received an apportionment.

(b) The new Form SAB 50-04 identifies the same number of pupils assigned to the original project or a lesser amount that is not less than 37.5 percent of the pupils originally assigned to the project (round up). In this case, the district will be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b). If the project was approved as a financial hardship project under the provisions of Section 1859.81, the project shall maintain its financial hardship status, however, the district will be subject to a financial review pursuant to Section 1859.81(a) to determine if there are additional district funds available for the project.

(c) The new Form SAB 50-04 identifies a lesser number of pupils assigned to the project that does not exceed an amount determined by multiplying the pupils assigned to the original project by 37.5 percent (round down). In this case, the district will not be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b).

(d) If a new Form SAB 50-04 is submitted under the provisions of subsection (b), the Architect of Record or Design Professional certification made on the original Form SAB 50-04 will be accepted as satisfying the requirements of the new Form SAB 50-04.

(e) Any Approved Application request that meets the requirements of Subsection (a) will be withdrawn 60 calendar days after the date Subsection (a) becomes effective (September 16, 2002), if the district does not submit a new Form SAB 50-04 conforming to either Subsections (b) or (c).

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(f) prior to submittal of Form SAB 50-04.

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9. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of subsection (c), new subsections (c)(1)-(4) and amendment of antepenultimate and penultimate paragraphs filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
12. Amendment of subsection (a), penultimate paragraph and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsections (c) and (c)(4) filed 5-1-2003 as an emergency; operative 5-1-2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

- (1) Obtained the final appraisal of the site.
- (2) Completed all California Environmental Quality Act requirements.
- (3) Obtained final approval of the site by the CDE.
- (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one-year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

- (1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.
- (2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105.2. Program Accountability for District-Owned Site Acquisition Cost.

When the district has received funds pursuant to Section 1859.74.5 for a district-owned site and has not submitted the certification required pur-

suant to Section 1859.104(d), the site apportionment is subject to the provisions of material inaccuracy as prescribed in Education Code Section 17070.51.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51 and 17072.12, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

(c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on Form SAB 50-06, an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP, Charter School, and Joint-Use projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint-Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

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

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17075.1(b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50(b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards. Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
6. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
8. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 1-4-2003 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 2-13-2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2-13-2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-13-2003 or emergency language will be repealed by operation of law on the following day.
10. Amendment of first paragraph and penultimate paragraph filed 5-1-2003 as an emergency; operative 5-1-2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2003 or emergency language will be repealed by operation of law on the following day.
11. Amendment of section and NOTE refiled 6-13-2003 as an emergency; operative 6-13-2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-13-2003 or emergency language will be repealed by operation of law on the following day.

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application, with the exception of funding applications identified in Subsection (a) below, that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resub-

mitted application will receive a new processing date by the OPSC. School districts that have already received a site apportionment under Section 1859.81.1(a) may withdraw the application and file as an environmental hardship pursuant to Section 1859.75.1 without forfeiting their original site apportionment, provided that the new application does not exceed the amount already apportioned.

A funding application, with the exception of funding applications identified in Subsection (a) below, submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50-04. The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

(a) A district that submitted an Approved Application request for either a Modernization Adjusted Grant or a Separate Design Apportionment for a modernization project pursuant to Section 1859.81.1 that meets the criteria in (1) and (2) below must submit a new Form SAB 50-04, that meets the criteria in Subsections (b) or (c) no later than 60 calendar days after the effective date (September 16, 2002) of this Subsection:

(1) The Approved Application was received by the OPSC after April 29, 2002 but no later than the date this Subsection becomes effective (September 16, 2002).

(2) The Approved Application has not received an approval or has received an approval pursuant to Section 1859.95, but has not received an apportionment.

(b) The new Form SAB 50-04 identifies the same number of pupils assigned to the original project or a lesser amount that is not less than 37.5 percent of the pupils originally assigned to the project (round up). In this case, the district will be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b). If the project was approved as a financial hardship project under the provisions of Section 1859.81, the project shall maintain its financial hardship status, however, the district will be subject to a financial review pursuant to Section 1859.81(a) to determine if there are additional district funds available for the project.

(c) The new Form SAB 50-04 identifies a lesser number of pupils assigned to the project that does not exceed an amount determined by multiplying the pupils assigned to the original project by 37.5 percent (round down). In this case, the district will not be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b).

(d) If a new Form SAB 50-04 is submitted under the provisions of subsection (b), the Architect of Record or Design Professional certification made on the original Form SAB 50-04 will be accepted as satisfying the requirements of the new Form SAB 50-04.

(e) Any Approved Application request that meets the requirements of Subsection (a) will be withdrawn 60 calendar days after the date Subsection (a) becomes effective (September 16, 2002), if the district does not submit a new Form SAB 50-04 conforming to either Subsections (b) or (c).

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(f) prior to submittal of Form SAB 50-04.



JACK O'CONNELL
State Superintendent of Public Instruction

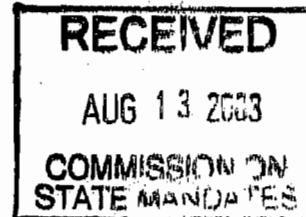
CALIFORNIA
DEPARTMENT
OF
EDUCATION

1430 N Street

P.O. Box 944272

Sacramento, CA

94244-2720



August 11, 2003

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

Correspondence from the Commission on State Mandates (CSM) requests comments from interested parties on a number of test claims submitted by the Clovis Unified School District. The test claims are: School Facilities Funding Requirements (02-TC-30), Design Build Contracts (02-TC-45), Developer Fees (02-TC-42), and Deferred Maintenance Programs (02-TC-44). Due to the fact that the comments for these test claims are generally due at the same time and the test claims generally deal with facilities or related issues, we have consolidated our comments into one piece of correspondence. Our comments for each test claim are as follows.

School Facilities Funding Requirements (02-TC-30)

This is not a mandated program. It is one of various capital funding mechanisms available to school districts for the funding of facilities. School districts elect to participate in this program and any requirements regarding this program are applicable only after districts elect to participate in this program.

Design Build Contracts (02-TC-45)

This is not a mandated program. It is one of several delivery options that school districts can choose to pursue, if school districts elect to enter into design build contracts. Other factual inaccuracies in this claim include:

Page 13, line 10 of the claim states: Education Code Section 17250.35, subdivision (a), requires the school district governing board to retain the services of an architect or structural engineer to monitor compliance with the established performance criteria and design standards.

This is incorrect. The Education Code states that the governing board *may*, and is *strongly encouraged* to, retain the services of an architect or structural engineer throughout the course of the project.

Page 14, line 6 of the claim states: Subdivision (d) assigns all liability for the facility to the design-build entity.

This is incorrect. The Education Code states that the design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

Page 15, line 5 of the claim states: To the extent that these guidelines are adopted, districts would be required to comply.

This is incorrect. The Education Code only states that the governing board shall review the guidelines. The Education Code does not require compliance with the guidelines. It should be noted that the claimant correctly interpreted this provision on page 5, line 4 of the test claim.

Developer Fees (02-TC-42)

This is not a mandated program. This is a funding option available to local school boards, whereby they can elect to establish developer fees to pay for the construction or re-construction of facilities. Any requirements that apply to the establishment and collection of developer fees are applicable only after districts elect to levy development fees, charges, and/or dedications.

Deferred Maintenance Programs (02-TC-44)

This is not a mandated program. School district elect to participate in this program in order to receive funding for deferred maintenance and for the removal and containment of asbestos or lead. Any requirements regarding this program are applicable only after districts elect to participate in the program.

As required by CSM regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list that accompanied your letter have been provided copies of this letter via either the United States Mail or, in the case of State agencies, Interagency Mail Service.

Should you have questions, please contact Juan Sanchez at (916) 322-3074.

Sincerely,



Gerald C. Shelton, Director
Fiscal and Administrative Services Division

JS:db

PROOF OF SERVICE

CALIFORNIA DEPARTMENT OF EDUCATION

Test Claim Name: School Facilities Funding Requirements, Design Build Contracts, Developer Fees, and Deferred Maintenance Programs

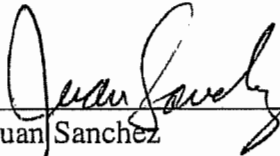
Claim Number: (02-TC-30), (02-TC-45), (02-TC-42), (02-TC-44)

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1430 Street, Suite 2213, Sacramento, CA 95814.

On August 11, 2003 I served the attached comment of the California Department of Education in said cause, by facsimile to the Commission on State Mandates and by placing a true copy Therefore: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1430 Street, Suite 2213, Sacramento, CA 95814, for Interagency Mail Service, to the parties listed on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the fore going is true and correct, and that this declaration was executed on August 11, 2003, at Sacramento, California.



Juan Sanchez

MAILING LIST

Ms. Harmeet Barkschat
Mandate Resource Services
325 Elkhorn Blvd. #307
Sacramento, CA 95842

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Mr. Michael Havey
State Controllers Office (B-08)
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Mr. Bill McGuire
Clovis USD
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Clovis, CA 936110599

Mr. Thomas J. Donner
Santa Monica Community College
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Santa Monica, CA 904051628



February 9, 2004

RECEIVED

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

FEB 10 2004

**COMMISSION ON
STATE MANDATES**

Dear Ms. Higashi:

The Department of Finance has reviewed the Commission on State Mandates' Test Claim No. 02-TC-30, School Facilities Funding Requirements, submitted by the Clovis Unified School District (CUSD). The Claimant cites more than 150 statutes in nine chapters of the Education Code and certain sections in Title 2 of the California Code of Regulations as the basis of the test claim. The test claim alleges State-mandated reimbursable costs for programs, policies, and procedures that school districts and community college districts must comply with in order to receive state funded bond money for new construction, renovation, and modernization projects through the Leroy F. Green State School Building Lease-Purchase Law of 1976, the Leroy F. Green School Facilities Act of 1988, and other cited funding sources. As explained below, we find nothing in the statutes or regulations cited by the Claimant that makes a school district's participation in the funding programs a compulsory activity. Instead, we conclude that a district's participation in any of the cited programs is voluntary and the result of the district's discretionary choice. We also note that 25 to 30 percent of California's nearly 1,100 K-12 school districts do not participate in the state-funded school facility programs, which demonstrates that the programs are not compulsory. Consequently, we believe that a school district's compliance with school facilities funding requirements does not create a State-mandated reimbursable activity. In addition, we cite two other issues—misstatements of the Education Code and existing fee authority—as reasons for denying this claim.

Strict Accountability in Local School Construction Bonds Act of 2000 (Part 10, Chapter 1.5 of the Education Code)—The Claimant cites Education Code Sections 15271 et seq. as a partial basis for the test claim. However, Education Code Section 15100, Chapter 1.0, Part 10 states "Except as otherwise provided by law, the governing board of any school district or community college district may, when in its judgment it is advisable, and shall, upon a petition of the majority of the qualified electors residing in the school district or community college district, order an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the following purposes: (a) The purchase of school lots. (b) The building or purchasing of school buildings..." (Underlining added.) Further, Education Code Section 15266 states, in part, "(a) As an alternative to authorizing and issuing bonds pursuant to Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), the governing board of a school district or community college district may decide, pursuant to a two-thirds vote and subject to

Section 15100 or 15302 as appropriate, to pursue the authorization and issuance of bonds..." (Underlining added.)

As such, notwithstanding the requirements of other provisions of this chapter, we note that when a school district elects to participate in a voluntary program, the "downstream" activities of the district do not constitute a State-mandated reimbursable program. In *Department of Finance v. Commission On State Mandates (2003) 30 Cal. 4th 727*, the California Supreme Court confirmed the merits of the argument that where a local government entity voluntarily participates in a statutory program, the State may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for increased level of activity.

Bonds of School Facilities Improvement Districts (Part 10, Chapter 2 of the Education Code)—The Claimant cites Education Code Sections 15301 et seq. as a partial basis for the test claim. However, we note that Education Code Section 15301(a) states that "Any school district or community college district that has a community facilities district formed pursuant to ... that has as one of its purposes the construction of school facilities ... may proceed under this chapter." (Underlining added.) Further, Education Code Section 15301(c) states that " A school district or community college district may proceed under this chapter without meeting the requirements of subdivision (a) and (b) if the governing board of the school district or community college district determines that it is necessary and in the best interest of the school district or community college district, respectively, to form a school facilities improvement district pursuant to this chapter to finance any or all of the improvements set forth in Section 15302." (Underlining added.) As noted and consistent with the *Department of Finance v. Commission On State Mandates (2003) 30 Cal. 4th 727*, when a school district elects to participate in a voluntary program, the "downstream" activities of the district do not constitute a State-mandated reimbursable program.

State School Building Lease-Purchase Law of 1976 (Part 10, Chapter 12 of the Education Code)—The Claimant cites Education Code Section 17006 et seq. and Title 2, California Code of Regulation, commencing with Section 1865.1 as a partial basis for the test claim. On page 20 of the Claimant's Declaration, the Claimant describes the "application process" for this chapter as "enter into an agreement with the State to receive funds for the construction, reconstruction, or replacement of school facilities from the State Allocation Board, pursuant to Title 2, California Code of Regulations Section 1865.3." (Underlining added.) Education Code Section 17002(d) states that a "Project means the facility being constructed or acquired by the state for rental to the applicant school district and may include the reconstruction ... " (Underlining added.) Further, California Code of Regulations Section 1865.1(d) defines "Application. A request pursuant to the act to lease a project..." (Underlining added.) We noted that the terms "enter into an agreement" and "applicant school district" indicated that a school district's participation in the Lease-Purchase is voluntary. Consequently, consistent with the *Department of Finance v. Commission On State Mandates (2003) 30 Cal. 4th 727*, when a school district elects to participate in a voluntary program, the "downstream" activities of the district do not constitute a State-mandated reimbursable program.

Leroy F. Greene School Facilities Act of 1998 (Part 10, Chapter 12.5 of the Education Code)—The Claimant cites Education Code Section 17070.33 et seq. as a partial basis for the test claim. Similar to a school district's participation in the State School Building Lease Purchase program, the School Facilities Act is based on a voluntarily submitted application by a district. California Code of Regulations Section 1859.2 states "'Application" means a request pursuant to the Act to receive an eligibility determination and/or funding for a school district." Therefore, as previously mentioned, when a school district elects to participate in a voluntary

program, the "downstream" activities of the district do not constitute a State-mandated reimbursable program.

Emergency School (State Relocatable) Classroom Law of 1979 (Part 10, Chapter 14 of the Education Code)—The Claimant cites Education Code Section 17088.3 et seq. as a partial basis for the test claim. Chapter 14 authorizes the State Allocation Board (SAB) to own, have maintained, and lease portable, relocatable classrooms to qualifying school districts or county superintendents of school. Education Code Section 17087(c) states, "'Lessee' means a school district or county superintendent of schools to whom the board has leased a portable classroom." Further, we note that, in part, Section 1862.52(a) of Title 2, California Code of Regulation states, "Applications for lease of portable classrooms pursuant to Chapter 25, shall contain the following: A resolution on forms provided by the Board, by the governing board of the eligible district authorizing the filing of an application and the signing of a lease agreement or agreements for such numbers of portable classrooms as the Board may approve...." (Note that Chapter 277, Statutes of 1996 repealed and renumbered Chapter 25 of Part 10 of the Education Code to Chapter 14 of Part 10 of the Education Code.)

We find no provision in this chapter that requires a school district to enter into a lease agreement with the SAB. Moreover, by authorizing this lease program—a voluntary agreement between two parties—the statutes have created a voluntary program for participating school districts. As such, notwithstanding the requirements of other provisions of this chapter, we note that when a school district elects to participate in a voluntary program, the "downstream" activities of the district do not constitute a State-mandated reimbursable program.

School District Revenue Bond (Part 10, Chapter 15 of the Education Code)—The Claimant cites Education Code Section 17110 et seq. as a partial basis for the test claim. However, Education Code Section 17110 states that "The governing board of a school district may issue for sale revenue bonds to finance the construction of joint occupancy facilities as prescribed ... which facilities are necessary to relieve overcrowded schools..." (Underlining added.) Because of the permissive nature of this section, the "downstream" activities of the district do not constitute a State-mandated reimbursable program.

Public Disclosure of Non-Voter-Approved Debt (Part 10, Chapter 16 of the Education Code)—The Claimant cites Education Code Section 17150 as a partial basis for the test claim. However, Education Code Section 17150 states that "Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing school construction..." (Underlining added.) Nothing in this chapter requires the governing board of a school district to enter into non-voter-approved debt. Instead, the Education Code places this choice with the governing board, making it a discretionary action. Again, the "downstream" activities of the district do not constitute a State-mandated reimbursable program.

California School Finance Authority (Part 10, Chapter 18 of the Education Code)—The Claimant cites Education Code Section 17180 et seq. as a partial basis for the test claim. Chapter 18 describes the actions of a "participating district," including when the district acts as an agent of the California School Finance Authority (CSFA) to carry out the mission of the CSFA. Education Code Section 17173(g) states that "'Participating district' means a school district or community college district which undertakes, itself, or through an agent, the financing or refinancing of a project or of working capital pursuant to this chapter..." Nothing in this chapter requires a school district to become a "participating district." Rather, a district becomes

a "participating district" based on its own discretion. Consequently, these voluntary activities of the district do not constitute a State-mandated reimbursable program.

Misstatements of Education Code—We noted numerous occasions in the Claimant's test claim where the Claimant's description of Education Code provisions inaccurately represents the wording of the statute. For example, on page 7 of the test claim, the Claimant states "Chapter 132, Statutes of 2001, Section amended Education Code Section 15266³. Subdivision (a) provides that the governing board of a school or community college district, shall, as may be necessary, pursue the authorization and issuance of bonds in accordance ..." (Underlining added.) However, Education Code Section 15266 (a) states that "As an alternative to authorizing and issuing bonds pursuant to Chapter 1 ..., the governing board of a school district or community college district may decide, pursuant ..." (Underlining added.) By making this change, the Claimant is changing an otherwise permissive action of the board to an action that appears compulsory. We find no provision in the Education Code that allows for the substitution between the words "may" and "shall." Consequently, throughout its test claim, the Claimant is intentionally changing the context and meaning of many provisions of the Education Code to make them appear compulsory when in actuality, the cited codes are permissive. In the first 200 pages of the test claim, we found more than three-dozen misstatements of this type.

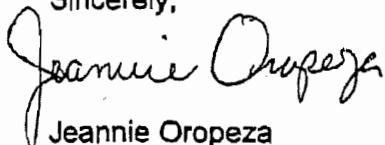
Fee Authority—Education Code Section 17620(a)(1) states: "The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities..." Government Code Section 17556(d) provides that the Commission shall not find a reimbursable mandate if the local agency has "authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Further, in *Kathleen Connell v. Superior Court of Sacramento County (1997) 59 Cal.App.4th 382*, the court found that the fee authority can exist even if it is not economically feasible or practical to implement the fee.

Based on the aforementioned reasons, we conclude that the cited State law does not create a State-mandated reimbursable activity; therefore the test claim should be denied.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 11, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Walt Schaff, Principal Program Budget Analyst at (916) 445-0328, or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF WALT SCHAFF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-30

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the various statutes sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

February 9, 2004
at Sacramento, CA

Walt Schaff
Walt Schaff

PROOF OF SERVICE

Test Claim Name: School Facilities Funding Requirements
Test Claim Number CSM-02-TC-30

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On February 9, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

E-08

Department of Education
Fiscal and Administrative Services Division
Attention: Gerald Shelton
1430 N Street, Suite 2213
Sacramento, CA 95814

A-17

Office of Public School Construction
Attention: Luisa M. Park
1130 K Street, Suite 400
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

Centration, Inc.

Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Mandated Cost Systems, Inc.

Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Clovis Unified School District
Attention: Bill McGuire
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Clovis, CA 93611-0599

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

Mandate Resource Services
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5325 Elkhorn Blvd., Suite 307
Sacramento, CA 95842

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 9, 2004, at Sacramento, California.

Chad Polue for

Jennifer Nelson

SixTen and Associates

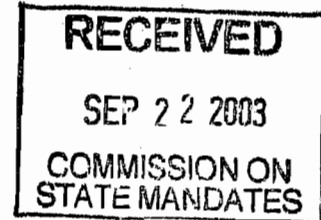
Mandate Reimbursement Services

EXHIBIT D

KEITH B. PETERSEN, MPA, JD, President
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Telephone: (858) 514-8605
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September 13, 2003



Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-30
Clovis Unified School District
School Facilities Funding Requirements

Dear Ms. Higashi:

I have received the comments of the State Superintendent of Public Instruction ("SPI") dated August 11, 2003, to which I now respond on behalf of the test claimant.

Although none of the objections generated by SPI are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

1. **The Comments of the SPI are Incompetent and Should be Excluded**

Test claimant objects to the Comments of the SPI, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The SPI comments do not comply with this essential requirement.

2. The Comments of the SPI do not Merit a Response

SPI comments that the test claim legislation is but one of various capital funding mechanisms available for the funding of facilities and that school districts elect to participate in this program. SPI then merely concludes that the program is discretionary and, therefore, not a mandated program.

The Commission letter date July 11, 2003 requested that the SPI provide a response as to whether the alleged statutes and code section constitute mandates subject to state reimbursement. This requires an analysis to determine whether the alleged mandates meet the requirements of Government Code section 17514 and specific court decisions. The SPI's response does not provide that analysis, so it is incomplete.

The response of the SPI should be ignored as legally incompetent for his failure to comply with Section 1183.02 of Title 5, California Code of Regulations and is incomplete.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

Commission on State Mandates

Original List Date: 6/26/2003 Mailing Information: Other
Last Updated:
List Print Date: 07/10/2003
Claim Number: 02-TC-30
Issue: School Facilities Funding Requirements

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Claimant Representative

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Claimant

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Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Tel: (916) 445-0554
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Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814

Tel: (916) 445-8913
Fax: (916) 327-0225

DECLARATION OF SERVICE

RE: School Facilities Funding Requirements
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of September 13, 2003, addressed as follows:

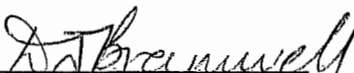
Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

- | | |
|---|--|
| <p><input checked="" type="checkbox"/> U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.</p> <p><input type="checkbox"/> OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:</p> <p>_____ (Describe)</p> | <p><input type="checkbox"/> FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.</p> <p><input type="checkbox"/> A copy of the transmission report issued by the transmitting machine is attached to this proof of service.</p> <p><input type="checkbox"/> PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).</p> |
|---|--|

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 9/16/03, at San Diego, California.


Diane Bramwell

SixTen and Associates

Mandate Reimbursement Services

Exhibit E

EITH B. PETERSEN, MPA, JD, President
252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

RECEIVED

March 12, 2004

MAR 23 2004

**COMMISSION ON
STATE MANDATES**

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-30
Clovis Unified School District
School Facilities Funding Requirements

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated February 9, 2004, to which I now respond on behalf of the test claimant.

A. The Opposition and Comments of the DOF are Incompetent and Should be Excluded

Test claimant objects to the comments of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response [such as, "We also note that 25 to 30 percent of California's nearly 1,100 K-12 school districts do not participate in the state-funded school facility

programs...”¹ since DOF has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

“If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency’s response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant’s personal knowledge or information or belief.”

The DOF’s comments do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of the DOF not be included in the Staff’s Analysis.

B. Obtaining School Facilities Funding is not Optional

The test claim presents a comprehensive analysis of the several statutory mechanisms available to school districts to obtain state money for the financing of new schools and modernization projects. DOF does not deny that any of the alleged mandated activities do, in fact, exist. Instead and as answered below, DOF excises language out of the several statutes to come to the conclusion that each and every one of the programs is optional and, therefore, all “downstream activities” are also optional.

School districts that need new facilities or modernization projects have, basically, three sources of funds for new facilities and modernization projects: the proceeds of their own district bonds, state funds, and developer fees. Each of the three are needed to do the job.

(1) **A District’s Ability to Borrow for Needed School Facilities is Strictly Limited**

The authority to issue local school bonds is found in Chapter 1 of Part 10 in Division 1 of Title 1 of the Education Code, commencing at Section 15100. This authority is strictly limited.

¹ Such spurious remarks could as likely mean that 25 to 30 percent of California’s schools are not currently building new facilities.

Education Code Section 15100 allows a district, when in its judgment it is advisable, and requires it, upon a petition of the majority of its qualified electors, to order an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the purchase of school lots, the building or purchasing of school buildings and the making of alterations or additions to school buildings. Section 15102 provides that such bonded indebtedness shall not exceed 1.25 percent of the taxable property of the district. Section 15106 provides that unified school districts or community college districts may not exceed 2.5 percent of the taxable property of the district.

Chapter 1.5 of Part 10 sets forth the Strict Accountability in Local School Construction Bonds Act of 2000, commencing with Section 15264. ("Proposition 39 bonds") Here again, bonded indebtedness is strictly limited.

Section 15266 provides that the Act is an alternative to authorizing and issuing bonds pursuant to Chapter 1 or Chapter 2 (commencing with Section 15300) when the governing board of a school district or community college district decides, pursuant to a two-thirds vote, to pursue the authorization and issuance of bonds for school facilities. Section 15268 provides that such bonded indebtedness shall not exceed 1.25 percent of the taxable property of the district and may only be issued if the tax rate levied would not exceed thirty dollars (\$30) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution. Section 15270 provides that a unified school district may not authorize or issue bonds that exceed 2.5 percent of the taxable property of the district and may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars (\$60) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

Chapter 2 of Part 10 sets forth the Bonds of School Facilities Improvement Districts Act, commencing with Education Code Section 15300. Here again, bonded indebtedness is strictly limited.

Section 15300 provides that the chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district and for the issuance of general obligation bonds by the school facilities improvement district. Section 15330 provides that the total

amount of bonds issued shall not exceed 1.25 percent of the taxable property of the school facilities improvement district. Section 15334.5 further provides that no bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106.

(2) The State's Ability to Fully Fund Needed School Facilities is Limited

The California Research Bureau has published a study entitled "School Facility Financing - A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds." (Cohen, Joel, February 1999)² In the study, the plight of school districts is described therein as follows:

"As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 student during the next decade that will require many districts to build new schools to meet burgeoning student demand." (Cohen, *op.cit.*, at page 1)

This independent study does not say school districts will have the discretion to build new schools, it concludes that districts will be required to build them. The report goes on to say:

"It is clear that throughout this history there was never enough State money available to school districts for facility construction or repair. In fact, in spite of the \$6.7 billion approved by Proposition 1A, experts estimate that an additional \$10 billion will be required during the next decade. This paper discusses how the constant shortage of funds caused districts to use 'whatever' means available to them to secure funding. (Cohen, *op.cit.*, at page 2)

Developer fees are the major "whatever" available to school districts to secure necessary funding. The historical path to this situation was explained:

² A true and exact copy of the report as it appears on the current website of the California Research Bureau is attached hereto as Exhibit "A" and is incorporated herein by reference.

"With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority..." (Cohen, *op.cit.*, at page 7)

Therefore, in the post-Proposition 13 era, school financing became a collective effort:

"In 1986, the Legislature recognized that resources were scarce and that no one governmental or private entity could finance school construction. It attempted to equalize the burden of school facilities financing between state government, local government and the private sector. This concept was known as the 'three legged stool.' The idea was that the state would provide funds through bonds. Local government would provide its share through special taxes, general obligation, Mello-Roos and other bond proceeds. The private sector would provide funds through developer fees." (Cohen, *op.cit.*, at page 15)

Even with Proposition 1A money, the report still projected a shortfall of available funds for school construction:

"...by 1998, the backlog of school construction projects that were approved by the State Allocation Board, but unfunded, totaled more than \$1.3 billion...there were times during the past five decades when bond money was not available for periods of four or six years. (¶) The Department of Finance has estimated that \$16 billion is needed over the next decade for public school construction and rehabilitation....in the end, Proposition 1A was passed....However, while the amount appears to be generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following the bond issue will require roughly an additional \$10 billion in State money." (Cohen, *op.cit.*, at page 19)

In fact, the worm is growing so large that it will soon swallow the fish:

"The State's bond capacity may not be able to fund every State infrastructure need, including schools, transportation, prisons and water during the next decade. School facility needs are estimated

conservatively at roughly \$10 billion, while some estimates have put the figure at \$40 billion for the next decade alone. According to the Department of Finance, the State can afford to service approximately \$25 billion in additional debt. Thus, school facility financing alone could incur the entire debt capacity of the State.” (Cohen, op.cit., at page 36)

(3) Subsequent Events Have Not Abated the Need

On November 5, 2002, California passed Proposition 47, the Kindergarten-University Public Education Facilities Bond Act of 2002. (Education Code Sections 100600, et seq.) This bond act provided 13.05 billion dollars for school facilities construction. Of this amount, 11.4 billion dollars was allocated to K-12 school district new construction and modernization. (See: Education Code Section 100620)

Proposition 55 appeared on the March 2, 2004 ballot which enacted the Kindergarten-University Public Education Facilities Bond Act of 2004. According to the official ballot information pamphlet³ prepared by the California Attorney General and published by the California Secretary of State, through September 2004, school districts identified a need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils. The state cost to address these needs was estimated to be roughly \$16 billion, yet only \$10 billion was earmarked for K-12 school districts.

So it can be seen that there still is not enough state money to full satisfy the need for school facilities construction.

For the DOF to argue that school districts need not use school facilities funding mechanisms (along with the two other legs of the stool) to build new, and modernize old, schools is so far beyond the realm of practical reality so as not to be seriously considered.

C. Legal Compulsion is not Necessarily Required For a Finding of a Mandate

A finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate. The controlling case law on the subject of non-legal

³ A true and exact copy of that portion of the ballot information pamphlet relative to Proposition 55 (excluding partisan arguments and text of proposed law) as it appears on the website of the Secretary of State is attached hereto as Exhibit “B” and is incorporated herein by reference.

compulsion is still City of Sacramento v. State of California (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II*).

(1) Sacramento II Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(2) Sacramento I Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In City of Sacramento v. State of California (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "mandate of the federal government" under Section 9(b).⁴

⁴ Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion,

In other words, *Sacramento I* concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to “compulsion”.

(3) *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the “program” and “service” standards for mandatory subvention because it imposed no “unique” obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court also overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to “compulsion”.

(4) *Sacramento II* “Compulsion” Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California’s failure to comply with the federal “carrot and stick” scheme were so substantial that the state had no realistic “discretion” to refuse.

In disapproving *Sacramento I*, the court explained:

“If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments.” (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state’s employers faced only with the federal tax. The court replied to this suggestion:

“However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards.” (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was

require an expenditure for additional services or which unavoidably make the provision of existing services more costly.”

so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically “without discretion” to do otherwise.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of “mandatory” versus “optional”:

“Given the variety of cooperative federal-state-local programs, we here attempt no final test for ‘mandatory’ versus ‘optional’ compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.” (Opinion, at page 76)

(5) The “Kern” Case Did Not Change the Standard

In *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 736, (“Kern”) the supreme court first made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

“For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate.” (Emphasis in the original, underlining added)

After concluding that the facts in *Kern* did not rise to the standard of non-legal compulsion, the court reaffirmed that either double taxation or other draconian consequences could result in non-legal compulsion:

“In sum, the circumstances presented *in the case before us* do not constitute the type of non-legal compulsion that reasonably could constitute, in claimants’ phrasing, a ‘de facto’ reimbursable state mandate. Contrary to the situation that we described in (*Sacramento II*), a claimant that elects to discontinue participation in one of the programs *here at issue* does not face ‘certain and severe...penalties’ such as

'double...taxation' or other 'draconian' consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations." (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

The test for determining whether there is a mandate is whether compliance with the test claim legislation is a matter of true choice, that is whether participation is truly voluntary. *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582 In light of the history of funding new school facilities and modernization projects (*supra*), the only real "choice" school districts have is to either (1) build and modernize or (2) not educate their children. This is not a true choice, school districts are compelled to use state funds to provide suitable housing for their students. Not educating their children is so far beyond the realm of practical reality, that it leaves school districts without any rational discretion.

D. DOF's Arguments Deny Students Equal Protection of the Laws

Test claimant requests the Commission to take notice of the Comments of the DOF dated February 9, 2004 filed in the test claim for Developer Fees. (Test Claim 02-TC-42) Those comments argue that applying for developer fees is an "optional" decision and all "downstream activities" are therefore discretionary.

Here, DOF argues that applying for state school facilities funding is also an "optional" decision and all downstream activities are therefore discretionary.

Read individually or collectively, the argument of the DOF is that all state programs are "optional" and school districts should build necessary schools and repair dilapidated facilities "on their own" using their own funds.

Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all. The Constitution in 1849 directed the Legislature to "provide for a system of common schools, by which a school shall be kept up and supported in each district." That constitutional command, with the additional proviso that the school maintained by each district be "free" has persisted to the present day. *Butt v. State of California* (1992) 4 Cal.4th 668, 680⁵ In *Butt* the court explained:

⁵ Pursuant to Title 2, California Code of Regulations, Section 1183.03(2), a copy of *Butt v. State of California* is attached hereto as Exhibit "C".

“Accordingly, California courts have adhered to the following principles: Public education is an obligation which the State assumed by the adoption of the Constitution. (Citations) The system of public schools, although administered through local districts created by the Legislature, is ‘one system...applicable to all the common schools...’ (Citation) In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. (Citation) ‘Management and control of the public schools [is] a matter of state[, not local,] care and supervision...’ (citations) The Legislature’s ‘plenary’ power over public education is subject only to constitutional restrictions. (Citations) Local districts are the State’s agents for local operation of the common school system (Citations), and the State’s ultimate responsibility for public education cannot be delegated to any other entity. (citation)” (Opinion, at pages 680-681)

Then after the court reminded us that, in Serrano I⁶, the court had struck down the then existing State public school financing scheme, which caused the amount of basic revenues per pupil to vary substantially among the respective districts depending on their taxable property values (Opinion, at page 683), the Supreme Court concluded:

“It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity. (¶)...Whatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State.” (Opinion, at page 685)

DOF’s argument that school districts need not participate in the various school facilities funding programs set forth in this and other test claim legislation is tantamount to saying that each school district is “on its own” when it comes to needed school construction. Since the quality of school facilities would then depend on the wealth of

⁶ Serrano v. Priest (1971) 5 Cal.3d 584

each individual district, the result would be a violation of the equal protection laws of the State constitution. (Article I, §7, subdivisions (a),(b); Article IV, §16, subdivision (a))

E. Districts do not have Authority to Levy Fees, Assessments and Taxes to Fund the Costs of New Construction or Modernization

DOF offers Government Code Section 17556, subdivision (d) for the proposition that districts are precluded from recovery since districts have the authority to levy fees, assessments and taxes under Education Code section 17620. Developer fees are not service charges, fees or assessments to the consumer of public services. Government Code section 17556(d) refers to “service charges, fees or assessments”. Education Code section 17620 refers to a “fee, charge, dedication or other requirement”. They are not the same.

In addition, Section 17556 presupposes the existence of a mandate which is contrary to DOF’s position. Also, subdivision (d) refers to the levy of service charges, fees and assessments against students. The levy of service charges, fees and assessments against students for any aspect of public education would be constitutionally prohibited by Article 9, Section 5, of the California constitution which requires the state to provide free schools.

In addition, the California Department of Education has issued Fiscal Management Advisory 97-02⁷ which makes it quite clear that tuition, fees, deposits and other charges may only be made when specifically authorized by law. The examples set forth in the advisory clearly demonstrate that the tuition, fees, deposits and other charges referred to in Government Code Section 17556, subdivision (d), clearly do not encompass sources for the construction of school facilities.

The facts of this test claim are clearly distinguishable from those which faced the court in Connell v. Superior Court (1997) 59 Cal.App.4th 382, relied upon by DOF. In Connell, the amount or availability of the fees⁸ were not restricted, the water district could charge fees in any amount it chose to levy. Here, there is no statute that allows school districts to charge fees (other than developer fees) to pay for school facilities

⁷ A copy of Fiscal Management Advisory 97-02 and its cover letter dated October 30, 1997 is attached hereto as Exhibit “D” and is incorporated herein by reference.

⁸ Note: In Connell, the court limited its opinion to the authority to levy “fees” and did not discuss “service charges, fees or assessments”, the language of the statute. (Id., at page 398, fn. 15)

construction. As to developer fees, school districts are limited as to what properties are subject to fees, they are limited as to the amount of the fees they can charge, and they may not charge any fees whatsoever if no developer projects are undertaken. The reason Government Code Section 17556(d) does not bar a finding of costs here is that DOF has made no legal or factual showing that the authorized service charges, fees, or assessments are "sufficient to pay for" the mandated program or increased cost of service. Also, the fees are not part of the same legislation. This issue is a question of fact for each district.

F. Test Claimant Has Not Misstated the Education Code


DOF cites one example of where it believes that test claimant has misstated the education code. The challenged sentence of the test claim⁹ states: "Subdivision (a) provides that the governing body of a school or community college district shall, as may be necessary, pursue the authorization and issuance of bonds in accordance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution..." The statute¹⁰ states "As an alternative...the governing board of a school district or community college district may decide, pursuant to a two-thirds vote..."

The statute provides that districts may undertake a certain course of action. The test claim states that they shall do so "when necessary". There is no conflict.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

⁹ Test claim, page 6, line 9 through page 7, line 3

¹⁰ Education Code Section 15266, subdivision (a)

DECLARATION OF SERVICE

RE: School Facilities Funding Requirements 02-TC-30
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of March 12, 2004 , addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

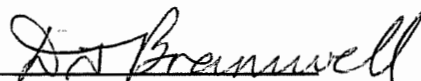
OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

_____ (Describe)

PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 3/18/04 , at San Diego, California.


Diane Bramwell

Commission on State Mandates

Original List Date: 6/26/2003 Mailing Information: Other
Last Updated:
List Print Date: 10/24/2003 **Mailing List**
Claim Number: 02-TC-30
Issue: School Facilities Funding Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen SixTen & Associates 5252 Balboa Avenue, Suite 807 San Diego, CA 92117	Claimant Representative Tel: (858) 514-8605 Fax: (858) 514-8645
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Mr. Bill McGuire Clovis Unified School District 1450 Herndon Avenue Clovis, CA 93611-0599	Claimant Tel: (559) 327-9000 Fax: (559) 327-9129
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Mr. Paul Minney Spector, Middleton, Young & Minney, LLP 7 Park Center Drive Sacramento, CA 95825	Tel: (916) 646-1400 Fax: (916) 646-1300
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Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
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School Facility Financing A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds

By Joel Cohen

*Prepared at the Request of
Senator Quentin Kopp*

FEBRUARY 1999

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EXECUTIVE SUMMARY

As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand. Recognizing the substantial need for infrastructure, in November 1998, California voters passed Proposition 1A, a bond measure that provides \$6.7 billion for public K-12 school construction and repair.

This measure establishes two new programs for the disbursement of bond funds and simplifies the application process by which schools apply for school construction resources. This change in programs, and in the methods by which funds are allocated, is important to the people of the State, as school districts, many of which have facilities in serious disrepair or require new construction, vie for their portion of the \$6.7 billion pie.

Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.

~~In order to understand the significance and relevance of this new process and its concomitant programs, however, it is useful to review the history of school construction financing in California and to understand the various pitfalls that existed under previous programs so as to avoid similar pitfalls in the future. This paper discusses that history and highlights the problems with preexisting programs.~~

It begins with an examination of the State Allocation Board and its staff (the Office of Public School Construction). Specifically, it reviews the role of the Board which is responsible for establishing policies for the distribution of school facility financing funds. It discusses how the Board, which was established in 1947, has evolved during the past five decades from one that set policy for various *loan* programs to one that today sets policy for *grant* programs.

The paper also discusses how various externalities—legislative or voter imposed initiatives, such as Proposition 13—have affected the Board's policies and procedures. The paper notes that the Board changed its policies often, and its policy shifts created an untenable dynamic for school districts as they attempted to secure funding. In particular, the paper highlights how districts were forced to weave their way through a complex, bureaucratic maze of applications, forms, and plans; and how this dynamic forced school districts to employ sophisticated personnel, or to contract with savvy consultants, in order to secure state financing for their construction projects.

This paper also presents a history of bond initiatives during the past five decades. It is clear that throughout this history there was never enough State money available to school districts for facility construction or repair. In fact, in spite of the \$6.7 billion approved by Proposition 1A, experts estimate that an additional \$10 billion will be required during the next decade. This paper discusses how the constant shortage of funds caused districts to use "whatever" means available to them to secure funding.

Voters have consistently been generous in approving the vast majority of statewide bond initiatives. Only three bond proposals out of 24 have failed in the past 50 years, and those that failed did so during times of recession. However, it is not clear how much additional debt voters will be willing to incur. This has especially been true since the passage of Proposition 13 in 1978, when the State began taking on a larger role in supporting school construction than it had before. To that end, this paper discusses how Proposition 1A creates a mechanism for school districts to tap state resources, and how school districts may need to tap other sources of facility funding.

Proposition 1A forges a partnership between the State and school districts for financing the construction and repair of their schools. Under its new programs, the State will provide 50 percent of the cost associated with building new schools, and provide 80 percent of the cost associated with modernizing existing facilities. It requires school districts to match state resources. However, school districts that are unable to offer this match can receive hardship funds based on prescriptive criteria. This paper provides details regarding these new programs and compares them to programs previously administered by the State Allocation Board. It also discusses how the Board is required to respond to district requests.

Proposition 1A is not the only impetus behind simplifying the school facility financing process. Concurrently, the Office of Public School Construction has rewritten the application process for funds to make it more user-friendly to school districts and has even offered applications and program information via the Internet. This paper discusses these changes.

The paper concludes with options that the Governor and the Legislature may wish to consider, including: offering protection to small and rural school districts when bond funds are exhausted; requiring annual financial reporting by the State Allocation Board; providing an on-line technical support for program applicants; and redeveloping the State funding source for school facility construction and rehabilitation.

REQUEST FOR RESEARCH

Programs and administrative procedures in Proposition 1A may produce significant changes to the previous programs and the manner by which the State Allocation Board distributes resources for school facility construction. In light of these changes, Senator Quentin Kopp requested that the California Research Bureau provide research on the following topics:

- A history of the State Allocation Board. How was the board's funding program intended to work and how has it evolved?
- An explanation of the State Allocation Board process. How does the State Allocation Board work? What are the procedures and criteria for receiving allocations? How are priorities set?

INTRODUCTION—THE PASSAGE OF PROPOSITION 1A

On November 3, 1998, California voters passed Proposition 1A - a \$9.2 billion school bond initiative, and the largest of its kind passed in our nation's history. Over the next four years, revenues from Proposition 1A's general obligation bonds will provide \$6.7 billion to public K-12 schools and \$2.5 billion to public colleges and universities for the purposes of constructing new facilities and repairing existing ones.

The State Allocation Board will have the responsibility for determining a fair means of distributing the \$6.7 billion available to K-12 schools. Many experts feel that developing such a system will be a daunting task, in spite of the fact that Proposition 1A/Senate Bill 50 is very prescriptive regarding the allocation of its bond funds.

This paper begins with a history and a discussion of the role of the State Allocation Board. Next, it examines the 24 state bond initiatives since 1947 and discusses how the Board has evolved its policies for distributing resources generated by these bond efforts. It then presents an overview of Proposition 1A and how this initiative creates a new allocation program that differs from previous ones. The paper also discusses the various problems that existed within the State Allocation Board's previous resource allocation systems and how Proposition 1A addresses these problems. It concludes with a section that offers options that the Legislature may wish to consider regarding the policies that the State Allocation Board should use for the equitable distribution of bond funds.

HISTORY OF THE STATE ALLOCATION BOARD AND ITS ROLE IN SCHOOL FACILITY FINANCING

There is a long and complex history regarding public school construction in California. This paper begins a review of the history in 1947¹ when the state legislature created the State Allocation Board.² Chapter 243, Statutes of 1947, established the State Allocation Board³ as a successor to the Post War Public Works Review Board. That statute specifically authorized the board to allocate funds for building and repairing schools. In addition, it designated the State Allocation Board to make allocations for public works projects when no other state officer or agency had authority to appropriate state or federal funds.⁴ Although it had many other fund allocation requirements during its five-decade history, the State Allocation Board today allocates funds only for school construction and renovation.

Composition of the Board

The State Allocation Board is comprised of seven members: two Senate members appointed by the Senate Rules Committee; two Assembly members appointed by the Speaker of the Assembly; the Director of the Department of General Services or his/her designee; the Director of the Department of Finance or his/her designee; and the Superintendent of Public Instruction or his/her designee. This appointment structure has existed since the Board's inception in 1947.⁵

Although its basic appointment structure is set in statute, its actual membership changes over time. ~~One member, Senator Leroy Greene, served on the Board for over 20 years.~~ Some Board members have served for only one meeting, while others have served an entire legislative session.

The four legislatively appointed State Allocation Board members provide a strong policy influence to the State Allocation Board. Through them, other members of the Legislature have input into the Board's policy and decision-making processes.

Policy Requirements

Members of the State Allocation Board are charged to formulate fair systems for determining priorities among project proposals. Prior to the passage of Proposition 1A/SB 50 in 1998, the Board was responsible for developing a fair and equitable appeals process that addressed the "special needs" of school districts. Such "special needs" included disaster relief, inability to secure matching funds, or inability to locate affordable property.

Board members also had extraordinary power to set school facility financing policy. Although the Board falls under the auspices of the State Administrative Procedures Act, it has often ignored the Act's provisions. It was common that board policies were changed from meeting to meeting, and that these new policies were not readily made public.⁶ Therefore, school districts that were uninformed of existing policy operated at a distinct disadvantage. They may not have known the appropriate procedures for receiving

financing approval. Conversely, school districts that utilized hired consultants or had staff that regularly monitored the Board's actions knew exactly what mechanisms and procedures would be necessary for them to secure funding.

State Allocation Board Staff

The Office of Public School Construction (formerly the Office of Local Assistance), within the Department of General Services, was and continues to be responsible for providing staff work that is necessary to carry out the policies and implement the various programs of the State Allocation Board. The State Allocation Board is responsible for policies regarding the allocation of funds for building new schools and for repairing, upgrading, and rehabilitating old ones.

The Office of Public School Construction staff is also responsible for disseminating to school districts information regarding board policy and programs. Under its previous programs, the staff was responsible for making recommendations to the State Allocation Board regarding various appeals made by school districts that may have been denied funding, or that may have required special funding consideration. To that end, the Office of Public School Construction staff influenced where school districts fell on the long queue of project proposals considered and passed by the State Allocation Board. Staff also could have influenced Board decisions by advocating for specific school district projects.

Outside Influence

~~The State Allocation Board and the Office of Public School Construction staff have also~~ been influenced by a variety of external interest groups. These include, but are not limited to, private school facility financing consultants, school board members, school administrators, teachers, parents, developers, California Building Industry Association, financial institutions, and other members of the Legislature. In addition, various state agencies with influence included the Division of State Architect, Department of Finance, and the Department of Education. These interests groups played and are likely to play a significant role in determining funding for projects that may have been denied or required special consideration. Consultants in particular, whether employed by or on contract with school districts, played an active role in the process. Many of these consultants, whose offices are in the same building as that of the Office of Public School Construction, influenced decisions of both the Office of Public School Construction staff and the State Allocation Board. Consultants were current on Board policies and procedures, and were highly sophisticated about the complicated processes that school districts must follow in order to obtain funding. They have been instrumental in shepherding proposals through the complex maze of funding phases - application to construction. School districts that did not contract with such advocates were often at a competitive disadvantage.

Evolution of State Allocation Board Programs—From Loans to Grants

The State Allocation Board has evolved markedly during the past five decades. Initially, its school programs provided resources to school districts via *loan programs* in which

districts were required to repay their assistance with property tax revenues. In addition, school districts used local school bonds to finance their various construction projects. In both cases, a two-thirds popular vote was required.

Proposition 13

With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority; and the Legislature and Governor were forced to rethink how school districts could repay their existing loans to the State Allocation Board.

Recognizing that many school districts faced bankruptcy by being unable to service their loans, the Legislature in 1979 directed the State Allocation Board to allow school districts four options: (1) withhold payments on their loans; (2) temporarily delay their payments; (3) pay only a portion of their loan obligations; (4) or not pay back their loans at all. Further, with the implementation of these options, the Legislature required that the State Allocation Board shift its policy focus from a *loan-based* program to a *grant-based* program. This shift to grant-based programs remains today.

HISTORY OF SCHOOL BOND INITIATIVES—A CYCLE OF UNDER-FUNDING

The electorate of the state has been ultimately responsible for determining the availability of resources for school construction. The electorate must have confidence in the state's economy, and perceive a need for new and upgraded schools. Without such assurances, the electorate can and has rejected various bond efforts. Since 1949, voters have been asked to approve 24 bond measures related to school construction and renovation, and have passed 21 of these proposals. However, an interesting history follows regarding the content of these initiatives.

State as a Bank—The Loan Program 1949-1978

Legislation enacted in 1949⁷ and 1952⁸ established a loan-grant program "to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the public school system."⁹ During this time period, the first baby boomers entered school, and for the next two decades, California public school enrollment increased by roughly 300 percent.¹⁰ The Legislature recognized that many school districts faced substantial enrollment growth, while lacking the bond debt capacity that was necessary to finance large building programs. In fact, many school districts had reached their financial capacity to service the bonds that they previously incurred.

As a result, the Legislature developed a program to provide loans to school districts that were approaching or were likely to exceed their legal level of bonded indebtedness.¹¹ This new program was financed through State general obligation bonds. This program also required building construction standards and placed fiscal controls on the districts, including maximum cost standards and square feet per pupil limitations.¹² School districts, however, retained control over the design and construction of their facilities. Districts that wanted to participate in the state loan program were required to receive approval from two-thirds of their district's electorate in order to incur the debt. A surcharge on the local property tax provided revenues to service the loan debt.

The State formula provided that the total amount due on some loans would be less than the total amount of the actual loan. Some experts believe that the state's willingness to forgive part of school district loans through this formula was a precursor to the state grant program discussed below.

The First Loan Program Bond Initiatives

In 1949, the state issued its first bond proposal for education facilities financing¹³ in the amount of \$250 million.¹⁴ This first initiative also began a cycle of inadequate funding. In that year, the Legislature thought that \$400 million was necessary (over what school districts could afford above their debt limits) to meet the need of school districts that were facing enrollment growth from the new generation of baby boomers. However, after substantial debate, the bond proposal was reduced to \$250 million, because the sponsors thought, "the people would not vote for such a large sum at one time."¹⁵ In arguments

against the bond, opponents argued that \$250 million was insufficient. Therefore, absent full funding, voters should reject the initiative. The measure passed.

In 1952, another school construction bond of \$185 million was put before the voters. Proponents of this initiative stated that the amount was "extremely" conservative. A comprehensive study by the State Department of Education at that time revealed that \$198 million was needed, while the Department of Finance estimated the need at \$250 million. Again, the amount of needed resources surpassed the amount proposed, and the cycle of chronically under-funded facility financing for schools continued.

To further exacerbate the shortfall, the 1952 proposition, along with subsequent propositions offered in 1956, 1958, and 1960, included "poison pill" language that limited the Legislature's ability to appropriate any additional funds for school construction beyond that in the various propositions.¹⁶ If the Legislature approved any additional resources for school construction, the amount of bonds that were sold would be reduced by an amount equal to the additional appropriation. After 1960, however, bond proposals excluded the language that precluded the Legislature from raising additional capital outlay funds.

During a two-decade period, the State Allocation Board administered this program as a bank. Resources from the state were limited, and many school districts were uncomfortable with the concept of borrowing money from the state, rather than from their local constituents. Further, since school districts were obligated to reach full bond indebtedness before applying for state loans, many did not participate. For these reasons, many school districts chose not to build facilities until their bonding capacity grew. Hence, many school districts found themselves chasing dollars after their schools were overcrowded—a situation not unlike today.

The Early 1970s

As a result of a major earthquake in the San Fernando Valley (Sylmar) in 1971, the state authorized \$30 million¹⁷ for a new program to finance the rehabilitation and construction of earthquake safe schools,¹⁸ and for the renovation of buildings that the earthquake damaged.¹⁹ This program was known as the School Buildings Safety Fund. Like its predecessor programs, the 1971 Act created a state loan program for eligible school districts. The Act also included provisions to forgive loans for school districts that had reached their bonding capacity. The 1971 program was augmented by a 1972 state bond initiative of \$350 million of which \$250 million was set aside for structural repairs due to earthquakes.²⁰ This latter bond initiative also provided a method for financing buildings in districts that did not meet the criteria of the program that was initiated in 1971,²¹ and it required the State Allocation Board to first approve those applications from school districts for earthquake repairs. The State Allocation Board gave second consideration to funding projects for other types of repairs or upgrades. Hence, the Board began a new system for not only new construction but also repairs, as well as a system that set priorities.

A Changing Paradigm

From 1970 to 1980, public school enrollment statewide decreased by roughly one percent per year.²² Reductions in both immigration and domestic in-migration to the state, as well as a decrease in the state's birth rate caused this decline. During this decade, there were sufficient resources available from local property tax revenues and from the state's loan program to meet the various rehabilitation needs especially of those school districts that were experiencing enrollment declines. The State Allocation Board thus shifted its loan program emphasis from new construction to rehabilitation, and to upgrading unsafe facilities that were damaged due to the 1971 earthquake.²³

Nevertheless, some school districts continued to experience enrollment growth in response to suburban housing development.²⁴ In spite of such growth patterns, the State Allocation Board set its priorities to favor rehabilitation projects over new construction. The Board's orientation accentuated the differences between growing school districts and those that required rehabilitation, and caused an unequal state spending system that favored property rich urban districts over fiscally poor and growing suburban districts.²⁵

To counter the State Allocation Board's orientation toward urban rehabilitation, growing suburban school districts recognized that in order to fund new school construction, they would have to depend almost entirely on their local property tax base. As more people demanded affordable housing in suburban neighborhoods, developers accommodated them by building numerous suburban housing units. The sheer increase in the number of suburban homes added significant resources to the property tax base, thereby benefiting the school districts that served those communities. Furthermore, the ongoing demand for suburban housing caused the prices of homes in these areas to increase precipitously, adding even more resources to the property tax base. Although school districts could have requested to reduce those tax rates that supported them to a minimum amount, they did not. Most districts kept their rates steady, and some even increased them. Homeowners, unhappy about menacing property taxes, sought relief. In 1972, the Legislature enacted a multi-year package, funded by the state's general fund, of \$1.2 billion for school operation to be allocated over a three-year period and to serve as property tax relief.²⁶ In spite of this legislation, property taxes remained relatively high to cover local bond debt, and continued to be the primary source for school construction for growing school districts. Concurrently, the state continued to loan money to enrollment-static school districts for the purpose of rehabilitation.

Leroy Greene State School Building Lease Purchase Law

In 1976, the Leroy Greene State School Building Lease Purchase Law was signed into legislation.²⁷ This law established a state fund to provide loans to school districts for reconstruction, modernization, and replacement of school facilities that were more than 30 years old. The Act significantly altered the state's role in how school facilities construction was financed. Specifically, the state would no longer loan money; but it would finance school construction based on a leasing model.²⁸ Although the legislation was passed, the voters of the State remained unconvinced that more money was needed to

improve schools. Consequently, they did not pass the bond initiative that was necessary to fund the Lease Purchase Program.

The 1976 Act had specific language that created "priority points" for school districts that would apply for state funding. This was the first time that the State Allocation Board used a point system for creating a queue of approved projects. Priority points were given based on the number of unhoused students in the district, the rate of student enrollment growth, and how much rehabilitation a facility needed. Further, the Board instituted a first-come, first-served policy in which each accepted school district's application was stamped with a time and date.

Under the previous program, the state loaned money to school districts to build their facilities, and the school districts owned their property. Under the Greene legislation, however, the State maintained a lien on the property for the duration of the loan via a lease purchase agreement.²⁹ The State wanted to preclude school districts from purchasing land on a speculative basis using State money, only to sell the State funded property at a profit at a later date. This meant that the state would control the disposition of any school facility that it financed until the school district repaid its obligation on the lease.

The Proposition 13 Epoch 1978-1986

Proposition 13—Local Governments and School Districts Fiscally Stymied

With its passage, Proposition 13 eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness. Proposition 13 capped the ad valorem tax rate on real property at one percent of its value, thereby reducing the income from property taxes to such an extent that it virtually eliminated this source as a means for lease payments. Proposition 13 also prohibited the electorate of a school district from authorizing a tax over-ride to pay debt service on bonds for the purpose of constructing needed school facilities.

To exacerbate this problem, the voters soundly defeated school construction bonds in both 1976 and 1978. They were two of only three³⁰ state general obligation bonds rejected by voters since 1947. The non-passage of these two successive bond initiatives, coupled with suburban enrollment growth, caused a statewide shortfall of \$550 million³¹ that was needed for school construction projects throughout the state in 1978.

Post Proposition 13

The limitations set by Proposition 13 caused school districts, counties and cities to turn to the state, which had a \$3.8 billion surplus, to fill the gap.³² In 1979, lawmakers approved a \$2.7 billion (in 1978 dollars) "bailout" plan to assist schools and local governments.³³ Within a year, the state surplus was reduced to roughly \$1 billion. Furthermore, the state had taken on a larger role as a funding source for school operations and capital improvement. To that end, it expected school districts to conform to its programs and projects.³⁴

Effects of Proposition 13 on the Lease Purchase Program

In 1979, legislation implementing Proposition 13 included provisions for restructuring the State's Lease Purchase Program.³⁵ School districts that received funds from the state were required to pay rent to the State as low as \$1 per year, creating an "unofficial" grant program.³⁶ In addition, school districts were to contribute up to 10% of the project's cost from local funds.³⁷ However, many school districts could not raise these matching funds through local bonds. They requested that the State fund their entire projects. The State Allocation Board created a waiting list of projects.

A Recession Further Complicates School Facility Financing

Beginning in 1982, California was in a recession that lasted until 1984. During this time period, the State's budget surplus was expended. School districts' recession experiences were complicated by the fact that student enrollments again began to increase again.³⁸ Approximately 60 percent of California's 1,034 districts at the time projected annual growth rates of over two percent between 1980-81 and 1983-84, with some districts projecting a doubling in their enrollment.³⁹ At the same time, estimates indicated that over one-third of the State's school buildings were over 30 years old and many needed substantial rehabilitation.⁴⁰ The Coalition for Adequate School Housing (CASH) estimated that the one-time cost of rehabilitating these older facilities would be \$1.9 billion.⁴¹ Further, CASH estimated that school districts would need an additional \$400 million annually for the next five years for building and repairing school buildings. Since the State was in recession, such funds were not available. Thus the State had to rethink how it would prioritize its school facilities projects.

A New System for Funding School Construction

In light of the backlog of applications for state funds, the Office of Local Assistance (now known as the Office of Public School Construction) designed a numerical ranking system that used "priority points" to determine a school district's eligibility for funds. This system gave priority to school districts who had students who were "unhoused," and special consideration was given to how districts used certain facilities.⁴² The more points a project application received, the higher on the list it was placed. Recognizing that school districts were facing enrollment growth and required further rehabilitation, the Legislature in 1982 authorized a general fund appropriation of \$200 million for school construction projects. This amount was later reduced to \$100 million.⁴³

Further, in order to ease the burden that many school districts felt because of the recession, the State loosened the repayment schedule for its lease-purchase program. School districts were allowed, for 10 years, to pay one percent of the cost of state funded lease-purchase projects, rather than the 10 percent they initially were required to pay.⁴⁴ Again, the State Legislature and the State Allocation Board moved away from a loan program and more toward a grant program.

Multi-Track Year-Round Education

Recognizing that the State had very limited bond resources, the Legislature wanted a more cost-effective facilities financing incentive system for school districts. That system would force districts to use their space more efficiently. In response to the shift in policy, the Legislature passed Chapter 498, Statute of 1983. This statute encouraged school districts that were experiencing growth pressure to adopt multi-track year-round education (MTYRE) programs. MTYRE programs enroll students in several tracks throughout the entire calendar year. At any given time, one track is on vacation, but vacation periods are short in duration.⁴⁵ The MTYRE program allows a more intensive use of existing facilities, thereby reducing the need for new facilities in growing districts.

School districts received an immediate financial return if they participated in the MTYRE program. A school district that redirected its students into a MTYRE program received a grant of up to 10 percent⁴⁶ of the cost that would be necessary to build a new facility not to exceed \$125 per student.⁴⁷ School districts that participated in MTYRE were eligible for air conditioning and insulation in their buildings.

In 1988, as pressure for state financing continued, the Legislature required that top priority for financing new construction projects be given to districts that used multi-track year-round education programs. School districts that offered MTYRE and were willing to match 50 percent of their construction costs received a funding priority from the State Allocation Board.⁴⁸ This put other school districts that could not meet these MTYRE and funding criteria at a distinct disadvantage. These latter school districts sought relief from the voters in 1986. Small school districts were one exception to the MTYRE requirement.

1986 Lease Purchase Program

In 1986, the voters approved Proposition 46. Proposition 46 amended Proposition 13⁴⁹ by restoring to local governments, including school districts, the ability to issue general obligation bonds and to levy a property tax increase to pay the debt service subject to a two-thirds vote of the local electorate.⁵⁰ This amendment allowed school districts to augment the one-percent cap on property taxes and to secure additional bond indebtedness to build and improve their schools.⁵¹

Passage of Proposition 46 helped, but did not solve school districts' financing problems. Many school districts were unable to secure the necessary two-thirds vote to authorize local funding, and still relied on state funding to assist them. Further, the federal government in 1986 passed legislation that required each state to remove friable asbestos from their educational facilities -- another charge that the school districts could ill afford.

California adopted similar asbestos standards to those established by the federal government in 1986; however, few school districts reported their estimated costs for removing the substance. In light of the need to remove the asbestos, and in order to address the growing backlog of proposed school construction projects, voters passed Proposition 79 in 1988 - an \$800 million bond initiative. It specifically set aside \$100 million to cover asbestos removal.⁵²

A Growing Shortfall and Greater Scrutiny

There is no doubt that from 1982 to 1988 state support for public school construction was limited and difficult to secure. The demand for new school facilities, for modernization, and for asbestos removal was great.⁵³ As of June 1, 1986, applications that were submitted by school districts to the State Allocation Board for state funding of *new school construction* projects alone totaled roughly \$1.3 billion. In addition, applications for state funding for *reconstruction or rehabilitation* of school facilities totaled over \$991 million.⁵⁴ Total demand for school facility improvement in 1986 was nearly \$2.3 billion - an amount that significantly outweighed the \$800 million voters approved in that year's bond initiative.⁵⁵ Even with a boost of funding of \$150 million per year from Tidelands revenues in fiscal years 1984 and 1985, the Lease Purchase Program fell short.⁵⁶ By 1988, the shortfall had grown to \$4 billion, in spite of the fact that voters had approved \$2.5 billion in bond money from 1982-1988.

The State Allocation Board was forced to scrutinize every request for school construction funding, recognizing that absent a major infusion of State bond money, most districts would not receive funding for their projects. This scrutiny created an extremely competitive environment for the limited resources that were available to the schools. Many participants believe that school districts that contracted with knowledgeable consultants, or had district staff who were familiar with the State Allocation Board's policies and criteria, were the most successful in securing a high ranking place in the queue for resources, once those funds become available.

There is no definitive research or data that support this belief. Consultants are not required to report their involvement in the application process. However, there is substantial anecdotal evidence to support the assertion.

School Financing as a Collective Effort—The Three Legged Stool

In 1986, the Legislature recognized that resources were scarce and that no one governmental or private entity could finance school construction. It attempted to equalize the burden of school facilities financing between state government, local government and the private sector.⁵⁷ This concept was known as the "three legged stool." The idea was that the state would provide funds through bonds. Local government would provide its share through special taxes, general obligation, Mello-Roos and other bond proceeds. The private sector would provide funds through developer fees. Appendix A describes funding alternatives for these latter two legs of the stool.

The "three legged stool," however, never quite worked. For example, to assure that developers would not fund a disproportionate share of the cost to build schools, the Legislature, in 1986, capped the amount new homebuyers would pay for developer fees at \$1.50 per square foot, and empowered the State Allocation Board to raise the cap by a certain amount each year. However, school districts found a loophole around the cap by requesting that cities impose a fee on their behalf, and cities imposed rates on some

developers that exceeded those allowed.⁵⁸ California courts upheld these fees in the Mira, Hart, Murrieta court cases.

Until the recent passage of Proposition 1A, many local governments have imposed developer fees that exceed those allowed by the Board. For example, in 1987, fees in San Diego and Orange counties reached a high of \$8700 per house.⁵⁹ By 1990, total development fees for some homes reached \$30,000.⁶⁰ Statewide, developer fees have increased from \$31 million in 1978 to \$200 million in 1997.

In 1998, the State Allocation Board increased the fee to \$1.93 per square foot.⁶¹ With the passage of Proposition 1A in November 1998, however, local governments have apparently lost their ability to increase their fees beyond those determined by the State Allocation Board. Further conflict is likely.

The 1990s—Complicated Funding Programs

In the fall of 1990, the Legislature passed legislation that created two programs that provided additional financial incentives for schools to offer year-round education.⁶² The first of these programs provided a one-time grant to school districts to ease the expense of changing from traditional nine-month programs to year-round tracks. The second program provided an "operating grant" of between 50 percent and 90 percent of the amount districts saved the state by not having to build new schools. At the recommendation of the Office of the Legislative Analyst, the Legislature repealed the 1982 and 1986 incentive programs discussed above.⁶³

In response to the 1990 legislation, the State Allocation Board developed a new priority system for allocating lease purchase money. Under this new system, the Board apportioned funds based on a combination of when an application was received and how many priority points it garnered. Through a complex formula, priority points were given to schools that had a significant number of "unhoused students," or had substantial rehabilitation needs. This procedure might have worked well if the state could have financed all applications in a timely manner. However, the demand for state money increased to the point where districts without special priorities could expect to wait years for the state to finance their projects.

The program was in effect for only one year when the Legislature repealed the program and created yet another system for allocating state money.⁶⁴ In 1991, the Legislature defined six priorities for funding. First priority was given to districts that had a "substantial"⁶⁵ enrollment in multi-track schedules, and that were paying at least 50 percent of the construction costs for their new schools. Second priority went to districts with a "substantial" year-round enrollment and that wanted the state to pay the entire cost of any new construction for their year-round schools. The remaining four priority levels took into consideration factors for those schools who did not meet the "substantial enrollment" criteria outlined above, or were unable to match state resources.

The complex set of formulas made it difficult for school districts to completely understand what criteria would best serve them. Further, throughout this period, the Board was

required to implement new programs and redefine its priorities. For example, in 1990 the Legislature created a program that was adopted by State Allocation Board for school districts that could not find adequate land on which to build a school. Known as the Space Saver Program, it was designed to assist urban school districts that could not obtain adequate acreage for a school campus. The first space saver school, developed in 1993, is scheduled to be completed in Spring 2000 in the Santa Ana Unified School District, in a former shopping mall.⁶⁶

Another example of shifting priorities took place in 1996 when the Legislature mandated the Board to redirect its third highest priority to class size reduction from a previous focus on child-care facilities.⁶⁷ A third took place at the end of 1997 when the priority points system was replaced by a first-come, first served system. While there were exceptions to this rule, money was offered first to school districts willing to cover some of the costs associated with constructing or repairing facilities. Schools that could not afford to cover the remaining 50 percent were placed on a separate list.

Such shifts in policy, coupled with the significant complexity of formulas that drove the priority point system, along with the sporadic creation of new programs, caused many school districts to depend on outside consultants. These consultants understood the many policy changes that the Board enacted – sometimes on a monthly basis. They were also knowledgeable of new programs, and clearly understood the workings of the staff who carried forth the Board's policies. Without the assistance of consultants, school districts were unable to keep track of policy changes and special considerations enacted by the Board. Further, while the Board and its staff advised school districts regarding changes in their policies in a regularly published document, it did not provide a centralized source of materials, such as an up-to-date handbook. Consequently, school district personnel were often uninformed about the various nuances of the programs administered by the Board.

State Bond Efforts of the Nineties

As the State Allocation Board shifted its focus and policies throughout the early 1990s, Californians approved state school bond initiatives in 1990 for \$1.6 billion and in 1992 for \$2.8 billion. In one of its 1992 reports, the Department of Finance reported that statewide K-12 enrollment was estimated to grow by 200,000 new students per year for at least five years,⁶⁸ and that an estimated \$3 billion would be needed annually for new school construction.⁶⁹ However, in spite of growing enrollments and a significant demand for facility rehabilitation, in 1994, the electorate rejected a \$1 billion bond initiative. The State was in a recession.

A lack of State bond funds was not the only problem associated with the allocation of school construction funds. The Auditor General reported in 1991 that the Office of Local Assistance mismanaged state funds. It detailed that construction funds loaned to school districts were not recovered; that districts overpaid on some projects and failed to collect the overage; that it dispersed funds without proper documentation; and that it failed to conduct required close-out audits on construction projects.⁷⁰

As a result of this audit, the Office of Public School Construction in concert with the State Allocation Board developed stringent internal and external audits and fiscal controls. These control mechanisms included increasing the detail of financial review of projects, prohibiting school districts from participating in the program unless a balance was not due, and no longer receiving rent checks for portable classrooms.⁷¹

Attempts to Ease Passage for Local Bonds

Recognizing that the State would be unable to fund the entire backlog of school construction proposals, Governor Pete Wilson in 1992 proposed a constitutional amendment to reduce the requirement for the passage of local bonds from two-thirds to a simple majority.⁷² The idea was that local governments should have to meet the same 50 percent requirement as the State for passing bonds. Further, there was strong sentiment in the Wilson administration that local governments should pay an increased share of school construction costs. However, the Legislature rejected his plan.⁷³ Other attempts in recent years to reduce the vote for passage of local bonds from two-thirds to something less have also failed.⁷⁴

1996 School Bond Issuance - Finally More Money

Proposition 203, passed by the voters in March 1996, provided \$2.065 billion for school facility construction. However, the Legislature at the time estimated that school districts would need \$7 billion in construction funds to meet enrollment growth that was anticipated during the next five years.⁷⁵ This \$7 billion did not include the needs of Los Angeles Unified School District (LAUSD), which had 20 percent of the state's student population. At the time, LAUSD alone needed \$3 billion to upgrade and modernize its schools.⁷⁶ Clearly, anticipated demand for State funds substantially exceeded available resources.

To respond to the many school district proposals, the State Allocation Board followed its general priority points policy. However, many school districts, recognizing that they would not receive funding for years because of their position in the funding queue, and because of the limited amount of resources that were available, resorted to creative means to try to secure funding for their projects. For example, some schools districts sought special consideration for funds by requesting emergency allocations. Such a tactic would allow a school district to receive funds immediately.⁷⁷ Other school districts used the appeals process to argue that their projects were needed more than those of other school districts that were higher in the queue.⁷⁸

This cannibalistic dynamic caused a fair amount of resentment among those school districts that were bumped from a relatively high position in the queue by those districts that sought emergency relief or special consideration. Further, it was clear that the most sophisticated school districts found a variety of tactics that would secure the funding of their projects. These tactics are described in greater detail later in this paper under the section that describes how the Board processed its applications.

Class Size Reduction Causes Greater Housing Needs

The distribution of funds from Proposition 203 was further complicated by the Governor's Class Size Reduction Initiative. In particular, the State Allocation Board earmarked \$95 million for the purpose of purchasing 2,500 portable classrooms for schools that were facing severe classroom shortages. This was in addition to \$200 million that the Department of Education had available for assisting schools in purchasing such facilities. The Office of Public School Construction determined that a total of 17,500 classrooms were needed to accommodate class size reduction, and that there was only enough money to fund less than half of the estimated need.⁷⁹ The State Allocation Board reinterpreted Proposition 203 by creating a new Portables Purchase Program at the expense of their other programs. This caused some school districts to again get bumped in the queue for funding.

Never Enough Money—Still a Shortfall

Since 1947, the electorate has approved all but three State bond initiatives. In spite of the voters' tendency to support various bond initiatives, by 1998, the backlog of school construction projects that were approved by the State Allocation Board, but unfunded, totaled more than \$1.3 billion. Although the voters have been generous by approving bond initiatives roughly every two years,⁸⁰ there were times during the past five decades when bond money was not available for periods of four or six years.⁸¹

The Department of Finance has estimated that \$16 billion is needed over the next decade for public school construction and rehabilitation.⁸² Various bond proposals in 1997 and 1998 were circulated that considered multiple-year bond issuances. The California Teachers Association and the California Building Industry Association presented a plan to issue \$2 billion a year for 10 years.⁸³ Governor Wilson proposed \$2 billion a year for four consecutive years. In the end, Proposition 1A was passed. It provides \$6.7 billion over a four-year period. However, while the amount appears generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following this bond issue will require roughly an additional \$10 billion in State money.

Table 1 on page 18 shows the history of state school bond initiatives from 1949 to 1998. In the next sections of this report, we discuss the various programs, the complicated application process used by the State Allocation Board that school districts had to endure to secure funding, and how Proposition 1A attempts to simplify this process.

Table 1 - STATE SCHOOL CONSTRUCTION BONDS

Title of Bond Initiative	Date & Year of Election	Funds Authorized
School Building Aid Law of 1949	November 8, 1949	\$250,000,000
School Building Aid Law of 1952	November 4, 1952	\$185,000,000
School Building Aid Law of 1952	November 2, 1954	\$100,000,000
School Building Aid Law of 1952	November 4, 1958	\$220,000,000
School Building Aid Law of 1952	June 7, 1960	\$300,000,000
School Building Aid Law of 1952	June 5, 1962	\$200,000,000
School Building Aid Law of 1952	November 3, 1964	\$260,000,000
School Building Aid Law of 1952	June 7, 1966	A)\$275,000,000
School Building Aid Law of 1952	June 6, 1972	B)\$350,000,000
School Building Aid Law of 1952 And Earthquake	November 5, 1974	\$150,000,000
School Building Lease-Purchase Bond Law of 1976 (Failed)	June 8, 1976	\$200,000,000
School Building Aid Law of 1978 (Failed)	June 6, 1978	\$350,000,000
School Building Lease-Purchase Bond Law of 1982	November 2, 1982	\$500,000,000
School Building Lease-Purchase Bond Law of 1984	November 6, 1984	\$450,000,000
Green-Hughes School Building Lease-Purchase	November 4, 1986	\$800,000,000
School Facilities Bond Act of 1988	June 7, 1988	\$800,000,000
1988 School Facilities Bond Act	November 8, 1988	\$800,000,000
1990 School Facilities Bond Act	June 5, 1990	\$800,000,000
School Facilities Bond Act of 1990	November 6, 1990	\$800,000,000
School Facilities Bond Act of 1992	June 2, 1992	\$1,900,000,000
1992 School Facilities Bond Act	November 3, 1992	\$900,000,000
Safe Schools Act of 1994 (Failed)	June 7, 1994	\$1,000,000,000
Public Education Facilities Bond Act of 1996, Proposition 203	March 1996	C)\$3,000,000,000
Class-size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, Proposition 1A	November 3, 1998	D)\$9,200,000,000

Bonds in [bold] failed to receive a majority of votes.

A) New amount of 1966 bond authorization available for regular program is \$185.5 million after deducting \$35 million reserved for compensatory education facilities, \$9.5 million for regional occupational centers, and \$35 million for rehabilitation and replacement of earthquake damaged and unsafe schools.

B) Up to 250 million dollars earmarked for rehabilitation and replacement of unsafe schools.

C) One billion dollars earmarked for higher education facilities

D) Two and one-half billion dollars is allocated for higher education.

THE PROGRAMS

Prior to the approval of Proposition 1A, the State Allocation Board oversaw six active programs associated with school facility construction, repair, and remodeling. These six programs made up the Lease-Purchase Program that was discussed earlier in this paper. This section briefly describes these programs, discusses how the State Allocation Board set priorities for school district projects, explains how the Office of Public School Construction staff reviewed and acted upon district proposals, and how the State Allocation Board considered district appeals. The purpose is to advise the reader of not only the process and administration of allocation, but also some of the pitfalls that existed under the old system. Perhaps these pitfalls of the old system can be avoided when allocating Proposition 1A resources.

The Growth and Modernization Programs

The Growth and Modernization Programs allocated funds to school districts for building new schools (Growth Program) and for repairing existing facilities (Modernization Program). School districts qualified for the Growth Program based on an "allowable building standards" formula.

For its Growth Program, the State Allocation Board developed standards for the amount of space that was necessary to house students based on a district's number of ADA (Average Daily Attendance).⁸⁴ The Modernization Program provided funds to school districts for nonstructural improvements to permanent school facilities that were more than 30 years old, and for portable buildings that were more than 20 years old. Such nonstructural improvements included interior partitions, air conditioning, plumbing, lighting and electrical systems.

The Modernization Program provided funding for up to 25 percent of the replacement value of the building. Under some circumstances, districts could use additional funds beyond the 25 percent for handicap access compliance, including elevators when appropriate, and for alternate energy systems.

School districts could apply to this program by offering to match state funds and be listed as "Priority One," or they could ask the State to fund their entire project and be listed as "Priority Two."

Process for Receiving Growth and Modernization Funds

School districts that applied for growth and/or modernization funds were required to follow nine steps in three critical areas - planning, site selection and construction. Each of these three critical areas provided a separate and gradual funding stream for the school's project.

Planning Phase

During the planning phase, a district was required to complete four forms that demonstrated that it was eligible for either the growth or modernization program.

Eligibility to participate in the programs was based on enrollment patterns or the age and condition of those schools that required modernization. If a district met these standards, it moved on to the "site development phase."

Site Development Phase

Selecting a school site was critical. If a school district was participating in the modernization program, it would move to the next phase. The site would have to be safe and able to support the school's curriculum. An adequate site would have to meet certain standards with respect to size and location. Site review could take a school district months (if not years) to investigate. Under the growth program, a school district arranged a search committee to locate available properties and narrowed its search to three sites. In addition, the school district held public hearings regarding the impact of the lands to be used for educational purposes, and notified neighbors about possible site use. A representative from the Department of Education visited three selected sites to review and determine which was the most suitable site based on criteria including, but not limited to: street traffic safety; traffic congestion; geological hazards; and other environmental issues. All school districts followed a similar process for site selection whether they financed the project themselves, or requested State funding.⁸⁵

Some school districts were unable to build new schools because they could not secure appropriate properties. This was especially true in urban and industrial areas where vacant land was not readily available or was extremely expensive.⁸⁶

Once a district found an appropriate property, it was required to prepare a site development plan that included architectural and engineering drawings, along with building contract agreements. Districts were required to follow strict site development, plan development, and construction cost guidelines in order to be eligible for state funds.⁸⁷ Once these guidelines were met, the district proceeded to the construction phase.

Construction Phase

Every construction project received an allowance for site development and to erect a building. The eligible costs associated with construction for these programs were classified into several broad categories: building construction; site development; energy conservation; and supplemental funding for multi-story construction. In addition, facility funding included adjustment costs associated with geographic and regional differences, or the demolition of an existing structure.

A project architect for each contract developed final plans and documents as part of the project's final stage. These documents were used to establish a construction budget. The Division of the State Architect approved and monitored the district's final plans. After review, a construction apportionment was recommended to the State Allocation Board, which in turn authorized the distribution of funds. Upon completion of all regulatory oversight, the district was allowed to break ground.

The Deferred Maintenance Program

The Deferred Maintenance Program provided a 50 percent State match to assist school districts with expenditures for major repair or replacement of school buildings. Such repairs or replacements were for plumbing, heating, air conditioning, electrical systems, roofing, interior and exterior painting, and floor systems. School districts were required to place one and one-half percent of their general funds into an escrow account in order to receive a State match. For school districts that could not fit the parameters of the modernization program, the deferred maintenance program was the only alternative to receive State assistance.

The State also provided critical hardship funds to repair buildings that might seriously affect the health and/or safety of pupils. When available funding was insufficient to fully fund all hardship requests in any given year, the State Allocation Board created a priority list. However, the State Allocation Board often made exceptions to its list.

The Deferred Maintenance Program differed from the modernization program in that school districts were required to submit a five-year plan as to how their projects would be implemented. The plan displayed a rank for each project, and identified those projects that the school district would likely fund.

Deferred Maintenance Application Process

Based on the most recent available material, the deferred maintenance program had 13 steps, and a school district needed to complete several forms and documents. The 13 steps were divided into categories including a letter of interest, application process, critical hardship project documentation, and fund release.

A school district notified the Office of Public School Construction each year if it wanted to participate. Upon receipt of the initial letter, the Office of Public School Construction would send the district a request for its five-year plan of maintenance needs and an "Annual Application for Funds."

The school district would then provide the OPSC with a list of items scheduled for major repair or replacement,⁸⁸ along with its five-year implementation plan. When the district received state funds, it could only expend those resources for those items on the list. It could not redirect any resources toward administrative overhead, repair and maintenance of furniture, ongoing preventative maintenance, energy conservation, landscaping and irrigation, athletic stadium equipment, drapery or blackout curtains, testing underground storage tanks for leaks, or chalkboards.

Once the Office of Public School Construction approved a school district's list of projects it allocated funds accordingly. In cases of hardship, OPSC would visit the school prior to allocating funds. The district's governing board controlled and was responsible for all deferred maintenance funds. These funds were placed in a special escrow account.

The Year-Round Air Conditioning/Insulation Program

The Year-Round Air Conditioning/Insulation Program (ACI) began in 1986, as an incentive program for schools to operate during the summer.⁸⁹ In order to participate in the program, a school district was required to have a plan for Multi-Track Year-Round Education, or have 10 percent of its students enrolled in a Multi-Track Year-Round Education program. The ACI program assisted school districts by providing resources for air conditioning and insulation.

Year-Round Schools Air Conditioning/Insulation Application Process

The application process for the ACI program differed slightly for those school districts that had a year-round program from those that were planning a year-round program. However, regardless of their status, school districts were required to complete eleven stages in two phases to receive funding. If a school district had an air conditioning system that needed repair, it could not apply to this program, but could apply for funds under the deferred maintenance program.

A school district completed forms that included information on the buildings and spaces that would be affected, along with a report regarding the project's anticipated start-date. In addition, another application was required that provided information on whether the school site was experiencing enrollment growth, and whether some level of modernization was already in progress. Further, a school district that was not on a year-round schedule was required to show how its year-round calendar would be used. If the district was approved for funding, various allowances were provided to the district.⁹⁰ In addition to these allowances, the state would provide funds for gas and electric service, general site development, and air conditioning/insulation construction.

Items that were not covered by this program included costs for heating, window solar film, classroom doors and hardware, re-roofing, lighting, security, interior housing, fire alarm systems, unrelated repairs, installations, and painting.

The State Relocatable Classroom Program

The Relocatable Classroom program was designed to meet the needs of school districts that were impacted by excessive growth or unforeseen classroom emergencies. The State Allocation Board allocated funds for the acquisition, installation, and relocation of safe portable classroom facilities. The State maintained a fleet of 5,000 furnished classrooms that could be leased to school districts for \$4,000 per year. Hardship cases could lease portables for \$2,000 per year. These portable units were available on a first-come, first-served basis. However, there was no maximum amount of time a school district could keep the portables, and districts were not required to return them. Thus, some school districts have kept the portables indefinitely.

Relocatable Classroom Application Process

In order to participate in either relocatable classroom program, a school district was responsible for site preparation costs including electrical hookup, plumbing connection, a State Architect approved plan, insurance and maintenance. After approval by the Board, the district would be reimbursed for the cost of architect fees, electrical hookup, furniture and equipment, and plumbing installation. However, reimbursements were capped at \$9,450 per classroom.

The Unused Site Program

The Unused Site Program was established in 1974 as part of the General Lease-Purchase umbrella. It required school districts and county superintendents of schools to pay a fee for district properties that were not used for "official" school purposes. "Official" school purpose was defined as being used for K-12 education, continuing or adult education, special education, childcare, or administration of any educational units.

This program did not provide funds directly to schools. However, resources generated from the fees that districts paid for unused facilities were used to cover deferred maintenance costs and to service the debt on the state's various school construction bonds. Since the Board simply administered the return of funds to the state, the funds could not be redirected to other programs administered by the Board. Proposition 1A eliminates their fee requirements.

The Office of Public School Construction Staff Review and The State Allocation Board's Appeals Process

The State Allocation Board meets roughly 11 times a year. At each meeting the Board reviews and approves about 200 applications for funding. Prior to the State Allocation Board's review, the Office of Public School Construction staff processes all applications. Before Proposition 1A, the approval processes for the programs, except for the growth and modernization programs, were straightforward. Either a school district's application fit a program's description for reimbursement, or it did not. Due to the complicated nature of the Growth and Modernization programs, "special considerations," or project applications that did not fit in the parameters of the program were placed in a different category. The State Allocation Board approved roughly 90 percent of all growth and modernization projects without special consideration. Issues requiring special consideration could include peculiarities of the proposed site, or the costs associated with a project. The applications were divided into special consents or "specials," and appeals. Both types permitted the Office of Public School Construction staff great latitude in the decision-making process, as they investigated and evaluated school district applications on a case-by-case basis.

A "special" occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined that an exception should be made. This agreement may have required several meetings between the school district's administration and the OPSC staff. With OPSC staff recommendation, which may have

been inconsistent with State Allocation Board policy, this application would be brought before the State Allocation Board for review. This category was normally granted approval in one action.

An appeal occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined an exception should not be made. If after several meetings an agreement could not be reached, the school district would bring its case before the State Allocation Board. An appeal was granted only on a case-by-case basis. At times, legislators have spoken on behalf of school districts at Board meetings.⁹¹ The difference in the two types of special considerations was that a school district or its representative would have to defend its actions in an appeal. However, as already noted, only those people who kept up with the process and policy changes were adept enough to tackle an appeal. Therefore, a school district seeking an appeal before the State Allocation Board might seek help from legislators that represented them, or hire consultants. For instance, in the May 1998 State Allocation Board meeting, a well-versed school finance consultant appeared on behalf of the Apple Valley Unified School District. Apple Valley hired both a construction manager and a general contractor to erect its new school, in the face of board policies allowing a school district to hire only one such position. On behalf of the school district, the consultant addressed the State Allocation Board, and pointed out that in five other cases the State Allocation Board had voted in favor of a school district that hired both a general contractor and a construction manager.⁹²

Less seasoned district representatives would not have known that the State Allocation Board had already set a precedent for funding projects that include both a construction manager and a general contractor.⁹³ The OPSC staff was not knowledgeable on this issue and therefore could not be a source of information.

PROPOSITION 1A—A POSSIBLE FIX TO SAB PROCESS PROBLEMS

Proposition 1A not only authorizes an additional \$6.7 billion to K-12 schools, but it also offers a fix to several of the process problems discussed above. It replaces the provisions of the previous Lease-Purchase Program. This section discusses (1) the resource allocation provisions of the legislation; (2) the programmatic components of the legislation; and (3) how the legislation improves the resource allocation process over that which existed under previous bond programs.

Total Resource Allocation Provisions of Proposition 1A

The resource allocation system in Proposition 1A is specific and detailed. Bond proceeds are to be allocated in 2 two-year cycles: \$3.35 billion available immediately; and \$3.35 billion available after July 2, 2000. Of the \$3.35 billion that is immediately available, \$1.35 billion is earmarked for new construction, \$800 million for modernization, \$500 million for hardship cases, and \$700 million for class-size reduction.

For the second \$3.35 billion distribution, \$1.55 billion will be available for new construction, \$1.3 billion for modernization, and \$500 million for hardship cases. There are no resources in the second allocation for class-size reduction.

School districts receive funding for their projects based on a per pupil formula. The formula is based on a statewide average cost for construction, adjusted each January for inflation. The figures are based on unhoused⁹⁴ average daily attendance (ADA). The per pupil ADA formula is as follows:

	Growth	Modernization
Elementary	\$5,200	\$2,496
Middle School	\$5,500	\$2,640
High School	\$7,200	\$3,456

It is anticipated that the initial \$1.35 billion available for new construction during the first round of allocations will be insufficient to meet the needs of those school districts that are facing substantial enrollment growth. Proposition 1A establishes a priority point system for new construction projects when State bond resources are exhausted.⁹⁵ The Office of Public School Construction will process applications on a first-come, first-served basis from subsequent bond offerings.

In addition to the provisions outlined above, school districts that receive bond proceeds are required to set aside three percent of their general funds each year for 20 years for the purpose of deferred maintenance.

Components of Proposition 1A

Proposition 1A establishes three categories for funding. The first is the Growth Program, in which the State finances half the cost of new construction and the school district the other half. The second is the Modernization Program, in which 80 percent of the cost of rehabilitation is provided by the state and 20 percent by the school district. The third category is "hardship," in which the State funds up to 100 percent of the cost for emergency needs, or an increased proportion of its share for new construction or modernization.⁹⁶

Proposition 1A holds harmless those school districts that received State Allocation Board approval for the construction phase of their projects (under the previous Priority 1 - able to provide a 50 percent match). They will receive growth and modernization funds, but under the rubric of the previous "Lease Purchase Program." This grant is supplemented by land costs, site development, and other adjustments.

Another new provision of the Proposition is that school districts can seek modernization resources after a facility is 25 years old, rather than 30 years under the previous program.

Schools districts that had received prior Board approval for Priority 2 projects (100 percent state funding) will have to either indicate their ability to finance 50 percent of their proposed projects or reapply under one of the new programs. If the school district cannot meet the provisions of the new programs, it can apply as a "hardship" case.

The California Supreme Court ruled in 1991 that cities and counties could limit housing development on the basis of the supply of classrooms.⁹⁷ Proposition 1A suspends, until 2006, the Court's ruling.⁹⁸ With the passage of Proposition 1A, school districts will not be able to limit new housing construction based on a rationale that school facilities do not exist. However, in 2006, if adequate bond funds for new construction are not available, cities and counties can once again deny development. Further, as discussed earlier, the Proposition permits the school board to increase developer fees to up to \$1.93 per square foot.⁹⁹ Proposition 1A sets up a system where fees can be levied of up to 50 percent and 100 percent of the costs associated with building a school by developers under certain circumstances.

Proposition 1A Improves the Resource Allocation System of the State Allocation Board

Proposition 1A makes several changes to the programs administered by the State Allocation Board. It attempts to simplify the process of applying for funds, consolidates the Board's previous six programs into two, and attempts to create a more equitable funding system. It also makes the State Allocation Board and the Office of Public School Construction staff more accountable for their actions. Table 2 presents the differences between the Board's previous Lease Purchase Program, and the new programs that are initiated by Proposition 1A.

Table 2 - Comparison of Lease Purchase Program to Proposition 1A Programs

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
FUNDING FACILITIES	<p>Priority 1 projects-growth and modernization-received 50 percent funding based on actual costs from the state.</p> <p>Priority 2 projects-growth and modernization-received 100 percent funding form the state.</p>	<p>Growth projects receive 50 percent funding based on a per pupil formula from the state.</p> <p>Modernization projects receive 80% funding from the state. Hardship projects can receive up to 100 percent of funding from the state based on three broad categories financial, physical and excessive costs.</p>
CONSTRUCTION EXCESSIVE COSTS & COST SAVINGS	Some excessive costs (i.e., change orders) were reimbursed by the state. Cost savings were returned to the state.	Excessive costs are not reimbursed by the state and school districts keep costs savings.
MODERNIZATION PROJECTS	Buildings must be at least 30 years old.	Buildings must be at least 25 years old.
PROJECT APPROVAL	Projects were approved three times in conjunction with the planning, site acquisition and construction phases.	Projects receive one approval (except hardships that receive two approvals).
FUND ALLOCATION	Funds were allotted after each phase.	Funds are allotted only after DSA approves plans, unless there is a hardship.
MAINTENANCE OF FACILITIES	Required school districts to set aside two percent of their general fund for ongoing maintenance.	Requires school districts to set aside three percent of their general funds for 20 years for ongoing maintenance.
PROPERTY LIENS	State maintains a lien to properties it funds.	State does not hold liens, and existing liens are released.
ARCHITECTURAL APPROVAL	Division of State Architect approved all plans.	The Division of State Architect or a state approved private engineering firm may approve plans.

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
DEVELOPER FEES	The cap on fees was \$1.93 per square foot; however, cities or counties could levy a higher fee and pass it to schools districts.	The cap on fees is \$1.93 per square foot, adjusted biannually. Fees may be assessed up to 50 percent of the costs of a project if a school district has accessed other forms of financing including Mello-Roos, G. O. bonds, and parcel taxes. In order to increase fees, school districts must meet two of four criteria, including MTYRE, local school bond positive votes of 50 + 1 percent, 20 percent of students are housed in portables, 15 percent of bond debt used.
WHEN STATE FUNDS RUN DRY	Projects were placed on a pending state-funding list or charged a city-based developer fee.	Modernization projects may be placed on a pending state-funding list. Growth projects may be placed on a priority points list, or the school district may collect 100 percent of financing from a developer.
CONTAINING DEVELOPMENT (MIRA, HART MURRIETA COURT CASES)	Cities and counties on behalf of school districts were able to contain residential development by suspending the building of new facilities.	School districts can not request cities or counties to prohibit residential development based on a lack of funds or school facilities until 2006.
ARCHITECT & CONSTRUCTION MANAGEMENT FEES	Percentage caps on fees based on size of projects	No caps.
MODERNIZATION PROGRAM	Provides funding to building over 30 years old, and portables over 25 years old. Calculations done on a district basis.	Provides funding for buildings over 25 years old and portables over 20 years old. Provides funding on a site-specific basis.
AIRCONDITIONING-ASBESTOS PROGRAM	Allotted funds specifically to install AC and remove asbestos.	These are now incorporated in the modernization program.

Simplification

To further simplify the process, the Proposition reduced the number of school facility financing phases from three to one.¹⁰⁰ This is now possible because school districts receive a flat grant from the State based on the number of students they enroll, rather than on the estimated cost of a project. Under the previous program, each phase of a project was evaluated independently; thus the cost to the State for any given project could change. Under the new program, a school district receives a single grant for a single project, and cannot request that the state fund additional need beyond the original request.¹⁰¹

The Proposition also explicitly requires that the State Allocation Board initiate a public hearing process that notices any policy changes considered by the Board. It requires that the Board make available to school districts written up-to-date documentation that clearly explains its policies, and specifically describes how its new programs work.

Consolidation

Until Proposition 1A, the State Allocation Board administered as many as 13 programs. The most current six are discussed above. With the enactment of Proposition 1A, the number of programs has been reduced to two, along with a special category for hardship cases. This consolidation of programs makes it easier for school districts to choose a program that best suits their needs. It precludes the type of creative tactics that school districts were forced to pursue to match their projects to the right program in order for them to receive funding.

A More Open Process

The Proposition causes a major shift in policy direction for the State Allocation Board. Under its previous programs, the Board funded both new construction and modernization on a 50/50 matching basis. Under Proposition 1A, the Board is required to fund modernization projects more generously than new construction projects, in that the State will fund 80 percent of the cost for modernization compared to 50 percent for new construction.

Another major outcome of Proposition 1A is that the State Allocation Board no longer has the authority to offer grants to school districts that may seek funds for special projects without any real statutory framework. Now school districts must demonstrate that they meet specific hardship criteria set out in the new law. The practical effect of this change will depend on how the Board interprets this provision.

Previous legislation implicitly required that the State Allocation Board follow guidelines set forth in the Administrative Procedures Act (APA); however, the Board did not do so. Proposition 1A explicitly requires the Board to follow APA guidelines. This means that any change in policy or regulation considered by the Board must be properly noticed to the public before the Board can act. This requirement, if the Board follows the full spirit, will allow school districts to be fully informed of Board policies and procedures, as well as its rules and regulations.

PITFALLS IN THE PROCESS PRIOR TO PROPOSITION 1A

This section discusses the State Allocation Board's attempts to improve its system and the pitfalls that existed under the previous programs.

Until recently, rules governing the application process were labor-intensive, both for school districts and the state agency personnel (including the Office of Public School Construction and the Division of the State Architect). In 1989, the Legislature received a report outlining the complex application.¹⁰² The report identified 54 steps school districts had to perform in order to receive application approval and eventual financing. In addition, the process required 24 separate forms.

Process Streamlined Recently

Since 1992, the OPSC has tried to be more efficient. Changes implemented by OPSC included: simplified and streamlined applications; improved response time for application review; improved policy information dissemination; and school districts were empowered to complete their own applications.

The most concrete indication that the Office of Public School Construction was becoming more efficient was in the application process. The application process for the Growth Program was reduced from 54 steps to nine. In addition, the number of forms that were needed to apply for funding was reduced from 24 to four.

School districts complained and begged for applications to be checked and approved for a State Allocation Board meeting agenda in an expeditious fashion. As part of the efficiency movement, the Office of Public School Construction set a goal to reduce the time from when a school district filed a completed application until it was placed on a State Allocation Board meeting agenda from over 400 days to 60 days.¹⁰³ Prior to Proposition 1A, applications on average still took longer than the 60 days to be reviewed. However, the office's efficiency achievement by reducing application review days is noteworthy.

In addition, the Office of Public School Construction worked more closely with school districts in the decision making process and provided greater leeway. In particular, school district personnel could self-certify certain information pertaining to a project rather than rely on state agency personnel. The self-certification process removed the time a school district would wait for a response from the Office of Public School Construction. It thereby shortened the application process.

Under its previous programs, it was difficult for school districts to get information pertaining to the funding process from the Office of Local Assistance (OLA) staff or from written materials. The Office of Public School Construction is now more service-oriented.¹⁰⁴ One can obtain information in person or from the office's Internet site.¹⁰⁵ In fact, the staff of the Office of Public School Construction is continually placing more information on the Internet. This information includes an automated project tracking system, Senate Bill 50 regulations, office contacts, and old board policy changes.

School Districts in Line Stand on Shifting Sands

Under the previous allocation system, school districts that completed their applications and were placed in queue were never guaranteed funding in the order their applications were received. The State Allocation Board dictated that school district applications were placed in an unfunded application list on a first-come/first-served basis. However, there were four general ways that school district applications could be "bumped" up or down in the queue.

Broad Classification Decisions

The first way a school district could get bumped was if the State Allocation Board decided to redirect its emphasis and fund a broad category of projects. For instance, the SAB could decide to fund all application projects from small school districts (no matter where they were in queue). If a school district was large, hundreds of proposed school projects could jump ahead in the funding queue.

The second way a school district could get bumped was if the State Allocation Board shifted the specific funding program allocations. Thus, for example, the State Allocation Board could decide to shift funds earmarked for the Growth Program to the State Portable Classroom Program.

Specific School District Decisions

The third way a school district could get bumped was if another school district application in queue with a later application filing date appealed to the State Allocation Board to change its application filing date to be ahead of other school districts. That school district application would be funded first.

The fourth way a school district could get bumped was if an emergency situation occurred and a school district requested critical hardship money from the State Allocation Board. The Board could provide these funds when available.

The application process requires equity and balance in order to ensure fair competition by school districts for State funds. The process needs to be flexible enough to handle emergency situations, yet firm enough to prohibit jockeying among school districts for better placement in the queue.

Proposition 1A halts the movement of funds from one program to another. However, the other examples are still feasible. Jockeying of school districts by consultants for better placement in line may continue to occur. This is especially true as Proposition 1A cannot handle the pent up demand for State funds. The next section discusses options that the Legislature may consider in order to improve this system.

OPTIONS FOR IMPROVING THE SCHOOL FACILITY FINANCING SYSTEM

A Separate List for Small and Rural School Districts

When the Proposition 1A funds are exhausted, new construction project applications will receive priority points for future funding. Small and rural school districts may require separate lists to ensure that they are placed near the front of a funding queue. This is necessary because there is no guarantee that the entire queue would receive future funding. Small and rural school districts, based on the current priority points system, may not receive enough priority points to approach the front of the queue. Larger school district applications, with greater per pupil need, may be able to position themselves high enough in the queue for funding by receiving favorable OPSC evaluations. Proposition 1A allows schools to skip to higher positions in the funding queue if they score higher priority points based on their number of unhoused students or if they can demonstrate a special hardship. *The Legislature may wish to create a separate list for small and rural school districts to create a more equitable system.*

Annual Report and Independent Accounting

In the early 1990s, many state agencies, boards, and commissions, because of budget cuts, postponed writing annual reports to the Legislature. These reports provided financial and policy information to the public. The State Allocation Board was one government entity that has not prepared regular audited reports of its programs' operations and expenditures for public review. The State Allocation Board will receive \$6.7 billion over the next four years to fund school construction projects. *The Legislature may wish to require the Board to prepare for the Governor and Legislature an annual report that details how and to whom bond funds were distributed. The Legislature may wish to require that an independent accounting firm or the State Auditor General prepare the Board's report.*

On-Line Technical Assistance

Although the application and funding process administered by the Office of Public School Construction has been streamlined and simplified in recent years, certain components of the process are still cumbersome. The process should be simple enough that school districts do not need to hire consultants or lobbyists to advise them or to shepherd their proposals. *The Legislature may wish to pass legislation that would require the OPSC to develop a technical assistance program to provide school districts with the necessary information and advice they need in order to qualify for and receive bond funds. Such a system could include an automated Internet help-line.*

A Special General Fund Appropriation for School Construction

The State's bond capacity may not be able to fund every State infrastructure need, including schools, transportation, prisons, and water during the next decade. School facility needs are estimated conservatively at roughly \$10 billion, while some estimates have put the figure at \$40 billion for the next decade alone. According to the Department of Finance, the State can afford to service approximately \$25 billion in additional debt. Thus, school facility financing alone could incur the entire debt capacity of the State. *The Legislature may wish to create a special appropriation fund for public school capital outlay as part of the State General Fund to augment the State's bond programs. In addition, the State may wish to design a school construction reserve fund, which is funded from budget surplus revenues.*

APPENDIX A

School District Financing Mechanisms

In addition to state bond funds, school districts have a variety of other alternatives for funding school construction. These include developer fees, certificate of participation, general obligation bonds, and Mello-Roos taxes. Also, a developer may simply build a school rather than consider other financing alternatives.

Local General Obligation Bonds

In 1986, after an eight-year hiatus, school districts could once again use general obligation bonds to finance school facilities. Bonds are a favorable method of financing, even though they require a two-thirds vote and proceeds cannot be used for items such as buses and furnishings. In 1986, 14 school districts offered bond initiatives. In 1987 and 1988, this number grew to 51 and 54 school districts, respectively. In November 1998, 36 school districts held bond elections.¹⁰⁶

Developer Fees

In 1978, the Wilsona School District was the first to use developer fees. These fees added about \$2,000 to the cost of a typical home in the Lancaster area. While school districts were exacting developer fees, there was no statute that explicitly permitted this activity. The Legislature standardized the authority by giving school districts direct authority to charge developer fees. School districts welcomed developer fees especially because they did not require an election, and the funds associated with the fees could be used for a wide variety of facilities that were associated with enrollment growth. In response to a growing number of complaints from developers, the Legislature capped the amount that could be collected in 1986. Proposition 1A prohibited local agencies from using the inadequacy of school facilities as a reason for not approving housing development projects. The authority to raise developer fees was placed with the State Allocation Board. However, developer fees generally are not enough to cover the full costs of constructing a school.

Certificates of Participation

Certificates of Participation (COPs) are another, though complicated, tool for districts to raise money without voter consent. The most common arrangement is that the district leases a new school owned by another government agency or a nonprofit agency, which in turn raises the capital to build the school by selling shares (certificates of participation). In the long run, lien revenues COPs are remarkably like bonds. One disadvantage of the COP arrangement is that it does not provide a new revenue source for the lease payments. Funds usually come from the school district's general fund.

Mello-Roos

The Mello-Roos Community Facilities Act, established in 1982, authorized school districts and local governments to form "community facilities districts." Subject to the approval of two-thirds of the voters, these special districts could sell bonds to raise revenues for the purpose of financing new buildings, or to rehabilitate existing school facilities. A majority of Mello-Roos districts are created in inhabitable areas that are proposed for development where voting is by the landowners. The district sets a specific tax per house.

ENDNOTES

¹ Chapter 243, Statutes of 1947.

² If a school district wants state funding for construction or repair of a school, it must apply to the State Allocation Board for the money. There are school districts that repair and construct school buildings without the assistance of the State Allocation Board (i.e., San Diego Unified School District, San Luis Unified School District). However, this report will focus on a school district that requires state support.

³ Chapter 243, Statutes of 1947. Initially, the State Allocation Board administered a number of Public Works programs for the State ranging from housing and employment assistance to school facilities construction. Various programs include: the Postwar Planning and Acquisition, Construction and Employment Act, Veterans Temporary Housing, State School Building Construction Programs, Emergency Relief Programs, and Community Assistance Programs (State Allocation Annual Report 1983-1984, p. 1).

⁴ California Government Code 15502.

⁵ Government Code 15490.

⁶ While the State Allocation Board submitted policy changes to school districts, an up-to-date handbook was not made available. In addition, turnover of board members and school administrators may lead to ignorance of programs and the program changes.

⁷ Amendments to the Constitution, Proposition 1, November 8, 1949.

⁸ Amendments to the Constitution, Proposition 4, November 4, 1952.

⁹ Op.cit.

¹⁰ California School K-12 enrollment grew from 1.689 million students in 1950, to 4.633 million students in 1970 (State of California. Department of Education. Education Demographics Unit. CBEDS Data Collection. "Enrollment in California Public Schools 1950 through 1997").

¹¹ This is defined by California Education Code, Section 15102, as the legal limit of debt that a school district can incur based on the assessed value of property in that school district.

¹² Known as the State School Building Aid Program. The Legislature determined qualifications in order for school districts to participate in this program. They include the following provisions:

1. To qualify for a loan from the State a school district must have voted local bonds to 95 percent of its bonding ability.
2. Borrowing districts financially able to do so must repay the money to the State. Terms of 30 or 40 years of repayments are provided.
3. No money can be borrowed by a school district unless the proposed loan is approved by two-thirds vote of the electors of the district.
4. School construction, financed in any part by State loans will be subject to cost controls to be established by State Allocation Board (includes restrictions on the number of square feet of construction allowed per pupil).

¹³ Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for \$250 million.

¹⁴ Voters set the initiative process in motion in 1911 under reform-minded Governor Hiram Johnson. Los Angeles Times. "State's Voters Face Longest List of Issues in 66 Years; November 8 Ballot to Carry Maze of 29 Propositions." July 7, 1988, p. 1-1.

¹⁵ Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for \$250 million.

¹⁶ Amendments to the Constitution, Special Election, June 7, 1960, Proposition 2, Part II, Appendix. p. 2.

¹⁷ School Building Safety Fund, December 1971.

¹⁸ The Field Act, that mandates that school construction is able to withstand earthquakes, has yet to dictate how to build an indestructible building.

¹⁹ Propositions and Proposed Laws, Together with Arguments, Primary Election Tuesday, June 6, 1972, p. 1.

²⁰ Ibid.

²¹ State Allocation Board Report to the Legislature 1972-1973 Fiscal Year, p. 3.

²² Public school K-12 enrollment declined from 4.457 million students in 1970 to 3.942 million students in 1980. (State of California. Department of Finance. Demographic Research Unit. 1997 Series California Public K-12 Graded Enrollment).

²³ Op.cit., p. 2.

²⁴ Ibid.

²⁵ Property rich communities often have more poor people than property poor communities. The presence of commercial and industrial development can make an otherwise poor district "rich" in its tax base. Conversely, affluent communities often discourage industrial development that would make them property rich, but environmentally poorer. The lack of correlation between poor people and property poor districts is often overlooked in discussions of school finance issues. Even though the distinction has been known for a long time. Campbell, Colin D.; Fischel, William A. National Tax Journal. "Preferences for School Finance Systems; Voters Versus Judges." Footnotes from Helen Ladd. "Statewide Taxation of Commercial and Industrial Property for Education." National Tax Journal (June 1976): 143-153.

²⁶ Goff, Tom. "Passage of Tax Reform School Financing Bill Urged by Riles." Los Angeles Times, July 19, 1972, p. I-1.

²⁷ Section 17700 et al., Education Code.

²⁸ Property values were increasing dramatically all over the State. This model stopped school districts from speculating on land that was financed by the State.

²⁹ Op.cit., p. 2.

³⁰ Proposition 1 of 1978 was defeated 65 percent to 35 percent. Propositions from 1976, 1978 and 1994.

³¹ Proposition 1 of 1976 would have provided \$250 million, and Proposition 1 of 1978 would have provided \$300 million.

³² Shultz, Jim. "Major Firms Gained Most With Prop. 13." Sacramento Bee, September 13, 1997, p. F-1.

³³ Ibid.

³⁴ Karmin, Bennett. California's Bankrupt Schools. " New York Times, July 17, 1983, pp. 4-21. Linsey, Robert. "San Jose Schools Declare Insolvency in Wake of Tax Revolt." The New York Times, June 30, 1983, p. A-14. However, some school districts that were academically and fiscally well managed prior to Proposition 13 faced problems. In 1983, the San Jose Unified School District filed for bankruptcy. The National School Boards Association stated that it was the first insolvency of a large school district since the depression. The San Jose Unified School District, at the time, held a reputation for excellence in education. It ranked 14th in the state in the ratio of students to teachers, and its teachers' salaries ranked second highest in Santa Clara County. However, since Proposition 13, the school district set aside maintenance and construction projects, laid off teachers and non-teaching administration, until it could not make further reductions and still continue to pay its staff.

³⁵ Chapter 282, Statutes of 1979. State School Building Lease Purchase Bond Law of 1984—Voter Pamphlet Analysis.

³⁶ While the loan program was still on the books, the state made exceptions to aid school districts.

³⁷ California Education Code, Sections 17730.2, 17732. However, the Attorney General cited that 10 percent of local funds to cover the costs associated with facility development is not required. Coalition for Adequate School Housing. CASH Register, November 1984, p. 3.

³⁸ California Department of Education. CBEDS Data Collection. Education Demographics Unit. 1998.

³⁹ Coalition for Adequate School Housing. CASH Register, September 1982, p. 1.

⁴⁰ Ibid.

⁴¹ Coalition for Adequate School Housing. CASH Register, December 1982, p. 2., (in 1980-81 dollars).

⁴² This evaluation was amended annually. The State developed a formula that was based on standards that considered how a facility was used and how many pupils were unhoused. In some years, the State gave preference to unhoused pupils, while in other years, the state gave first consideration to how a facility was used. Facility use included childcare, before and after school programs, adult education, and traditional K-12 programming.

⁴³ Savage, David. "Resolution Brings Tax Cuts, Schools Told." Los Angeles Times, October 15, 1982, p. B1.

⁴⁴ Assembly Bill 62, Chapter 820, Statutes of 1982.

⁴⁵ California Department of Education. California Year-Round Education Directory 1997-98.

⁴⁶ For example, a school district that needed to build a new elementary school that cost \$4 million could receive \$400,000 from the state if it chose to redirect students to existing facilities that incorporated the MTYRE program.

- ⁴⁷ Chapter 886, Statutes of 1986, added provisions that capped the grant at \$125 per student.
- ⁴⁸ School districts that could not offer to cover any expenses (now referred to as a Priority 2) could conceivably wait years. MTYRE continues today, and has been a successful program. In 1997, more than 1.19 million or about 22 percent of California students attended schools with year-round calendars. The State Department of Education estimates that the MTYRE program has saved that State more than \$1.8 billion in construction costs since its inception. In 1997-98, \$66 million was allocated from the "mega item" of the state budget. About \$40 million was sent to Los Angeles Unified School District to cover the reported 40,872 excess students. However, once students are "excess," they can not be counted as students for the Office of Public School Construction in the erection of new facilities. Approximately 102,000 students are "excess." While the program has provided relief for school construction, it remains a controversy whether educationally the program is successful.
- ⁴⁹ Proposition 46 on the June 1986 Ballot.
- ⁵⁰ Greene-Hughes School Building Lease-Purchase Bond Law of 1986 Voter Pamphlet.
- ⁵¹ Proposition 46: Property Taxation, June 3, 1986.
- ⁵² DeWolfe, Evelyn. "Schools Get Low Marks for Asbestos." Los Angeles Times, January 8, 1989.
- ⁵³ School enrollment bottomed to 4.089 million students in 1983, the same population amount that occurred in 1964. By 1986, student population increased to 4.377 million. California Department of Education. Education Demographics Unit. CBEDS. 1998.
- ⁵⁴ Op.cit.
- ⁵⁵ Op.cit.
- ⁵⁶ State Allocation Board Report to the Legislature 1984-85, 1985-86, Fiscal Years.
- ⁵⁷ AB 2926, Statutes of 1986.
- ⁵⁸ These were referred to as the Mira, Hart, Murrieta court cases.
- ⁵⁹ Later that year, fees were capped by the Legislature at \$1.50 per square foot on residential units statewide.
- ⁶⁰ Fulton, William, "California Pulls Out the Stops; Cities Cope with Government Budget Deficit." American Planning Association, p. 24, October 1992. About one-third going to school districts.
- ⁶¹ Cummings, Judith. "CA Turns to Developer Fees." The New York Times, January 16, 1987, p. A-15.
- ⁶² Chapter 1261, Statutes of 1990.
- ⁶³ Legislative Analyst's Office, p. 23. "Building Schools in California: What Role Should the State Take in Local Capital Development?" Linda Herbert. Jesse Marvin Unruh Assembly Fellowship Journal, Volume II, 1991, pp. 1-4.
- ⁶⁴ Op.cit.
- ⁶⁵ Substantial enrollments are defined as at least 30 percent of the district's enrollment in kindergarten or any of the grades one to six, inclusive, or 40 percent of the students in the high school attendance area, see Education Code, Section 17717.7g.
- ⁶⁶ Conversation with Mike Vail, on January 21, 1999. Mr. Vail is the Assistant Superintendent of Facilities and Governmental Relations at the Santa Ana Unified School District.
- ⁶⁷ The class size reduction program reduced the ratio of students to teachers in kindergarten to third grades. It exacerbated the obstacles for school districts that were growing in size, but lacked facilities to house the new students. School districts that were not growing had to provide additional classroom space to account for smaller ratios of teachers to students in kindergarten to third grades. The State Allocation Board provided portable classrooms to cover the smaller-sized classes. The State Allocation Board estimates that thousands more classrooms are needed.
- ⁶⁸ Department of Finance, School Populations Projections. 1998.
- ⁶⁹ Jacobs, Paul. "Backers of Education Cite Jobs, Overcrowding." Los Angeles Times, May 27, 1992.
- ⁷⁰ Auditor General of California. "Some School Construction Funds are Improperly Used and not Maximized." January 1991.
- ⁷¹ County of Sacramento Superior/Municipal Court, Court #97F05608, CJIS XREF #250593.
- ⁷² Vrana, Deborah. "Assembly Rejects Plan in California to Ease Passage of School Bonds." The Bond Buyer, January 27, 1992.
- ⁷³ The passage required a two-thirds vote by the legislature.
- ⁷⁴ November 1993, Proposition 170 failed by 70 percent.

⁷⁵ Colvin, Richard Lee. "Bond Victory Heartening to Educators." Los Angeles Times, March 28, 1996, p. A1. Anderluh, Deborah, Sacramento Bee, March 31, 1996, p. A1. Of the \$7 billion, \$1.6 billion was estimated for overhauls of buildings over 30 years old, and \$5.6 billion for new construction and classroom additions.

⁷⁶ Colvin, Richard Lee. "The California Vote (a Series)." Los Angeles Times, March 19, 1996, p. A3.

⁷⁷ If a school district has an application with the SAB to repair its roof and the roof is not fixed in a reasonable period of time, further structural damage may occur. This new or additional damage could bump the project to the top of the list.

⁷⁸ See the sub-section entitled "School Districts in Line Stand on Shifting Sands."

⁷⁹ Bazar, Emily and Jane Ferris. "Money for Portable Classrooms." Sacramento Bee, September 26, 1996.

⁸⁰ State bonds were proposed biannually in 1988, 1990, and 1992.

⁸¹ In 1976 and 1978 bond measures were defeated by the electorate.

⁸² "Lawmakers Scrap Over Billions in School Bonds." California Public Finance, May 5, 1997, p. 1.

⁸³ "Huge School Bond Mullied" California Public Finance, September 8, 1997, p. 1.

⁸⁴ This included the type of facility and the number of teaching stations (classrooms).

⁸⁵ The Department of Education, School Facilities Planning Division is responsible for site review and site plan review and is required to recommend all school locations for new schools and additions to schools site regardless of the funding source.

⁸⁶ For example, in 1988, the Los Angeles Unified School District wanted to rehabilitate a hotel into a school. The State Allocation Board paid \$48 million to an escrow account in an attempt to hold the price to acquire the Ambassador Hotel. When the school district and State Allocation Board realized that the site was not acceptable and decided to back out of the contract, they found that the developer had removed the money placed in the escrow account. In addition, when the district attempted to backpedal out of the contract, the owner sued for a breach of contract. Currently, there are negotiations between the school district and the owner of the property, Donald Trump.

⁸⁷ A school district was responsible for developing detailed cost estimates for the proposed school or addition. Site support costs provided funds for the preparation of environmental impact documents, development of relocation reports, determination of relocation claims, and negotiation of site purchases. The state reimburses up to 85 percent of the amount expended for eligible sites.

⁸⁸ This list was limited to those school facility components that have approached or exceeded their normal life expectancy.

⁸⁹ Applications for projects and appeals with correspondence from Carol A. Fisher, Apple Valley Unified School District, Author.

⁹⁰ Reimbursable fees and costs related to plans include architect fees, Division of State Architect/ORS Plan Check fee, CDE Plan Check Fee, Preliminary Tests (like soil, foundation, and exploratory borings) and other fees, for instance, advertising construction bids, and printing of plans.

⁹¹ Pascual, Psyche. "Funding to Build High School Finally Approved By State." Los Angeles Times, June 17, 1993.

⁹² Understanding the board's other five opinions would be difficult to track if not impossible to uncover.

⁹³ To evaluate the State Allocation Board's policies and procedures, it was necessary to obtain the State Allocation Board Handbook. The Handbook contains procedures and policies for reviewing and criteria for approving applications from school districts for bond funds to build new schools. When this report was initiated, the Handbook that the State Allocation Board provided was dated 1995, but contained policies adopted in 1993. Further, the State Allocation Board changes its policies and procedures often, and has no administrative process by which it updates its Handbook. An up-to-date, comprehensive list of policies and procedures was not available in any other format. A new handbook for the Lease Purchase Program was available on line - however, it also suffered from a lack of regular updating. The State Allocation Board meets every month and, hypothetically, policy changes can occur each month. Prior to Proposition 1A, despite being subject to the Administrative Procedures Act, the State Allocation Board had no public notice or participation requirements for the procedures by which it changes its policies. Only long-term policies are published in the California Regulatory Notice Register. Such policies included contracting and affirmative action requirements. Furthermore, staff reported that policies change so frequently, that it would be impossible to include relevant policies in the reporter or any other document.

⁹⁴ The number of students above the maximum number set by CDE to be in a classroom.

⁹⁵ The priority points ranking mechanism is based on, among other things, the percentage of currently and projected unhoused students relative to the total population of the applicant district or attendance area.

⁹⁶ In hardship cases, the State will fund more than 50 percent of new construction if a school district is unable to come up with its 50 percent match and had gone through a reasonable effort. Similarly, districts that are unable to offer a 20 percent match for modernization can seek relief from the State. Financial hardship is defined for those school districts that cannot afford to build, repair, or replace facilities because of fiscal restrictions (for example, an inability to match state funding because of an inability to pass local bonds or a lack of bonding capacity). Facility hardship can also apply to school districts that lack adequate housing for their pupils due to a lack of health and public safety conditions; or because of a natural disaster, traffic safety, or the remote geographic location of pupils (i.e., rural). Excessive costs may be attributed to geographic location, size of project, the cost associated with a new project in urban locations that may require high security or toxic cleanup, and sites that may require seismic retrofitting.

⁹⁷ The State Supreme Court ruled that school districts that were unable to accommodate enrollment growth could ask their city and county councils to limit real estate developers from building additional housing. Some developers found it necessary to offer additional resources (land or money) to get support from school districts and city councils for their projects.

⁹⁸ In three legal challenges, the courts have ruled that cities were not precluded from making zoning or other land-use decisions, because of the availability of classroom space, see *Mira Development Corporation v. City of San Diego*, *William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles*, *Murietta Valley Unified School District v. County of Riverside*. The practical effect of the rulings was that cities could limit development on the basis of the supply of classrooms. Some developers found it necessary to offer additional resources, land or money, to get support from school districts and city councils for their projects.

⁹⁹ If the State expends all of its Proposition 1A resources prior to 2006, school districts can ask developers to pay 100 percent of site acquisition and school construction costs. In order to receive developer support under these conditions, school districts must participate in the Multi-Track Year-Round Education program. The Proposition includes language that the State may reimburse developers for up to 50 percent of their costs if subsequent bond funds become available.

¹⁰⁰ Under the old program, school districts had three application phases for each of their projects – planning, site, and construction. Under the new program, there is only one application phase for the entire project proposal, except under hardship provisions.

¹⁰¹ However, once the funds are distributed to the school district, the school district keeps the interest accrued on the funds.

¹⁰² Price Waterhouse. Joint Legislative Budget Committee Office of the Legislative Analyst. Final Report of the Study of the School Facilities Application Process. January 10, 1988.

¹⁰³ One streamlined step is the self-certification process in the Lease Purchase Program.

¹⁰⁴ However, in light of the office's accomplishments, the author had to request information routinely more than once.

¹⁰⁵ www.dgs.ca.gov/opsc.

¹⁰⁶ School Services of California.

EXHIBIT B
PROPOSITION 55 BALLOT MATERIALS



Official Voter Information Guide

California PRIMARY ELECTION



Propositions

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Proposition 55

KINDERGARTEN-UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT OF 2004.

- This act provides for a bond issue of twelve billion three hundred million dollars (\$12,300,000,000) to fund necessary education facilities to relieve overcrowding and to repair older schools.
- Funds will be targeted to areas of greatest need and must be spent according to strict accountability measures.
- Funds will also be used to upgrade and build new classrooms in the California Community Colleges, the California State University, and the University of California, to provide adequate higher education facilities to accommodate growing student enrollment.
- Appropriates money from General Fund to pay off bonds.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- State costs of about \$24.7 billion to pay off both the principal (\$12.3 billion) and interest (\$12.4 billion) costs on the bonds. Payments of about \$823 million per year.

Final Votes Cast by the Legislature on AB 16 (Proposition 55)

Assembly:	Ayes 71	Noes 8
Senate:	Ayes 27	Noes 11

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Propositions

ANALYSIS BY THE LEGISLATIVE ANALYST

Proposition 55

BACKGROUND

Public education in California consists of two distinct systems. One system includes local school districts that provide elementary and secondary (kindergarten through 12th grade, or "K-12") education to about 6.2 million pupils. The other system (commonly referred to as "higher education") includes the California Community Colleges (CCCs), the California State University (CSU), and the University of California (UC). The three segments of higher education provide education programs beyond the 12th grade to the equivalent of about 1.6 million full-time students.

K-12 Schools

School Facilities Funding. The K-12 schools receive funding for construction and modernization (that is, renovation) of facilities from two main sources—state general obligation bonds and local general obligation bonds. General obligation bonds are backed by the state and school districts, meaning that they are obligated to pay the principal and interest costs on these bonds.

- **State General Obligation Bonds.** The state, through the School Facility Program (SFP), provides money for school districts to buy land and to construct and renovate K-12 school buildings. Districts receive funding for construction and renovation based on the number of pupils who meet the eligibility criteria of the program. The cost of school construction projects is shared between the state and local school districts. The state pays 50 percent of the cost of new construction projects and 60 percent of the cost for approved modernization projects. (Local matches are not necessary in "hardship" cases.) The state has funded the SFP by issuing general obligation bonds. General Fund revenues would be used to pay these costs. These revenues come primarily from state income and sales taxes. Over the past decade, voters have approved a total of \$20.1 billion in state bonds for K-12 school construction. About \$1.9 billion of these funds remain available for expenditure.
- **Local General Obligation Bonds.** School districts are authorized to sell general obligation bonds to finance school construction projects with the approval of 55 percent of the voters in the district. These bonds are paid off by taxes on real property located within the district. Over the last ten years, school districts have received voter approval to issue more than \$37 billion of general obligation bonds.

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general obligation bonds, school districts also receive significant funds from:

- **Developer Fees.** State law authorizes school districts to impose developer fees on new construction. These fees are levied on new residential, commercial, and industrial developments. Statewide, school districts report having received an average of over \$400 million a year in developer fees over the last decade.
- **Special Local Bonds (Known as "Mello-Roos" Bonds).** School districts may form special districts in order to sell bonds for school construction projects. (These special districts generally do not encompass the entire school district.) The bonds, which require two-thirds voter approval, are paid off by charges assessed to property owners in the special district. Statewide, school districts have received on average about \$270 million a year in special local bond proceeds over the past ten years.

K-12 School Building Needs. Under the SFP, K-12 school districts must demonstrate the need for new or modernized facilities. Through September 2004, the districts have identified a need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils. The state cost to address these needs is estimated to be roughly \$16 billion.

Higher Education

California's system of public higher education includes 141 campuses in the three segments listed below, serving about 1.6 million students:

- The CCCs provide instruction to 1.1 million students at 108 campuses operated by 72 locally governed districts throughout the state. The community colleges grant associate degrees and also offer a variety of vocational skill courses.
- The CSU has 23 campuses, with an enrollment of about 331,000 students. The system grants bachelor and master degrees, and a small number of joint doctoral degrees with UC.
- The UC has nine general campuses, one health sciences campus, and various affiliated institutions, with a total enrollment of about 201,000 students. This system offers bachelor, master, and doctoral degrees, and is the primary state-supported agency for conducting research.

Over the past decade, the voters have approved \$5.1 billion in general obligation bonds for capital improvements at public higher education campuses. Virtually all of these funds have been committed to specific projects. The state also has provided almost \$1.6 billion in lease revenue bonds (authorized by the Legislature) for this same purpose.

In addition to these state bonds, the higher education segments have other sources of funding for capital projects.

FIGURE 1	
PROPOSITION 55 USES OF BOND FUNDS	
<i>Amount (in Millions)</i>	
K-12	
New construction projects 2485	\$5,260 ^a

Modernization projects	2,250
Critically overcrowded schools	2,440
Joint use	50
Subtotal, K-12	(\$10,000) ^b
Higher Education	
Community Colleges	\$920
California State University	690
University of California	690
Subtotal, Higher Education	(\$2,300)
TOTAL	\$12,300
^a Up to \$300 million available for charter schools.	
^b Up to \$20 million available for energy conservation projects.	

- **Local General Obligation Bonds.** Community college districts are authorized to sell general obligation bonds to finance school construction projects with the approval of 55 percent of the voters in the district. These bonds are paid off by taxes on real property located within the district. Over the last decade, community college districts have received local voter approval to issue over \$7 billion of bonds for construction and renovation of facilities.
- **Gifts and Grants.** The CSU and UC in recent years together have received on average over \$100 million annually in gifts and grants for construction of facilities.
- **UC Research Revenue.** The UC finances the construction of new research facilities by selling bonds and pledging future research revenue for their repayment. Currently, UC uses about \$130 million a year of research revenue to pay off these bonds.

Higher Education Building Plans. Each year the institutions of higher education prepare capital outlay plans in which they identify project priorities over the next few years. Higher education capital outlay projects in the most recent plans total \$5.3 billion for the period 2003-04 through 2007-08.

PROPOSAL

This measure allows the state to issue \$12.3 billion of general obligation bonds for construction and renovation of K-12 school facilities (\$10 billion) and higher education facilities (\$2.3 billion). Figure 1 shows how these bond funds would be allocated to K-12 and higher education.

Future Education Bond Act. If the voters do not approve this measure, state law requires the same bond issue to be placed on the November 2004 ballot.

K-12 School Facilities

Figure 1 describes generally how the \$10 billion for K-12 school projects would be allocated. However, the measure would permit changes in this allocation with the approval of the Legislature and Governor.

New Construction. A total of \$5.26 billion would be available to buy land and construct new school buildings. A district would be required to pay for 50 percent of costs with local resources unless it qualifies for state hardship



funding. The measure also provides that up to \$300 million of these new construction funds is available for charter school facilities. (Charter schools are public schools that operate independently of many of the requirements of regular public schools.)

Modernization. The proposition makes \$2.25 billion available for the reconstruction or modernization of existing school facilities. Districts would be required to pay 40 percent of project costs from local resources.

Critically Overcrowded Schools. This proposition directs a total of \$2.44 billion to districts with schools which are considered critically overcrowded. These funds would go to schools that have a large number of pupils relative to the size of the school site.

Joint-Use Projects. The measure makes a total of \$50 million available to fund joint-use projects. (An example of a joint-use project is a facility constructed for use by both a K-12 school district and a local library district.)

Higher Education Facilities

The measure includes \$2.3 billion to construct new buildings and related infrastructure, alter existing buildings, and purchase equipment for use in these buildings for California's public higher education systems. As Figure 1 shows, the measure allocates \$690 million each to UC and CSU and \$920 million to CCCs. The Governor and the Legislature would select the specific projects to be funded by the bond monies.

FISCAL EFFECT

The cost of these bonds would depend on their interest rates and the time period over which they are repaid. If the \$12.3 billion in bonds authorized by this proposition is sold at an interest rate of 5.25 percent (the current rate for this type of bond) and repaid over 30 years, the cost over the period would be about \$24.7 billion to pay off both the principal (\$12.3 billion) and interest (\$12.4 billion). The average payment for principal and interest would be about \$823 million per year.

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EXHIBIT C

BUTT V. STATE OF CALIFORNIA (1992)

4 Cal.4th 668; 15 Cal.Rptr.480; 842 P.2d 1240

[No. S020835. Dec. 31, 1992.]

THOMAS K. BUTT et al., Plaintiffs and Respondents, v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.

SUMMARY

Parents of school children enrolled in a unified school district filed a class action for injunctive relief against the state and the district's board of education, seeking to prevent the district from closing its schools six weeks before the official end of the school year due to a projected revenue shortfall. After granting plaintiffs' motion to amend the complaint to include the state Superintendent of Public Instruction and the state Controller as defendants, the trial court granted plaintiffs' motion for a preliminary injunction, ordering the state and the superintendent to ensure that the schools remained open until the end of the school year or to provide the students with a substantially equivalent educational opportunity. The court subsequently issued another order, pursuant to the superintendent's plan, authorizing the Controller to disburse an emergency loan to the district from unspent portions of appropriations for the Greater Avenues for Independence (GAIN) program and another unified school district, and authorizing the superintendent to relieve the present board, and to develop recovery and repayment plans. The state's appeal from the trial court's orders was transferred from the Court of Appeal to the Supreme Court. (Superior Court of Contra Costa County, No. C91-01645, Ellen Sickles James, Judge.)

The Supreme Court reversed the trial court's second order insofar as it approved funding of an emergency loan from appropriations for the GAIN program and the other school district; in all other respects, the court affirmed the orders, and directed the Court of Appeal to remand the matter to the trial court for further proceedings. The court held that the trial court, in deciding the propriety of a preliminary injunction, did not abuse its discretion in finding that there was a reasonable probability that plaintiffs would succeed on the merits of their case, since the early closure of the district's schools would have deprived the students of their fundamental right to basic equality in public education, and the state was required to intervene to prevent a deprivation of that right. The court also held that the trial court properly found that denial of the preliminary injunction would have caused students and their parents substantial and irreparable harm greater than that which defendants would suffer if the injunction were granted. The court held that

the trial court acted within its equitable powers in ordering the superintendent to displace the board, operate the district, and impose a plan for the district's permanent financial recovery, but that it was improper for the trial court to order the state to extend the loan by using unspent funds from appropriations for the GAIN program and the other school district, since those funds were not "reasonably available" for that purpose. (Opinion by Baxter, J., with Panelli, Arabian and George, JJ., concurring. Separate concurring and dissenting opinions by Lucas, C. J., Mosk and Kennard, JJ.)

HEADNOTES

Classified to California Digest of Official Reports

- (1) **Appellate Review § 119—Dismissal—Grounds—Mootness—Exception for Matters of Public Interest—Issues Concerning Injunction Requiring Emergency State Loan to Fund School District.**—On the state's appeal from a preliminary injunction requiring it to extend an emergency loan to a school district so that it could keep its schools open until the end of the school year despite revenue shortfalls, and to implement a recovery plan for the district, some issues were moot due to the fact that a plan had already been implemented and the state did not seek rescission of the loan. Nevertheless, the Supreme Court had discretion to decide the issues, which included whether the state was responsible to ensure the students' fundamental right to basic educational equality and whether the trial court had authority to order a loan from funds the Legislature had appropriated for other purposes, since those issues involved potentially recurring questions of public importance. As to the appropriations issue, there was a substantial possibility that similar crises would produce similar emergency orders in the future, thus favoring review. Moreover, the state had fully litigated the issue, and any mootness stemmed from the Supreme Court's denial of the state's request for a stay pending appeal.
- (2) **Injunctions § 21—Preliminary Injunctions—Appeal—Scope of Review.**—Appellate review of a trial court's decision as to whether to issue a preliminary injunction is limited to whether the decision was an abuse of discretion. In deciding whether to issue a preliminary injunction, the trial court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits, and (2) the relative interim harm to the parties resulting from the issuance or nonissuance of the injunction. The trial court's determination must be guided by a "mix" of the two factors, and the greater the

plaintiff's showing on one, the less must be shown on the other to support an injunction. The scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at a trial on the merits, and the trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. Thus, unless the potential merit of the claim is conceded, the appellate court must address that issue when reviewing an order granting a preliminary injunction.

- (3a-3c) Schools § 4—School Districts; Financing; Funds—Shortening School Year on Emergency Basis Due to Budget Shortfall—State's Obligation.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district, seeking to prevent the district from ending the school year six weeks early due to a budget shortfall, the trial court, in granting plaintiffs a preliminary injunction, did not abuse its discretion in finding that there was a reasonable probability that plaintiffs would succeed on the merits of their case. Basic equality in public education for all students, regardless of the district in which they reside, is a fundamental right under the California Constitution, and denials of that right are subject to strict scrutiny. The state has the ultimate responsibility for assuring equal operation of the public school system, and is obliged to intervene when a local district's fiscal problems prevent its students from receiving basic educational equality. Moreover, there was no state policy of local autonomy and accountability at the district level that was compelling enough to justify the state's tolerance of the extreme and unprecedented educational deprivation that would have resulted from the early closure of the district's schools.

[See Cal.Jur.3d, Schools, §§ 291, 299.]

- (4) Schools § 1—Legislature's Nondelegable Responsibility Over Public School System.**—Public education is an obligation that the state assumed by adoption of the state Constitution. The public school system, although administered through local districts created by the Legislature, is one system applicable to all of the common schools. In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. The Legislature's "plenary" power over public education is subject only to constitutional restrictions. Local districts are the state's agents for local operation of the common school system, and the state's ultimate responsibility for public education cannot be delegated to any other entity.

-
- (5) **Constitutional Law § 87.2—Equal Protection—Classification—Judicial Review—Strict Standard of Review for Suspect Classifications or Classifications Touching on Fundamental Interests—Right to Education.**—Under the equal protection clauses of the federal and state Constitutions, heightened judicial scrutiny applies to state-maintained discrimination whenever the disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest. Education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.
- (6) **Schools § 4—School Districts; Financing; Funds—Shortening School Year on Emergency Basis Due to Budget Shortfall—Preliminary Injunction Against State—Balancing Harm to Parents and Students Against Harm to District.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district to prevent closure of the district's schools six weeks early due to a budget shortfall, the trial court properly found that denial of the parents' motion for a preliminary injunction would have caused district students and their parents substantial and irreparable harm that was greater than that which defendants would suffer if the injunction were granted. Plaintiffs' declarations suggested that the district's inability to complete the school year arose from its ever-worsening fiscal condition and the deterioration of negotiations for emergency aid, and that the teachers' lesson plans did not provide for the contingency of early closure. They also detailed the difficulties of maintaining the educational progress of over 31,000 suddenly displaced students. While plaintiffs may not have demonstrated that "irreparable" harm to students was unavoidable by other means, the trial court's findings both that plaintiffs had a reasonable probability of success on the merits and that they would suffer more harm if an injunction were denied than the state would suffer if it were granted fully justified its decision to grant the preliminary injunction.
- (7a, 7b) **Schools § 4—School Districts; Financing; Funds—District in Financial Distress Due to Mismanagement—Trial Court's Equitable Power to Grant Relief—Ordering Superintendent of Public Instruction to Assume Management.**—In an action for injunctive relief by parents against the state, the state Superintendent of Public Instruction, the state Controller, and the board of education of a school district, seeking to prevent the school district from ending the school year six weeks early due to a budget shortfall, the trial court did not exceed its powers in issuing an order, based on a plan submitted by the superintendent and the Controller, authorizing the superintendent to

displace the board, operate the district, and impose a plan for the district's permanent financial recovery. Although no statute gave the superintendent such authority, the takeover order was within the trial court's inherent equitable power to enforce the state's constitutional obligations in light of the unique situation. The state was justified in satisfying its duty by extending a loan with conditions to ensure appropriate use of the funds and minimize the risk of default, especially since the district's ability to administer the loan under its existing systems and managers was uniquely suspect.

- (8) **Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power—To Order Discretionary Acts By Executive or Legislature.**—In general, courts have equitable authority to enforce their constitutional judgments. Principles of comity and separation of powers, however, place significant restraints on the authority of courts to order or ratify acts that are normally committed to the discretion of other branches or officials. In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature. Moreover, a judicial remedy must be tailored to the harm at issue. A court should always strive for the least disruptive remedy that is adequate to its legitimate task.
- (9) **Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power—To Order Spending of Legislative Appropriations—Ordering Emergency Loan to School District From Funds Appropriated for Other Educational Purposes.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district, seeking to prevent the school district from ending the school year six weeks early due to a budget shortfall, the trial court improperly ordered the state to extend the district an emergency loan of \$19 million out of unspent funds appropriated for the Greater Avenues for Independence (GAIN) program and for an emergency loan to another school district. The appropriations did not make funds "reasonably available" for the purpose of financing the remainder of the district's school term. GAIN's purpose is to provide employment, adult education, and job training to recipients of public aid. The GAIN appropriation was expressly designated for that program alone, and was not intended to fund the needs of non-GAIN students. Similarly, the emergency loan to the other district was specifically appropriated for that district, with conditions addressed to the circumstances of that case. The funding of the remainder of the district's term was clearly

outside the particular purposes for which the appropriations were reserved.

[See 7 **Witkin**, Summary of Cal. Law (9th ed. 1988) Constitutional Law, §§ 112, 115.]

COUNSEL

Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, Charlton G. Holland, Assistant Attorney General, D. Robert Shuman, Richard J. Chivaro, Joseph R. Symkowick, Roger D. Wolfertz, Michael E. Hersher, Allan H. Keown and Stuart Biegel for Defendants and Appellants.

Frank R. Calton, Howard P. Abelson, Ronald A. Zumbun and Anthony T. Caso as Amici Curiae on behalf of Defendants and Appellants.

Eva Paterson, Michael Harris, Morrison & Foerster, Darryl Rains, Arturo J. Gonzalez and Katherine E. Schuelke for Plaintiffs and Respondents.

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Robert J. Bezemek as Amicus Curiae.

OPINION

BAXTER. J.—In late April 1991, after a period of mounting deficits, the Richmond Unified School District (District) announced it lacked funds to complete the final six weeks of its 1990-1991 school term. The District proposed to close its doors on May 1, 1991. The Superior Court of Contra Costa County issued a preliminary injunction directing the State of California (State), its Controller, and its Superintendent of Public Instruction (SPI) to ensure that the District's students would receive a full school term or its equivalent. The court approved the SPI's plan for an emergency State loan, and for appointment by the SPI of an administrator to take temporary charge of the District's operation.

We declined to stay implementation of the plan pending the State's appeal. However, we transferred the appeal here in order to decide an important issue of first impression: Whether the State has a constitutional duty, aside from the equal allocation of educational funds, to prevent the budgetary problems of a particular school district from depriving its students of "basic" educational equality.

We affirm the trial court's determination that such a duty exists under the California Constitution. Further, the court did not err in concluding, on the basis of the plaintiffs' preliminary showing, that the particular circumstances of this case demanded immediate State intervention. However, the court exceeded its judicial powers by approving the diversion of emergency loan funds from appropriations clearly intended by the Legislature for other purposes.

FACTS AND PROCEDURAL HISTORY¹

On April 17, 1991, Thomas K. Butt and other named District parents filed a class action for temporary and permanent injunctive relief against the State and the District's board of education (Board).² The complaint alleged as follows: The State is responsible for educating all California children, and the Board is the State's agent for carrying out this responsibility in the District. The scheduled final day of the District's 1990-1991 school term was June 14, 1991, but the District had announced that its 44 elementary, secondary, and adult schools would close on May 1, 1991. The resulting loss of six weeks of instruction would cause serious, irreparable harm to the District's 31,500 students and would deny them their "fundamental right to an effective public education" under the California Constitution. Moreover, as an unjustified discrimination against District students compared to those elsewhere in California, the closure would violate equal protection guarantees of the California and United States Constitutions. Therefore, defendants should be enjoined from closing the District's schools before the scheduled end of the scholastic term.

On April 22, 1991, plaintiffs noticed a motion for preliminary injunction. In an attached declaration, Frank R. Calton, a member of the Board, stated

¹The State, as appellant, has elected to proceed by way of an appendix in lieu of the clerk's transcript, as permitted by rule 5.1 of the California Rules of Court. Some of the documents contained in the appendix, though they include handwritten filing dates, bear no official file stamps and have no proofs of service attached. However, rule 5.1 expressly allows the use of unofficial conformed copies (subd. (c)(1)) and provides that the filing of an appendix "constitutes a representation by counsel that the appendix consists of true and correct copies of the papers in the superior court file" (subd. (i)(1)). No party having urged otherwise, we adopt that assumption for purposes of this opinion.

²The named plaintiffs sued on behalf of themselves, their children, and other parents and students of the District.

that the District projected a revenue shortfall of \$23 million for the 1990-1991 academic year and only had sufficient funds to pay its employees through April 1991. Calton declared the District would have to close at the end of April unless new funds were obtained or employees agreed to work for registered warrants in lieu of paychecks. He indicated that the District's efforts to obtain an emergency loan from the State had not yet succeeded, and the District was preparing to file for bankruptcy.

Plaintiffs' motion papers also included declarations by District teachers, academicians in the field of education, and members of the Contra Costa County board of education. These statements detailed the serious disruptive effect the proposed closure would have upon the educational process in the District and upon the quality of education afforded its students.

The motion was heard on April 29, 1991. The Attorney General represented the State in opposition. Counsel for the District represented that the Board's appearance was precluded by an automatic bankruptcy stay. The trial court granted plaintiffs' unopposed motion for amendment of the complaint to include the SPI and the Controller as defendants. Pending applications for intervention and amicus curiae status were not formally granted,³ but as stipulated by the parties, the court heard argument from the applicants and agreed to consider their briefs.

At the conclusion of the hearing, the trial court ruled orally that under the California Constitution, the State itself is responsible for the "fundamental" educational rights of California students and must remedy a local district's inability to provide its students an education "basically equivalent" to that provided elsewhere in the State. Concluding that the threatened closure would deny the District's students a "constitutionally [equal] education," the court ordered the State and the SPI to act as "they deem appropriate" to ensure that District schools remained open until June 14, 1991, or to provide District students a "substantially equivalent educational opportunity" within the statutory school year ending June 30, 1991.

This oral decision was followed by two written orders filed May 2. One of these, drafted by plaintiffs' counsel, purported to formalize the April 29 ruling. It made findings that closure of District schools by May 1 would cause District students irreparable harm, that the balance of harm favored a preliminary injunction, that education is a "fundamental right" in California,

³Applications to appear as amici curiae were submitted by the Richmond Federation of Teachers (RFT) and jointly by the Meiklejohn Civil Liberties Institute, the National Lawyers Guild, and Multi-Cultural Education, Training, and Advocacy, Inc. (collectively Meiklejohn). Complaints in intervention and/or applications for leave to intervene were submitted by the Oakland Unified School District (OUSD), RFT, and United Teachers of Richmond (UTR).

that no "compelling interest" justified denying District students six weeks of instruction available to "every other child in the State," and that plaintiffs' ultimate success on the merits was reasonably probable. The State and its agents again were directed to act "as . . . appropriate" to ensure District students, within the school year ending June 30, 1991, an education "equivalent basically" to that provided elsewhere in California for a full school term. The Controller was added as a State official expressly bound by the court's commands.

On the same day, May 2, the SPI and the Controller submitted their plan for compliance with the preliminary injunction. With counsel for all interested parties present, the court took evidence indicating that uncommitted funds exceeding the estimated \$19 million necessary to complete the District's school year were available from existing State appropriations to the Greater Avenues for Independence (GAIN) program and for emergency assistance to the OUSD. Counsel for the OUSD stipulated that his client had "no objection" to use of the \$10 million OUSD appropriation for purposes of an emergency loan to the District.

Accordingly, the court executed an order, drafted by counsel for the SPI, approving in principle the submitted plan.⁴ The order authorized the Controller to disburse an emergency loan to the District from unspent portions of the GAIN and OUSD appropriations. (See Stats. 1989, ch. 93, § 22.00; Stats. 1989, ch. 1438, § 1 et seq.) Meanwhile, the SPI, by virtue of the State's "ultimate responsibility" for equal education and his own statutory obligation to "superintend the schools of this state" (Ed. Code, § 33112, subd. (a)),⁵ would have authority to "relieve the . . . [B]oard of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, [develop] a repayment plan on the [D]istrict's behalf as necessary" to ensure completion of the school term, the District's financial recovery, and the protection of the loaned funds.⁶

The Attorney General timely noticed appeals from the April 29 and May 2 orders on behalf of the State. Defendants SPI and Controller did not

⁴Though the court's order recites that the SPI and the Controller "presented . . . , after notice to all parties, an agreement" to provide an emergency loan, neither the agreement itself, nor a description of its precise terms, has been made part of the record on appeal.

⁵All further statutory references are to the Education Code unless otherwise indicated.

⁶The preliminary injunction motion was litigated with understandable haste, and evidence of the causes of the District's apparent insolvency was not presented below. On appeal, the SPI invites us to take judicial notice of grand jury findings on this subject which were released after the preliminary injunction was granted. (See The Financial Affairs of the Richmond Unified School District, Rep. of 1990-1991 Contra Costa County Grand Jury (May 29, 1991) [hereafter Report].) Without objection, we may note the Report's contents. (Evid. Code, §§ 452, subds. (c), (d), 455, 459; see *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1259, fn. 54 [275 Cal.Rptr. 729, 800 P.2d 1159].) Of course, we cannot accept its findings as evidence or its criticisms of the District and the Board as conclusively founded. We are

appeal. The State immediately requested transfer of the appeal from the Court of Appeal, First Appellate District, to this court (see Cal. Rules of Court, rule 20) and also asked that we stay enforcement of the trial court's orders pending appeal. (1)^(See fn. 7.) The SPI and the Controller opposed a stay but supported transfer of the appeal to this court. We granted the transfer request but denied a stay.⁷

DISCUSSION

1. *Standard of review.*

(2) In deciding whether to issue a preliminary injunction, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party

particularly loath to do so when the District and the Board were disabled below from defending against claims of mismanagement and, except for a special appearance at oral argument, have not participated in the appeal.

Nonetheless, we cannot ignore the grand jury's assessment that despite repeated warnings, an earnest but financially inexperienced Board permitted massive, accelerating deficit spending over a period of several years to expand staff, boost salaries and benefits, and support innovative programs installed by the District's former superintendent. (Report, pp. 3-5.) According to the Report, the resulting deficit for the years 1986-1990 was \$29.5 million, with an \$18.1 million deficit for 1990 alone. (*Id.*, at p. 4.) In 1990, the District had received a State emergency loan exceeding \$9 million, in consequence of which a limited-powers trustee appointed by the SPI was overseeing District financial affairs during the 1990-1991 school term. (*Id.*, at p. 5.)

⁷Our denial of a stay allowed implementation of the plan approved by the trial court, and the District's school year was completed. Though the State vigorously contends the court lacked power to invade the GAIN and OUSD appropriations, it does not demand actual rescission of the court-approved loan. Moreover, we judicially notice without objection that in June 1992, the SPI approved a repayment and recovery plan adopted by the District, restored the Board's powers, and terminated the court-authorized appointment of the State administrator. (See Evid. Code, §§ 452, subs. (c), (h), 455, 459.) Although portions of the appeal may therefore be technically moot, we have discretion to decide the issues presented as potentially recurring questions of public importance. (E.g., *O'Hare v. Superior Court* (1987) 43 Cal.3d 86, 91, fn. 1 [233 Cal.Rptr. 332, 729 P.2d 766]; *DiGiorgio Fruit Corp. v. Dept. of Employment* (1961) 56 Cal.2d 54, 58 [13 Cal.Rptr. 663, 362 P.2d 487]; *People v. West Coast Shows, Inc.* (1970) 10 Cal.App.3d 462, 468 [89 Cal.Rptr. 290].)

The Chief Justice objects in particular that we neither must nor should address whether the sources of funding approved by the trial court were proper. However, he fails to indicate why this important and sensitive issue is any more moot, or any less worthy of consideration, than other portions of the trial court's order which have also been irretrievably implemented. Indeed, in these uncertain times, the substantial possibility arises that similar future crises will produce similar emergency orders for immediate diversion of State funds from expedient sources. Hence, contrary to the Chief Justice's suggestion, the issue is one capable of repetition but difficult to review, and this concern favors its prompt consideration under the "public interest" exception to the mootness doctrine. (*DiGiorgio Fruit Corp.*, *supra*, 56 Cal.2d at p. 58.) Moreover, the State has fully litigated the merits of the appropriations issue throughout, and any mootness in this or other aspects of the injunction stems from our denial of the State's request for a stay pending appeal. Under these circumstances, the State should not be penalized on appeal for conceding that State funds already expended by the District cannot practicably be recovered.

will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 441-442 [261 Cal.Rptr. 574, 777 P.2d 610].) Appellate review is limited to whether the trial court's decision was an abuse of discretion. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286 [219 Cal.Rptr. 467, 707 P.2d 840].)

The trial court's determination must be guided by a "mix" of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. (*King v. Meese* (1987) 43 Cal.3d 1217, 1227-1228 [240 Cal.Rptr. 829, 743 P.2d 889].) Of course, "[t]he scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits." (*Common Cause, supra*, 49 Cal.3d at p. 442.) A trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. (*Id.*, at pp. 442-443.) Unless potential merit is conceded, an appellate court must therefore address that issue when reviewing an order granting a preliminary injunction.

Here, the trial court found that plaintiffs' constitutional demand for State intervention had potential merit, and that the balance of interim harm justified the issuance of a preliminary injunction against the State. For the reasons that follow, we conclude that each of these determinations was within the court's discretion.⁸

2. Merits of plaintiffs' claims.

(3a) The trial court expressly found "[t]here is a reasonable probability that plaintiffs will succeed on the merits of their case." The court agreed with plaintiffs' claim that the equal protection guaranties of the California Constitution (art. I, § 7, subs. (a), (b); art. IV, § 16, subd. (a)) require State intervention to ensure that fiscal problems do not deprive a local district's

⁸The State insists that under the circumstances of this case, appellate review should not be limited to whether the trial court "abused its discretion" when weighing "interim" harm and "probable" merit. The State stresses that the unstayed injunction, though preliminary in form, was both final and unprecedented in fact. Accordingly, the State suggests, we must decide, as on appeal from a final judgment, whether plaintiffs were entitled to the relief they received.

We disagree. The abuse-of-discretion standard acknowledges that the propriety of preliminary relief turns upon difficult estimates and predictions from a record which is necessarily truncated and incomplete. Here, the urgency of the situation forced plaintiffs to produce, and the State to rebut, a hasty tentative showing of constitutional necessity. The evidence on which the trial court was forced to act may thus be significantly different from that which would be available after a trial on the merits. Neither the trial court nor this court could undertake a final adjudication of plaintiffs' lawsuit under such circumstances.

students of basic educational equality.⁹ The court also accepted plaintiffs' preliminary showing that the effect of the District's crisis on its students' educational rights was serious enough to trigger the State's constitutional duty. The State, supported by amicus curiae Pacific Legal Foundation (Pacific),¹⁰ assails these conclusions on multiple grounds.

At the outset, the State does not claim it lacks any and all constitutional role in local educational affairs. Instead, its reasoning proceeds as follows: The State fulfills its financial responsibility for educational equality by subjecting all local districts, rich and poor, to an equalized statewide revenue base.¹¹ Unless a district fails to provide the minimum six-month school term set forth in the "free school" clause (Cal. Const., art. IX, § 5),¹² the State has no duty to ensure prudent use of the equalized funds by local administrators. Even if local mismanagement causes one district's services to fall seriously below prevailing statewide standards, the resulting educational inequality is

⁹Article I, section 7, subdivision (a) provides in pertinent part that "[a] person may not be . . . denied equal protection of the laws. . . ." Article I, section 7, subdivision (b) provides in pertinent part that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. . . ." Article IV, section 16, subdivision (a) provides that "[a]ll laws of a general nature have uniform operation."

¹⁰The positions adopted by the various parties and numerous amici curiae in this appeal are diverse. The Attorney General, representing the State as defendant and appellant, opposes all aspects of the trial court orders. Though they were joined as defendants below, the SPI and the Controller, deeming themselves "respondents" on appeal, support plaintiffs' view that the orders were proper in all respects. Amicus curiae Pacific supports the State's position. Amici curiae RFT and UTR approve State financial aid but object to displacement of the local governing board by a State administrator. Amici curiae Frank R. Calton and Howard P. Abelson urge that the Board acted correctly by deciding to close District schools and should not have been displaced. Calton and Abelson also suggest the injunction was improper because the Board had no opportunity to appear and defend against claims of mismanagement. Amici curiae Mario Diaz and Rebecca Hazlewood Bezemek (Diaz and Bezemek) take no position on State financial assistance but argue that the SPI's takeover of District government was improper. Amicus curiae briefs in support of plaintiffs have been filed by the American Civil Liberties Union Foundation, Human Rights Advocates, and Meiklejohn.

¹¹The funding scheme for public education is complex, but no party disputes the summary description provided in the State's brief: "The Legislature has attempted to equalize school district funding . . . by the use of a 'base revenue limit' for each district. Each district is classified by size and type. ([Ed.] Code, [§] 42238.) Based upon this classification scheme, each district has a 'base revenue limit' per unit of average daily attendance. The base revenue limit for any district includes the amount of property tax revenues a district can raise, with other specific local revenues, coupled with an equalization payment by the State, thus bringing each district into a rough equivalency of revenues. (Compare [Cal. Code Regs., tit. 5, [§] 15371, *et seq.*; Ed.] Code [§] 42238 *et seq.*) [¶] Because the student population is so diverse, the Legislature had to supplement the base revenue limit with specific augmentations targeted for categories of children with needs that require special attention. These supplements are designated as 'categorical' aid. . . ."

¹²Article IX, section 5 provides: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

not grounded in district wealth, nor does it involve a "suspect classification" such as race. Thus, "strict scrutiny" of the disparity is not required, and the State's refusal to intervene must be upheld as rationally related to its policy of local control and accountability. Even if strict scrutiny is appropriate, the local-control policy is "compelling" enough to justify the State's inaction.

Under the unprecedented circumstances of this case, we cannot accept the State's contentions. We set forth our reasons in detail.

Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all. The Constitution of 1849 directed the Legislature to "provide for a system of common schools, by which a school shall be kept up and supported in each district" (Cal. Const. of 1849, art. IX, § 3.) That constitutional command, with the additional proviso that the school maintained by each district be "free," has persisted to the present day. (Cal. Const., art. IX, § 5.)

In furtherance of the State system of free public education, the Constitution also creates State and county educational offices, including a Superintendent of Public Instruction and a State Board of Education. (Cal. Const., art. IX, §§ 2-3.3, 7.) It authorizes the formation of local school districts (*id.*, §§ 6½, 14), requires that all public elementary and secondary schools be administered within the Public School System (*id.*, § 6), establishes a State School Fund (Fund) (*id.*, § 4), reserves a minimum portion of State revenues for allocation to the Fund (*id.*, art. XVI, §§ 8, 8.5), guarantees minimum allocations from the Fund for each public school (*id.*, art. IX, § 6), specifies minimum salaries for public school teachers (*ibid.*), authorizes the State Board of Education to approve public school textbooks (*id.*, § 7.5), and permits the Legislature to grant local districts such authority over their affairs as does not "conflict with the laws and purposes for which school districts are established" (*id.*, § 14).

(4) Accordingly, California courts have adhered to the following principles: Public education is an obligation which the State assumed by the adoption of the Constitution. (*San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 951-952 [92 Cal.Rptr. 309, 479 P.2d 669]; *Piper v. Big Pine School Dist.* (1924) 193 Cal. 664, 669 [226 P. 926].) The system of public schools, although administered through local districts created by the Legislature, is "one system . . . applicable to all the common schools" (*Kennedy v. Miller* (1893) 97 Cal. 429, 432 [32 P. 558], italics in original.) ". . . In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. . . ." (*Jackson v.*

Pasadena City School Dist. (1963) 59 Cal.2d 876, 880 [31 Cal.Rptr. 606, 382 P.2d 878].) “[M]anagement and control of the public schools [is] a matter of state[, not local,] care and supervision. . . .” (*Kennedy v. Miller, supra*, 97 Cal. at p. 431; see also *Hall v. City of Taft* (1956) 47 Cal.2d 177, 181 [302 P.2d 574]; *California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1523-1524 [7 Cal.Rptr.2d 699].) The Legislature’s “plenary” power over public education is subject only to constitutional restrictions. (*Hall v. City of Taft, supra*, at pp. 180-181 [302 P.2d 574]; *Tinsley v. Palo Alto Unified School Dist.* (1979) 91 Cal.App.3d 871, 903-904 [154 Cal.Rptr. 591].) Local districts are the State’s agents for local operation of the common school system (*Hall v. City of Taft, supra*, at p. 181; *San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d at p. 952; *California Teachers Assn., supra*), and the State’s ultimate responsibility for public education cannot be delegated to any other entity (*Hall v. City of Taft, supra*; *Piper v. Big Pine School Dist., supra*, 193 Cal. at p. 669).

(3b) It is true that the Legislature has assigned much of the governance of the public schools to the local districts (e.g., §§ 14000, 35160 et seq., 35160.1), which operate under officials who are locally elected and appointed (§§ 35020, 35100 et seq.). The districts are separate political entities for some purposes. (E.g., *Johnson v. San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 698-700 [266 Cal.Rptr. 187] [general theory of respondeat superior does not make State liable for torts of local district or its employees]; *Gonzales v. State of California* (1972) 29 Cal.App.3d 585, 590-592 [105 Cal.Rptr. 804] [same]; *First Interstate Bank v. State of California* (1987) 197 Cal.App.3d 627, 633-634 [243 Cal.Rptr. 8] [State not vicariously liable for district’s breach of contract]; *Board of Education v. Calderon* (1973) 35 Cal.App.3d 490, 496 [110 Cal.Rptr. 916] [local district is not the “state” or the “People,” so as to be civilly bound in dismissal proceedings by teacher’s acquittal of criminal sex offense under principles of res judicata].)

Yet the existence of this local-district system has not prevented recognition that the State itself has broad responsibility to ensure basic educational equality under the California Constitution. Because access to a public education is a uniquely fundamental personal interest in California, our courts have consistently found that the State charter accords broader rights against State-maintained educational discrimination than does federal law. Despite contrary federal authority, California constitutional principles require State assistance to correct basic “interdistrict” disparities in the system of common schools, even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents.

In *Serrano v. Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187] (*Serrano I*), this court struck down the existing State

public school financing scheme, which caused the amount of basic revenues per pupil to vary substantially among the respective districts depending on their taxable property values. *Serrano I* concluded at length that such a scheme violated both state and federal equal protection guaranties because it discriminated against a fundamental interest—education—on the basis of a suspect classification—district wealth—and could not be justified by a compelling state interest under the strict scrutiny test thus applicable. (Pp. 596-619.) As the court concluded, “where fundamental rights *or* suspect classifications are at stake, a state’s general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause. [Citation.]” (P. 612, italics added.)

Among other things, *Serrano I* rejected a claim that the wealth-based financing scheme was immune from challenge because the interdistrict revenue disparities it produced were not de jure, but merely de facto. Our opinion detailed the purposeful state legislative action which had produced the geographically based wealth classifications. It also made clear, however, that under California principles developed in cases involving school racial segregation, the absence of purposeful conduct by the State would not prevent a finding that the State system for funding public education had produced unconstitutional results. (*Serrano I, supra*, 5 Cal.3d at pp. 603-604, citing *Jackson v. Pasadena City School Dist., supra*, 59 Cal.2d 876, 881.)

Serrano I also discussed two groups of federal cases suggesting that place of residence was an impermissible basis for State discrimination in the quality of education. *Serrano I* cited with approval *Hall v. St. Helena Parish School Board* (E.D.La. 1961) 197 F.Supp. 649. This federal decision struck down a Louisiana statute permitting local parishes to close their schools rather than integrate them. As *Serrano I* noted, *Hall v. St. Helena Parish* found an equal protection violation not only because of the statute’s racial consequences, but also “‘because its application in one parish, while the state provides public schools elsewhere, would unfairly discriminate against the residents of that parish, irrespective of race. . . . [A]bsent a reasonable basis for so classifying, a state cannot close the public schools in one area while, at the same time, it maintains schools elsewhere with public funds.’” (*Serrano I, supra*, 5 Cal.3d at p. 612, quoting *Hall v. St. Helena Parish, supra*, 197 F. Supp. at pp. 651, 656.)

Serrano I further noted a “second group of cases, dealing with apportionment [of votes], [in which] the high court has held that accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among a state’s citizens. [Citation.] . . . If a voter’s address may not determine the weight to which his ballot is entitled,

surely it should not determine the quality of his child's education. [Fn.]” (*Serrano I*, *supra*, 5 Cal.3d at p. 613.)

Finally, *Serrano I* rejected the State's claim that plaintiffs' wealth-discrimination theory would apply equally, and with disastrous effect, to all public services dependent in part on local property taxes. “[W]e are satisfied,” the majority concluded, that whatever the status of other public services, “its uniqueness among public activities clearly demonstrates that education must respond to the command of the equal protection clause.” (*Serrano I*, *supra*, 5 Cal.3d at p. 614, italics in original.)

In *San Antonio School District v. Rodriguez* (1973) 411 U.S. 1 [36 L.Ed.2d 16, 93 S.Ct. 1278], decided after *Serrano I*, the United States Supreme Court declined to subject Texas's similar local-property-tax based school financing scheme to heightened scrutiny under the Fourteenth Amendment. The *Rodriguez* majority concluded that a school finance scheme dependent on district tax values does not discriminate against the poor as a distinct class; in any event, the majority observed, wealth alone had never been deemed a suspect classification for federal purposes. Moreover, the majority reasoned, education is not a fundamental interest protected by the federal Constitution. Therefore finding the strict scrutiny standard of review inapplicable, the majority upheld Texas's system as rationally related to that state's policy of local control of schools. (411 U.S. at pp. 18-55.)

Nonetheless, in *Serrano v. Priest* (1976) 18 Cal.3d 728 [135 Cal.Rptr. 345, 557 P.2d 929] (*Serrano II*), this court reaffirmed the reasoning and result of *Serrano I* as required by the separate equal protection guaranties of the California Constitution. (*Serrano II*, *supra*, 18 Cal.3d at pp. 760-768.) Among other things, *Serrano II* reiterated that for California purposes, education remains a fundamental interest “which [lies] at the core of our free and representative form of government [fn.]” (*Id.*, at pp. 767-768.)

Hence, *Serrano II* declared, “[i]n applying our state constitutional provisions guaranteeing equal protection of the laws we shall continue to apply strict and searching judicial scrutiny” to claims of discriminatory educational classifications. (*Serrano II*, *supra*, at p. 767.) More recent cases confirm that education is a fundamental interest under the California equal protection guaranties (e.g., *Steffes v. California Interscholastic Federation* (1986) 176 Cal.App.3d 739, 746 [222 Cal.Rptr. 355]) and that the unique importance of public education in California's constitutional scheme requires careful scrutiny of state interference with basic educational rights (see, e.g., *Hartzell v. Connell* (1984) 35 Cal.3d 899, 906-909 [201 Cal.Rptr. 601, 679 P.2d 35] [scope of free school guarantee]).

In *Tinsley v. Palo Alto Unified School Dist.*, *supra*, 91 Cal.App.3d 871, parents sought mandate requiring several neighboring San Mateo and Santa Clara County school districts, the State, and certain State school officials, to submit a plan for the redress of interdistrict racial segregation in the affected locality. The petitioners declined to allege any specific acts committed by State or local parties as the cause of the interdistrict imbalance.

The State respondents answered the petition, but the districts successfully demurred, and the petition was dismissed as to them. The Court of Appeal reversed, holding that the California Constitution, unlike its federal counterpart as construed in *Milliken v. Bradley* (1974) 418 U.S. 717 [41 L.Ed.2d 1069, 94 S.Ct. 3112], contemplates interdistrict relief to remedy mere de facto racial imbalance which extends across district lines. (*Tinsley*, *supra*, 91 Cal.App.3d at pp. 899-907.) Several aspects of the *Tinsley* decision emphasize the State's ultimate responsibility for maintaining a nondiscriminatory common school system.

At the outset, the districts asserted that an appeal was premature under the "one final judgment" rule, because as mere agencies of the State, which had not demurred, they had no separate legal interests which an appeal from their dismissal could finally resolve. The Court of Appeal observed that if the districts' claim of mere agency was correct, any relief ordered against the State would necessarily affect them, and the judgment dismissing them from the action should therefore be reversed. In any event, the court concluded, the premise of identical interests did not bear scrutiny, because while "[t]he local districts, as agents, may have limited powers in interdistrict affairs, . . . the state . . . has plenary powers in all school district affairs. . . ." (*Tinsley*, *supra*, 91 Cal.App.3d at pp. 880-881.)

Turning to the merits, *Tinsley* dismissed the majority reasoning in *Milliken* insofar as based on the federal rule, long rejected in California (see *Crawford v. Board of Education* (1976) 17 Cal.3d 280 [130 Cal.Rptr. 724, 551 P.2d 28]; *Jackson v. Pasadena City School Dist.*, *supra*, 59 Cal.2d 876), that only de jure racial segregation is a constitutional violation. (*Tinsley*, *supra*, 91 Cal.App.3d at p. 903.) *Tinsley* also distinguished the *Milliken* majority's concern that it "would disrupt and alter" Michigan's entrenched system of local control of schools to impose an interdistrict remedy for Detroit city school segregation without proof that the state or affected suburban districts had engaged in intentional segregative conduct. The *Tinsley* court noted, among other things, that in California, the State shares responsibility with "the local entities it has created" to provide "equal educational opportunity

to the youth of the state" and "has a duty to intervene to prevent unconstitutional discrimination" in its schools. (*Id.*, at pp. 903-904.)¹³

It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity.

The State claims it need only ensure the six-month minimum term guaranteed by the free school clause (Cal. Const., art. IX, § 5). This contention, however, misconstrues the basis of the trial court's decision. Whatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State.

The State argues that even if the District's fiscal problems threatened its students' basic educational equality, any State duty to redress the discrimination must be judged under the most lenient standard of equal protection review. The State reasons as follows: Plaintiffs do not claim discrimination on the suspect basis of race. Nor is wealth-based discrimination at issue; as all parties concede, the District received the full benefit of the equalized funding system mandated by our *Serrano* decisions. At most, plaintiffs assert that a misuse of equalized funds by the District's officials caused a geographical disparity in service. Because residence and geography are not suspect classifications, the State's failure to prevent educational discrimination on those grounds is not subject to strict scrutiny. Rather, State inaction must be accepted as rationally related to the legitimate State policy of local control of schools.

(5) However, both federal and California decisions make clear that heightened scrutiny applies to State-maintained discrimination whenever the

¹³In November 1979, the voters adopted a Senate amendment to the California Constitution's equal protection clause, article I, section 7, subdivision (a). The amendment declares that nothing in the California Constitution imposes upon the State, or any local district or official, any obligations beyond those imposed by the Fourteenth Amendment of the United States Constitution "with respect to the use of pupil school assignment or pupil transportation." The amendment further forbids California courts from imposing any school-assignment or pupil-transportation obligation except when a violation of the Fourteenth Amendment has occurred, and unless a federal court could impose such a remedy for the violation. Whatever effect this amendment may have on *Tinsley's* result, it does not affect consistent interpretations of the California equal protection guaranty where, as here, assignment or transportation of students is not at issue.

disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest. (*Plyler v. Doe* (1982) 457 U.S. 202, 216-217 [72 L.Ed.2d 786, 102 S.Ct. 2382]; *Shapiro v. Thompson* (1969) 394 U.S. 618, 634 [22 L.Ed.2d 600, 614-615, 89 S.Ct. 1322]; *Darces v. Woods* (1984) 35 Cal.3d 871, 885, 888 [201 Cal.Rptr. 807, 679 P.2d 458]; *Fair Political Practices Com. v. Superior Court* (1979) 25 Cal.3d 33, 47 [157 Cal.Rptr. 855, 599 P.2d 46]; *Serrano II, supra*, 18 Cal.3d 728, 761, 767-768; *Weber v. City Council* (1973) 9 Cal.3d 950, 959 [109 Cal.Rptr. 553, 513 P.2d 601]; *Serrano I, supra*, 5 Cal.3d 584, 597; *Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 784-785 [87 Cal.Rptr. 839, 471 P.2d 487].) As we have seen, education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.

(3c) The State suggests there was no showing that the impact of the threatened closure on District students' fundamental right to basic educational equality was real and appreciable. Of course, the Constitution does not prohibit all disparities in educational quality or service. Despite extensive State regulation and standardization (see discussion, *post*), the experience offered by our vast and diverse public school system undoubtedly differs to a considerable degree among districts, schools, and individual students. These distinctions arise from inevitable variances in local programs, philosophies, and conditions. "[A] requirement that [the State] provide [strictly] 'equal' educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. . . ." (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176, 198 [73 L.Ed.2d 690, 707, 102 S.Ct. 3034].) Moreover, principles of equal protection have never required the State to remedy all ills or eliminate all variances in service.

Accordingly, the California Constitution does not guarantee uniformity of term length for its own sake. While the current statutory system for allocating State educational funds strongly encourages a term of at least 175 days (see fn. 14, *post*, at p. 687), that system is not constitutionally based and is subject to change. In an uncertain future, local districts, faced with mounting fiscal pressures, may be forced to seek creative ways to gain maximum educational benefit from limited resources. In such circumstances, a planned reduction of overall term length might be compensated by other means, such as extended daily hours, more intensive lesson plans, summer sessions, volunteer programs, and the like. An individual district's efforts in this regard are entitled to considerable deference.

Even unplanned truncation of the intended school term will not necessarily constitute a denial of "basic" educational equality. A finding of constitutional disparity depends on the individual facts. Unless the actual quality

of the district's program, viewed as a whole, falls fundamentally below prevailing statewide standards, no constitutional violation occurs.

Here, however, plaintiffs' preliminary showing suggested that closure of the District's schools on May 1, 1991, would cause an extreme and unprecedented disparity in educational service and progress. District students faced the sudden loss of the final six weeks, or almost one-fifth, of the standard school term originally intended by the District and provided everywhere else in California.¹⁴ The record indicates that the decision to close early was a desperate, unplanned response to the District's impending insolvency and the impasse in negotiations for further emergency State aid.¹⁵ Several District teachers declared that they were operating on standard-term lesson schedules made at the beginning of the school year. These declarants outlined in detail how the proposed early closure would prevent them from completing instruction and grading essential for academic promotion, high school graduation, and college entrance.¹⁶ Faced with evidence of such extensive educational disruption, the trial court did not abuse its discretion

¹⁴The trial court record contains no evidence of the prevailing term length in California, but the parties assumed below that a minimum term of 175 days prevails, and no dispute has arisen on the issue here. The statutes provide that an established local district may not receive any part of its annual apportionment from the State School Fund if it failed to remain in session at least 175 days during the most recent fiscal year, unless specified circumstances excusing the failure are established to the satisfaction of the SPI. (§§ 41420, subd. (a), 41422.) In an appendix to his brief, the SPI provides copies of local district certifications, submitted to the SPI as a condition of funding under section 41420, which indicate that virtually every established school district in California operated for at least 175 days during the 1990-1991 school year. The SPI asks us to take judicial notice of this information. Having received no objection, we do so. (Evid. Code, §§ 452, subds. (c), (h), 455, 459.)

¹⁵The declaration of Board member Calton, dated April 12, 1991, detailed the District's growing financial woes and stated the following: ". . . The District has only enough money to pay its employees through April 1991 [even under the most favorable accounting assumptions]. . . . Unless (a) additional funds are received, or (b) employees are willing to work for registered warrants, not redeemable checks, the District will have no alternative but to close all of its public schools at the end of April 1991. [¶] . . . The District has applied to the State of California for a loan, but that request has not been approved. It is my understanding that [collective bargaining concessions demanded by the State] have not been made, although negotiations are continuing. The District has retained bankruptcy counsel, . . . and is preparing to file for bankruptcy prior to April 30, 1991, if necessary."

¹⁶For example, John Enos, a high school government/economics teacher, stated that early termination of his required senior government class would eliminate intended lessons covering the State's executive and judicial branches, and county and local government. Geoffrey Cantrell, a high school mathematics teacher, stated that if the District closed early, Algebra I students would miss essential instruction in quadratic equations; Algebra II students would miss essential instruction in trigonometry; and geometry students would miss lessons in coordinate systems, logical proof, and trigonometric ratios. Craig Brammer, another high school mathematics teacher who also teaches a preparatory course for the Scholastic Aptitude Test (SAT), opined that loss of six weeks' instruction would severely impair his students' chances on the mathematics portion of the SAT. Betty Jean Crenshaw, a teacher of first-year languages, declared that early closure would prevent students from learning vocabulary and

by concluding that the proposed closure would have a real and appreciable impact on the affected students' fundamental California right to basic educational equality.

The State asserts that its financial obligation to equal education is limited to the equalized system of interdistrict funding required by our *Serrano* decisions. Once revenues are fairly apportioned at the beginning of each school year, the State insists, it cannot be constitutionally liable for how local officials manage the funds.

Nothing in the *Serrano* cases themselves, or in other California decisions, supports the State's argument. On the contrary, the cases suggest that the State's responsibility for basic equality in its system of common schools extends beyond the detached role of fair funder or fair legislator. In extreme circumstances at least, the State "has a duty to intervene to prevent unconstitutional discrimination" at the local level. (*Tinsley, supra*, 91 Cal.App.3d at p. 904.)

The State's most vigorous contention is that its nonintervention should have been upheld even under the strict scrutiny standard of equal protection analysis. Allowing the District's students to absorb the consequences of District mismanagement, the State urges, was necessary to preserve the State's compelling educational policy of local autonomy and accountability. However, the State fails to demonstrate a policy of local control so compelling as to justify State tolerance of the extreme local educational deprivation at issue here.

In the first place, the local-district system of school administration, though recognized by the Constitution and deeply rooted in tradition, is not a constitutional mandate, but a legislative choice. (See Cal. Const., art. IX, §§ 6½, 14.) The Constitution has always vested "plenary" power over education not in the districts, but in the State, through its Legislature, which may create, dissolve, combine, modify, and regulate local districts at pleasure. (See *Tinsley, supra*, 91 Cal.App.3d at p. 904.) The legislative decision

grammar necessary for advancement to second-year courses. Amy Shinsako, a first grade teacher, stated that early closure would prevent instruction in phonics, reading comprehension, creative writing, handwriting skills, two-digit addition and subtraction, and addition with three addends, all necessary for advancement to the second grade. Several declarants noted that failure to complete the term would prevent the scheduling of final examinations and other term-end projects crucial to the assignment of final grades. Other declarants detailed the difficulties District students would face if forced to transfer to other districts to complete the year's studies. They also noted that unless graduating seniors completed required courses and received final grades, the District might not be able to award high school diplomas, any diplomas awarded would be "stigmatized," and the ability of departing seniors to qualify for college admission might be seriously compromised.

to emphasize local administration does not end the State's constitutional responsibility for basic equality in the operation of its common school system. Nor does disagreement with the fiscal practices of a local district outweigh the rights of its blameless students to basic educational equality.

Moreover, though the Constitution and statutes encourage maximum local program and spending authority consistent with State law (Cal. Const., art. IX, § 14; Ed. Code, §§ 14000, 35160, 35160.1), the degree of supervision voluntarily retained by the State over the common school system is high indeed. The volume and scope of State regulation indicate the pervasive role the State itself has chosen to assume in order to ensure a fair, high quality public education for all California students.

School finance aside, the statutes address at length such matters as county and district organization, elections, and governance (§§ 4000-5450, 35000-35780); educational programs, instructional materials, and proficiency testing (§§ 51000-62008); sex discrimination and affirmative action (§§ 40-41, 200-263, 44100-44105); admission standards (§§ 48000-48053); compulsory attendance (§§ 48200-48416); school facilities (§§ 39000-40048); rights and responsibilities of students and parents (§§ 48900-49079); holidays (§§ 37220-37223); school health, safety, and nutrition (§§ 32000-32254, 49300-49570); teacher credentialing and certification (§§ 44200-44481); rights and duties of public school employees (§§ 44000-44104, 44800-45460; see also Gov. Code §§ 3540-3549.3 [organizational and bargaining rights]); and the pension system for public school teachers (§§ 22000-24924). The statutory scheme has spawned further voluminous regulations administered by the State's Department of Education and the SPI. (Cal. Code Regs., tit. 5, §§ 1-23005.) This long-established level of State involvement in the public education system undermines any claim that local control is a paramount and compelling State policy for all purposes.

Nor is there any indication that the State has had a compelling policy of absolute budgetary freedom and responsibility for local districts. On the contrary, during the years in which the District's deficit developed, districts were required to adopt budgets meeting State standards, and to submit them for oversight and approval by county and State authorities. (§§ 33127, former §§ 42120-42129.) Failure to adopt a conforming budget precluded State or county funding of the district (former § 42128), and a district was required to operate under its most recent approved budget (former § 42127.4).

The State argues that by saddling the District with long-term debt to cover short-term operations, the trial court's orders undermine the District's future

financial health and compromise its ability to provide basic educational equivalency in years to come. The State also urges that other districts will feel free to overspend if encouraged to believe in the availability of State relief.

These are indeed troubling concerns, but we cannot accept the implication that the State deems them compelling. In fact, the State itself has endorsed a policy of emergency conditional loan assistance to districts in financial difficulty.

Under statutes in effect since 1977, distressed districts may, through the SPI, seek specific legislative apportionments for emergency loans. (§§ 41310, 41310.5, 41320 et seq.) As a condition of such aid, a district must prepare a financial recovery plan and obtain approval of the plan from the county superintendent and the SPI. (§ 41320.) The district must also accept a temporary SPI-appointed trustee with veto power over financially significant actions of the local governing board. (§ 41320.1.)

The District itself had received a \$9,525,000 conditional State loan under this program in spring 1990 (Stats. 1990, ch. 171, § 3), and its operations were already being monitored by a State trustee at the time closure of District schools was threatened in April 1991. The 1989 Legislature had also appropriated \$10 million for a similar emergency loan-with-trustee to the OUSD. (Stats. 1989, ch. 1438, §§ 1-11.) Under these circumstances, the State cannot claim it follows a compelling policy of local control by declining to intervene when financial adversity threatens a district's operations.

Shortly before this lawsuit began, the District faced the prospect of further legislative intervention in its crisis. Assembly Bill No. 128, 1991-1992 Regular Session (A.B. 128), as introduced in December 1990 and thereafter amended, would have appropriated an additional \$29 million for emergency loans to the District. Acceptance of the proposed loan would have subjected the District to unprecedented restrictions on self-government. These included a temporary takeover of all District affairs by an SPI-appointed administrator pending approval and implementation of a plan for financial recovery and loan repayment. The administrator would have had broad power, among others, to unilaterally determine wages and benefits for all District employees who, as of April 29, 1991, were not covered by ratified collective bargaining agreements meeting the requirements of an approved recovery plan. (A.B. 128, Sen. Amend. of Jan. 18, 1991, §§ 2, 5.)

A.B. 128 failed passage, but that fact does not suggest a compelling policy against emergency State financial assistance to a local district. On the

contrary, the State has forged into the realm of emergency assistance and control, using the "specific appropriation" requirement (§ 41320) to decide on a case-by-case basis whether, and on what terms, it will intervene.

The State claims that emergency assistance to mismanaged districts contravenes the compelling principle of equalized funding established in our *Serrano* decisions. As we have seen, however, nothing in the *Serrano* cases, which addressed wealth-based disparities in district revenues, prohibits emergency State assistance to a particular district which is experiencing financial difficulties despite its receipt of equalized funding.¹⁷

Finally, nothing in our analysis is intended to immunize local school officials from accountability for mismanagement, or to suggest that they may indulge in fiscal irresponsibility without penalty. The State is constitutionally free to legislate against any recurrence of the Richmond crisis. It may further tighten budgetary oversight, impose prudent, nondiscriminatory conditions on emergency State aid, and authorize intervention by State education officials to stabilize the management of local districts whose imprudent policies have threatened their fiscal integrity. To the extent such conditions compromise local autonomy and mortgage a district's future, they are not calculated to persuade local officials or their constituents that mismanagement and profligacy will be rewarded.

Indeed, in response to this case, the Legislature and the Governor have already agreed to tighter county and State control of local district budgets and spending.¹⁸ Under certain circumstances, this new legislation *requires* the SPI's complete takeover of an insolvent district as a precondition of an

¹⁷The *Serrano* decisions themselves, as well as the subsequent adoption of Proposition 13, have exacerbated the need for occasional emergency State intervention by restricting one aspect of local control—the power of local districts to tax themselves out of financial crises. Our *Serrano* opinions condemned the former dependence of school finance on local ad valorem property taxes, because, as a practical matter, however willing a local district might be to increase taxes for education, "districts with small [real property] tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts. . . ." (*Serrano I, supra*, 5 Cal.3d 584, 598.) In obedience to *Serrano* principles, the current system of public school finance largely eliminates the ability of local districts, rich or poor, to increase local ad valorem property taxes to fund current operations at a level exceeding their State-equalized revenue per average daily attendance. (§ 42238 et seq.) Moreover, Proposition 13 places a general ceiling on the ad valorem property taxes which may be levied on behalf of local governments and school districts. (Cal. Const., art. XIII A, § 1.)

¹⁸Legislation adopted in 1991 provides, among other things, that if a local district's proposed budget fails to win final county and State approval, the county superintendent of schools shall adopt a governing budget for the district which permits the district to meet current and "multiyear" commitments. The county superintendent may rescind any district action or payment which is inconsistent with the county superintendent's budget, except those

emergency State appropriation.¹⁹ Thus, the State has already made vast inroads on the principle that local control is paramount to State intervention in an insolvent district's affairs. The State's plenary power over education includes ample means to discourage future mismanagement in the day-to-day operations of local districts.

In sum, the California Constitution guarantees "basic" equality in public education, regardless of district residence. Because education is a fundamental interest in California, denials of basic educational equality on the basis of district residence are subject to strict scrutiny. The State is the entity with ultimate responsibility for equal operation of the common school system. Accordingly, the State is obliged to intervene when a local district's fiscal problems would otherwise deny its students basic educational equality, unless the State can demonstrate a compelling reason for failing to do so.

The preliminary facts before the trial court support the inference that the District's impending failure to complete the final six weeks of its scheduled school term would cause educational disruption sufficient to deprive District students of basic educational equality. The State has identified no compelling interest which negated its duty to intervene. We therefore find no abuse of discretion in the trial court's conclusion that plaintiffs' constitutional claims had potential merit.²⁰

3. *Interim harm.*

The trial court also expressly concluded that plaintiffs, District students and their parents, would suffer "substantial and irreparable harm" if a preliminary injunction were denied. This harm, the court further found,

in performance of a previously effective collective bargaining agreement. (§ 42127.3, subd. (b)(1), as amended by Stats. 1991, ch. 1213, § 18.) The county superintendent must also monitor all local budgets continuously to ensure that each district can meet its financial obligations for the current and ensuing fiscal years. A county superintendent's determination that a district will be unable to meet its obligations triggers a process which may culminate in forced revisions to the district's budget and rescission of actions, other than collective bargaining obligations, which are inconsistent with the revisions. (§ 42127.6, added by Stats. 1991, ch. 1213, § 20.)

¹⁹New sections 41325 through 41327 provide that when a local district accepts an emergency appropriation more than twice the size of its State-recommended reserve, the SPI must take control of the district for at least two fiscal years, assume all duties and powers of the local governing board, fire district officials who took no action to avert insolvency, impose a recovery plan including a ten-year repayment schedule, and remain in control until satisfied that local compliance with recovery requirements is probable.

²⁰Our conclusion that the trial court's finding of probable merit is supported by the equal protection clauses of the California Constitution makes it unnecessary to address claims that a State duty of intervention may also have arisen under the "free school" clause or the Fourteenth Amendment.

would be "greater . . . than defendants will suffer if the injunction is granted."

These determinations were based upon the uncontradicted declarations of District teachers, local and regional public school officials, and academic specialists in the field of public education. Besides detailing the severe and immediate academic disruption which would arise from the pending closure (see discussion, *ante*, fn. 16, at p. 687), these declarations set forth at length the "ripple" effect on District parents and students. For example, the declarations recounted, working parents, including the high percentage of needy families in the District, would be faced with expensive child care for the lost school hours; difficult efforts would be required to obtain other placement of the students for the remainder of the year; and special-need students would lose carefully nurtured progress.

The State submitted no evidence that it would suffer comparable or greater harm by offering emergency loan assistance necessary to ensure completion of the District's academic program for 1990-1991. Instead, the State simply argued that court-ordered State aid would damage the State's public school policies of local control and accountability.

(6) The State nonetheless claims plaintiffs' "interim harm" showing was inadequate as a matter of law. In the State's view, plaintiffs' declarations failed to establish that the early closure was unforeseeable, or to explain persuasively why any adverse effects on student progress could not be ameliorated.

We find the trial court's interim-harm findings amply supported. As previously noted, plaintiffs' preliminary showing suggested that the District's inability to complete its school year arose from its ever-worsening fiscal condition and from the deterioration of its negotiations for emergency aid. The declarations of District teachers uniformly indicated that their lesson plans did not provide for the contingency of early closure. Other declarations detailed the difficulties of alternate arrangements to maintain the educational progress of over 31,000 suddenly displaced District students, who included high school seniors poised for graduation. The court could reasonably infer that orderly planning to minimize the resulting educational disruption had not taken place and was not realistically possible.

In any event, the court was not obliged to deny a preliminary injunction simply because plaintiffs failed to demonstrate that "irreparable" harm to students was unavoidable by other means. The preliminary record properly convinced the court *both* that plaintiffs had a reasonable probability of

success on the merits, *and* that they would suffer more harm in the meantime if an injunction were denied than the State would suffer if it were granted. This “mix” of the “interrelated” relevant factors fully justified the court’s decision to grant the injunction. (See *Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d at pp. 441-442; *King v. Meese*, *supra*, 43 Cal.3d at p. 1227.) No error appears.

4. *Scope of remedial order.*

In orders dated April 29, 1991, and May 2, 1991, the trial court directed the State, the SPI, and the Controller to ensure “by whatever means they deem appropriate” that District students would receive their educational rights; both orders made clear that “[h]ow these defendants accomplish this is up to the discretion of defendants. . . .” When no other State official proposed a solution, the SPI and the Controller, on May 2, 1991, offered a conditional loan plan for approval by the court.

After a hearing on that day, the court found that \$19 million in aid funds proposed by the SPI and the Controller were presently available, and the court authorized the Controller to apportion such funds as an emergency loan to the District. The court further determined that, given the State’s obligation to provide an equal education, the SPI’s statutory authority to “[s]uperintend the schools of this state” (§ 33112, subd. (a)), and the “unique” emergency circumstances, “the [SPI] . . . has authority to relieve the [Board] of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, [develop] a repayment plan on the [D]istrict’s behalf as necessary to ensure the operation of the schools through June 14, 1991, the financial recovery of the [D]istrict, and the protection of State funds loaned to the [D]istrict.”

(7a) The State and several amici curiae contend that even if the trial court could require State intervention to prevent violation of the District students’ constitutional rights, there was no legal or equitable basis for the court’s order authorizing the SPI to displace the Board, operate the District through his own administrator, and impose a plan for the District’s permanent financial recovery. Under the circumstances presented by this case, however, we conclude that this portion of the court’s order did not exceed its powers.

We agree that the statutes themselves provided no direct authority for the approach taken by the trial court. In general, though they act as regulated State agents, local governing boards are vested by statute with immediate jurisdiction over day-to-day district affairs. (§§ 14000, 35000 et seq.) The

SPI has important statutory responsibilities for allocating school funds (§§ 33118, 14000 et seq.), monitoring local budgets (§§ 42120 et seq., 41450), and administering the conditions of emergency loans *appropriated by the Legislature* (§§ 41310, 41320 et seq.; see also § 41325 et seq.), but no statute grants him emergency powers to operate a local district under other circumstances.²¹

The court relied in part on section 33112, subdivision (a), which provides that the SPI shall “[s]uperintend the schools of this state.” But no case has interpreted this statute to vest the SPI with nonexpress powers, and an older decision construed similar language narrowly against a county superintendent. (*McKenzie v. Board of Education* (1905) 1 Cal.App. 406, 409 [82 P. 392].) Indeed, counsel for the SPI conceded in the trial court that the SPI had no statutory authority to take over the District’s government.

The trial court also believed its takeover order was within its inherent equitable power to enforce the State’s constitutional obligations in light of the “unique emergency financial conditions” presented by the case. In the court’s view, ratification of all loan conditions proposed by the SPI was necessary to ensure the District’s continued operation through June 14, 1991, promote its permanent financial recovery, and protect the loan itself. We agree.

(8) In general, courts have equitable authority to enforce their constitutional judgments. (E.g., *Crawford v. Board of Education*, *supra*, 17 Cal.3d 280, 308.) Of course, principles of comity and separation of powers place significant restraints on courts’ authority to order or ratify acts normally committed to the discretion of other branches or officials. (*Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d 432, 445-446; *Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Serrano II*, *supra*, 18 Cal.3d 728, 751; *Crawford v. Board of Education*, *supra*, 17 Cal.3d at pp. 305-306; cf. *Missouri v. Jenkins* (1990) 495 U.S. 33, 50-58 [109 L.Ed.2d 31, 53-59, 110 S.Ct. 1651].) In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature.

Moreover, a judicial remedy must be tailored to the harm at issue. (E.g., *Sheet Metal Workers v. EEOC* (1986) 478 U.S. 421, 476 [92 L.Ed.2d 344, 388, 106 S.Ct. 3019]; *Dayton Board of Education v. Brinkman* (1977) 433

²¹A.B. 128 would have granted the SPI powers of this magnitude over the District, but the bill failed passage. (See discussion, *ante*, at p. 690.) 1991 statutory amendments call for the SPI’s takeover of districts that accept large emergency insolvency *appropriations* (§ 41325 et seq.; see discussion, *ante*, fn. 18 at p. 691), but even after 1991, the SPI has no such statutory authority *independent* of a specific insolvency appropriation by the Legislature.

U.S. 406, 420 [53 L.Ed.2d 851, 863-864, 97 S.Ct. 2766].) A court should always strive for the least disruptive remedy adequate to its legitimate task.

(7b) The trial court's remedial order in this case fell within proper boundaries. Having correctly held the State constitutionally responsible for the students' rights, the court could not deny the State and its officials effective means of fulfilling its obligation. Under the circumstances, the court was warranted in authorizing temporary transfer to the SPI of the Board's statutory powers over District affairs.

The emergency the court confronted on May 2, 1991, demanded a prompt State-assisted solution to prevent immediate closure of the District's schools. The State was justified in satisfying its constitutional duty of aid by extending a loan that would impose the ultimate consequences of the District's self-created predicament upon the District, rather than upon the State, its taxpayers, and the students of other districts. The State was also entitled to conditions on the loan that would ensure its appropriate use for the intended constitutional purpose, and would minimize the risk of the District's default in repayment.

The District's ability to administer the new loan under its existing systems and managers was uniquely suspect. As a matter of public record, the District's worsening financial situation had recently led the Legislature to provide a loan in excess of \$9 million. A limited-powers State trustee appointed to monitor the District's fiscal affairs in connection with that loan had not been able to stem a growing District deficit estimated by one declarant, a member of the Board, to exceed \$23 million for the 1990-1991 school year alone. In response to these difficulties, the Board had caused the District to seek bankruptcy protection against its existing creditors.

As counsel for the SPI explained on April 29, 1991, the District's unprecedented financial collapse indicated systemic management problems. Hence, counsel reported, the SPI considered it foolhardy to extend further substantial State credit to the District unless its management was placed in competent hands, its administrative practices were reformed and restructured from the outside, and a long-term plan for its financial recovery was imposed.²² On behalf of the State, the Attorney General contested the legality of vesting such extraordinary powers in the SPI, but no party disputed the logic of the SPI's position.

²²The following colloquy occurred between the court and counsel for the SPI: "[¶] MR. HERSHER [SPI's counsel]: . . . [The SPI] does not want to make . . . 20 to 30 million dollars in state funds available to a district that has already demonstrated substantial financial irresponsibility. It's pouring state money into a hole and it's never going to come back out. [¶] THE COURT: Would he want to do that if the State was given the responsibility for running the district as you suggested? [¶] MR. HERSHER: I believe so. I think what Bill Honig sees is that

Nor can we. Given the emergency circumstances, and under the extreme and aggravated conditions disclosed by the evidence, the court below could properly conclude that orderly completion of the District's 1990-1991 school term, and the sound financing essential to achieve that end, required temporary displacement of the sitting Board and the operation of the District by the SPI's designee for the purpose of stabilizing its financial affairs.²³ We conclude that the order approving temporary takeover of the District by the SPI was within the court's inherent equitable power to remedy the constitutional crisis.²⁴

5. *Source of loan funds.*

In order to obtain the necessary \$19 million in emergency loan funds, the trial court authorized the Controller to disburse (1) \$9 million of unspent funds from a special contingency appropriation to the Department of Education for the GAIN program, and (2) the unused \$10 million appropriated as an emergency loan to the OUSD. (9) The State and amicus curiae Pacific argue that because the Legislature had not earmarked either of these sums

the District has to be reorganized. The financial management of the District needs to be completely restructured, and there needs to be a long-term recovery plan [I]t has always been [the SPI's] position that somebody needs to . . . take over the District, come up with a long-term plan in which all the creditors of the District suffer equally or equitably."

²³Amici curiae Diaz and Bezemek ask us to receive additional evidence and make findings about the SPI's record as administrator of the District after May 2, 1991. Among other things, Diaz and Bezemek allege that the SPI's administrator has withdrawn the District's bankruptcy petition, dismantled essential programs, failed to reappoint a citizens' advisory committee, restructured the District's administration, dismissed faculty and counselors, obstructed reorganization of the District's existing debt, imposed an unconscionable interest rate on the court-approved loan, and diverted educational funds to debt repayment. Diaz and Bezemek claim this evidence supports their contention that the SPI's governance of the District presents an inherent conflict between his role as protector of State-loaned funds and his duty to restore the District to financial and educational health.

Appellate courts have limited powers to take evidence and find facts in nonjury civil cases. (Cal. Const., art. VI, § 11; Code Civ. Proc., § 909; Cal. Rules of Court, rule 23(b).) However, the matters Diaz and Bezemek seek to present are beyond the scope of this lawsuit and unnecessary to our analysis. Moreover, Diaz and Bezemek concede the proffered evidence is disputed; appellate courts will not resolve such factual conflicts. (E.g., *In re Marriage of Davis* (1983) 141 Cal.App.3d 71, 75-76 [190 Cal.Rptr. 104]; see *McCracken v. Teets* (1953) 41 Cal.2d 648, 653 [262 P.2d 561].) We therefore deny the motion.

²⁴The State argues that even if extraordinary judicial interference in the District's affairs was necessary to guarantee the constitutional rights of District students, the court erred by granting the SPI extralegal "discretion" to act rather than assuming control over the District itself, with the SPI as the court's appointed agent. The State cites no authority for its proposition that the court's remedial options were so narrowly confined. The remedial order of May 2, 1991, makes clear that the authority therein accorded the SPI flows from a direct and critical exercise of the court's equitable power and jurisdiction over the constitutional dispute. The order laudably minimizes direct judicial involvement in matters best left to officials with specific responsibilities and expertise in education, but its effect is no different than if it had expressly made the SPI a court functionary. We find no error.

for purposes "reasonably related" to resolving the District's financial crisis, the court improperly invaded the nonjudicial power of appropriation.

We agree. In a valid exercise of its constitutional powers, the Legislature had directed each of these sums to specific agencies and narrow purposes which did not include the District and its financial emergency. Hence, the Legislature had not made these funds reasonably available for disbursement to the District. By diverting the funds from their earmarked destinations and purposes, the court invaded the Legislature's constitutional authority.

Article III, section 3 of the California Constitution provides that "[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." Article XVI, section 7 provides that "[m]oney may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." Article IV, sections 10 and 12 set forth the respective powers of the Legislature and Governor over the enactment of appropriations. It has long been clear that these separation-of-powers principles limit judicial authority over appropriations. (*Myers v. English* (1858) 9 Cal. 341, 349; see *Westinghouse Electric Co. v. Chambers* (1915) 169 Cal. 131, 135 [145 P. 1025]; *California State Employees' Assn. v. Flourney* (1973) 32 Cal.App.3d 219, 234 [108 Cal.Rptr. 251]; see also *Payne v. Superior Court* (1976) 17 Cal.3d 908, 920, fn. 6 [132 Cal.Rptr. 405, 553 P.2d 565].)

In certain narrow circumstances, California courts have concluded that judicial orders for the disbursement of appropriated funds do not invade valid legislative functions. *Mandel v. Myers, supra*, 29 Cal.3d 531, is the only decision by this court which found judicial power to "commandeer" appropriated funds. The facts and analysis of that case demonstrate the strict limits on the judicial authority it recognized.

The plaintiff in *Mandel*, a Department of Health Services (DHS) worker, had prevailed in litigation challenging DHS's practice of allowing paid employee leave on Good Friday. The judgment against the State included an award of attorney fees. However, the Legislature removed appropriations for payment from successive claims and budget bills, including the 1978-1979 Budget Act (Act). The Act included the usual appropriation to DHS for "general operating expenses and equipment," which expressly included expenses for "services" and "all other proper purposes." Such "catchall" budget categories for State agencies had traditionally been used to pay agency legal expenses. However, the Act expressly precluded use of any appropriation therein "to achieve any purpose which has been denied by any formal action of the Legislature."

We upheld the trial court's order that the Controller pay the fee award from the general operating budget of DHS. We noted first that the "catchall" appropriation was "reasonably" or "generally" available for payment of legal expenses incurred by DHS, because the broad terms of the appropriation, as well as its historical uses, indicated such a legislative intent. In effect, we concluded that the Legislature had voluntarily made an appropriation for payments of this general kind. (*Mandel v. Myers*, *supra*, 29 Cal.3d at pp. 539-545.)

We further explained that, once having made an appropriation generally available, the Legislature may not impose specific restrictions which are unconstitutionally discriminatory, or which constitute an impermissible legislative attempt to readjudicate the merits of a final court judgment. Hence, we reasoned, the Legislature's attempt to avoid payment of the *Mandel* award in particular must be struck down. The DHS "catchall" appropriation thus remained "available" under its general terms for payment of the judgment. (*Mandel v. Myers*, *supra*, 29 Cal.3d at pp. 545-551.)

Subsequent Court of Appeal decisions adhered to these principles of *Mandel*. In *Serrano v. Priest* (1982) 131 Cal.App.3d 188 [182 Cal.Rptr. 387], attorneys who had won the school-finance class action sought judicial help after the State rebuffed their informal efforts to collect a court-ordered fee award. After *Mandel* was decided, the State conceded that the trial court had properly ordered payment from a "catchall" appropriation to the Department of Education, the SPI, and the State Board of Education for "operating expenses and equipment." (Pp. 197-198.) In *Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852 [183 Cal.Rptr. 475], the court concluded, after disregarding an unconstitutional budget act provision against use of Medi-Cal funds for abortions (see *Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252 [172 Cal.Rptr. 866, 625 P.2d 779, 20 A.L.R.4th 1118]), that abortion funding could be ordered from monies appropriated for other Medi-Cal pregnancy services. (132 Cal.App.3d at pp. 857-858.)

Plaintiffs and the SPI suggest that two more recent Court of Appeal decisions, *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155 [275 Cal.Rptr. 449] and *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521 [234 Cal.Rptr. 795], have expanded *Mandel's* concept of "reasonable [or] general availability." The trial court in the instant case apparently relied on these decisions to conclude that it could divert the GAIN and OUSD appropriations to the District because they were "generally related" to education.

Long Beach and *Carmel Valley* do make occasional use of the term "generally related" to describe *Mandel's* principle of reasonable or general

"availability." (See *Long Beach*, *supra*, 225 Cal.App.3d at p. 181; *Carmel Valley*, *supra*, 190 Cal.App.3d at p. 541.) But nothing in those cases supports the trial court's apparent view that funds appropriated for one specific educational purpose may be judicially diverted to another. So far as the face of the opinions discloses, the stated intent of the target appropriation in each case, or its historical uses, indicated that the court's application of the funds was plausibly within purposes the Legislature might have contemplated.²⁵ No court has suggested that *Mandel* principles permit court-ordered diversion of an appropriation away from a clear, narrow, and valid purpose specified by the Legislature. We affirm that the words "generally related," as used in *Long Beach* and *Carmel Valley*, do not countenance such judicial incursions into the legislative power over appropriations.²⁶

The instant trial court misapplied *Mandel* when it authorized the diversion of appropriated funds from the specific purposes and programs for which the Legislature had validly earmarked them. Nine million dollars was taken from an appropriation in the 1989-1990 Budget Act for the GAIN program. (Stats. 1989, ch. 93, § 22.00.) GAIN's purpose is to provide employment, adult

²⁵In *Carmel Valley*, the Court of Appeal struck down budgetary language which had been inserted to foreclose the constitutionally required reimbursement of local agencies for expenses incurred in upgrading firefighter protective clothing as mandated by the State. (See Cal. Const., art. XIII B, § 6.) After disregarding these unconstitutional restrictions, the Court of Appeal quite logically determined that funds appropriated to the Department of Industrial Relations for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers, were available for this expense. (*Carmel Valley*, *supra*, 190 Cal.App.3d at p. 541.) In *Long Beach*, a local school district sought reimbursement for the State-mandated expenses of developing desegregation programs. After the Legislature deleted an appropriation for this purpose from the 1985-1986 budget bill, the district obtained a trial court order for reimbursement from specified line-item accounts related to education, and from the general operating budget of the Department of Education, which had mandated the programs. The Court of Appeal affirmed on grounds that the record substantially supported the trial court's order. As the Court of Appeal explained, these and similar accounts had historically been used to support programs such as the one for which reimbursement was sought, and were logical sources of funding for this specific purpose. (*Long Beach*, *supra*, 225 Cal.App.3d at pp. 181-182; see also p. 185.)

²⁶We are aware that in *Missouri v. Jenkins*, *supra*, 495 U.S. 33, the United States Supreme Court upheld the power of federal courts to order local tax levies to enforce judicial remedies for unconstitutional school segregation. However, even if the federal Constitution permits federal courts to impose far-reaching remedies for State government violations of federal constitutional rights, it does not follow that California courts are exempt from the constraints imposed by the California Constitution upon their power to invade the functions of a coequal branch of State government.

Indeed, the California Constitution's separation of powers clause precludes any branch from usurping or improperly interfering with the essential operations of either of the other two branches. (See Cal. Const., art. IV, § 1 [legislative power]; Cal. Const., art. V, § 1 [executive power]; Cal. Const., art. VI, § 1 [judicial power].) Nothing in this opinion should be interpreted as sanctioning or immunizing such unconstitutional interference, or as addressing the question of the appropriate remedies that may be invoked in the event one branch improperly impinges on the essential operations of a coequal branch.

education, and job training to recipients of public assistance. (Welf. & Inst. Code, § 11320 et seq.) Local school districts can receive GAIN funds for adult education and training classes (*id.*, §§ 11320.8, 11322, 11323), and the Legislature intended that the 1989-1990 GAIN appropriation might include such funding subject to strict conditions (see Stats. 1989, ch. 93, § 22.00, subd. (b)). However, this appropriation was expressly designated for that program alone and was not intended to fund the needs of non-GAIN students. Nothing in the trial court's order restricted use of the GAIN-derived funds to uses contemplated by the appropriation.

Similar considerations govern the remaining \$10 million of the emergency loan, which was derived from the 1989 Legislature's special appropriation for the OUSD. This appropriation, by its express terms, was "for the purpose of an emergency loan to [that] [d]istrict in compliance with Article 2 (commencing with Section 41320) of Chapter 3 of Part 24 of the Education Code." (Stats. 1989, ch. 1438, § 1, italics added.)

Section 41310 expresses the intent that emergency loans to distressed districts under section 41320 et seq. not occur "unless funds have been *specifically* appropriated *therefor* by the Legislature." (Italics added.) The statutory scheme imposes detailed conditions on emergency loans granted under its auspices (§§ 41320.1-41323), and the Legislature further refined the conditions on the OUSD appropriation to address the particular circumstances of that case (Stats. 1989, ch. 1438, §§ 2-9).

When it makes an appropriation to a specific district, under specific conditions addressed to the problems of that district, the Legislature clearly intends and contemplates that the appropriation will only be used for that purpose, and under those conditions. Hence, the appropriation is not reasonably available for court-ordered diversion to another district under different conditions.

The trial court, understandably anxious to resolve the crisis, concluded that it could fund its order from any monies previously appropriated "for a purpose that is reasonably related to educational purposes." The court found that the GAIN and OUSD appropriations were "reasonably related to the State's obligation to keep the Richmond schools open through June 14, 1991"

As we have seen, however, the test of reasonable availability under *Mandel* does not extend to uses clearly outside the particular purpose for which an appropriation was reserved. The GAIN and OUSD appropriations were earmarked for purposes entirely distinct from the subject matter of this

lawsuit.²⁷ They were not reasonably available for court diversion to finance the remainder of the District's school term.

In her concurring and dissenting opinion, Justice Kennard claims that by flatly disclaiming judicial power to divert appropriations from the purposes specified by the Legislature, we adopt a "formalistic" and outmoded view of the separation of powers. Citing language from two United States Supreme Court decisions (*Mistretta v. United States* (1989) 488 U.S. 361 [102 L.Ed.2d 714, 109 S.Ct. 647]; *Nixon v. Administrator of General Services* (1977) 433 U.S. 425 [53 L.Ed.2d 867, 97 S.Ct. 2777]), she proposes that interbranch conflicts of this kind be resolved under a "pragmatic" and "flexible" case-by-case balancing test, in which the derogation of one branch's powers by another may be warranted to promote overriding objectives within the "constitutional authority" of the latter. Because both the OUSD and GAIN appropriations were "generally related" to elementary and secondary education, she reasons, diversion of these funds to the District was not a "great" or "extreme" intrusion upon the appropriations power, and the court's action was justified by its constitutional responsibility to District students.

We cannot accept these contentions. Our adherence to *Mandel* can hardly be deemed rigid or formalistic; our decision in that case strained to find a practical, sensitive, and principled balance between legislative and judicial power over appropriations. In effect, Justice Kennard urges abandonment of *Mandel's* careful analysis in favor of a rule giving the judiciary unchecked power to override the valid budgetary acts of coequal branches.

However, nothing in the California or federal cases on which Justice Kennard relies even hints that a court may nullify a *specific and valid exercise* by the Legislature and the Executive of fundamental budgetary powers explicitly entrusted to those branches, simply for the purpose of

²⁷No party or amicus curiae suggests that the purposes specified by the Legislature for these two appropriations were "improper or invalid . . . restriction[s]" on their use which may be disregarded by the courts. (*Mandel v. Myers, supra*, 29 Cal.3d at p. 542.) This is not a case where the Legislature, in defiance of the Constitution or the judicial branch, had prohibited use of appropriations for particular purposes to which they would otherwise logically extend.

We recognize that, at the May 2 hearing, counsel for the OUSD indicated his client had "no objection" to diversion of its loan appropriation for the court's purposes. The OUSD's position may not have been entirely altruistic; on April 29, counsel had committed the OUSD to accepting an influx of displaced District students but expressed concern about the disruption such a solution would cause. Even if the OUSD believed that diversion of its appropriation was in its own best interests, however, the OUSD could not unilaterally alter the terms and conditions the Legislature had imposed on the appropriation. Moreover, the OUSD's waiver was conditional; counsel made clear that the OUSD reserved its right to demand refunding of the OUSD appropriation "if and when [the OUSD] chooses to exercise its rights to request a loan from the state of [\$]10 million at any time up until June 30, 1993."

satisfying a judgment or order that is *unrelated* to the appropriation. (Compare, e.g., *Mistretta v. United States*, *supra*, 488 U.S. 361, 380-384 [102 L.Ed.2d 714, 735-738] [Congress's creation of United States Sentencing Commission, a judicial-branch agency charged with establishing mandatory federal sentencing guidelines, did not usurp authority of individual judicial officers or grant forbidden legislative power to judicial branch]; *Nixon v. Administrator of General Services*, *supra*, 433 U.S. 425, 441-446 [53 L.Ed.2d 867, 889-893] [legislation vesting Administrator of General Services with limited control over presidential papers of resigned chief executive did not undermine authority of executive branch]; *Wilson v. Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306] [Legislature's failure to reapportion justifies judicial adoption of reapportionment plan]; *Davis v. Municipal Court* (1988) 46 Cal.3d 64, 72-87 [249 Cal.Rptr. 300, 757 P.2d 11] [District attorney's statutory power to disapprove local misdemeanor-diversion program was not improper delegation of legislative authority; prosecutor's absolute discretion to prevent diversion by charging "wobbler" as felony did not constitute forbidden judicial power]; *Younger v. Superior Court* (1978) 21 Cal.3d 102, 115-118 [145 Cal.Rptr. 674, 577 P.2d 1014] [statute requiring Department of Justice to destroy individual's marijuana arrest and conviction records upon application after sentence is complete did not create impermissible conflict with executive clemency powers].)

The balance proposed by Justice Kennard in this case would elevate the judiciary above its coequal brethren, upset the delicate system of checks and balances, and stand the separation of powers clause on its head. Applying *Mandel's* well-settled principles, we remain satisfied that the trial court acted in excess of its authority when it funded the District's loan with appropriations specifically earmarked by the Legislature for other purposes.²⁸

CONCLUSION AND DISPOSITION

The District's financial inability to complete the final six weeks of its 1990-1991 school term threatened to deprive District students of their

²⁸Although the instant record is silent on the point, Justice Kennard worries that there *may* have been no unearmarked educational appropriations available to enforce this trial court's order. She suggests further that such funds *may* also not be available under current laws and budgetary constraints to permit judicial enforcement of students' constitutional rights in similar future cases. These concerns have no practical effect in the instant lawsuit, because the State does not seek rescission of the District's loan, and the educational rights of the District's students are secure. In any event, we cannot overlook the fact that the urgency of the District's crisis denied the Legislature any opportunity to respond to the trial court's injunctive order. Once alerted by the trial court's constitutional ruling, however, the Legislature and the Governor have taken significant steps to prevent or remedy recurrences of the District's crisis. We may not assume they will fail or refuse to respond as necessary to our final determination of the State's constitutional responsibilities.

California constitutional right to basic educational equality with other public school students in this State. As the court further concluded, discrimination of this nature against education, a fundamental interest, could only be justified as necessary to serve a compelling interest. The State itself, as the entity with plenary constitutional responsibility for operation of the common school system, had a duty to protect District students against loss of their right to basic educational equality. Local control of public schools was not a compelling interest which would justify the State's failure to intervene.

The trial court thus properly ordered the State and its officials to protect the students' rights. The court also acted within its remedial powers by authorizing the SPI to assume control of the District's affairs, relieve the Board of its duties, and supervise the District's financial recovery. However, the court invaded the exclusive legislative power of appropriation by approving the diversion of appropriations for GAIN and the OUSD to an emergency loan for the District.

Accordingly, we reverse the trial court's remedial order of May 2, 1991, insofar as it approves funding of an emergency loan to the District from appropriations for the Oakland Unified School District and the Greater Avenues for Independence program. In all other respects, the court's orders of April 29 and May 2, 1991, are affirmed. The Court of Appeal is directed to remand the cause to the trial court for such further proceedings as may be appropriate under the views expressed in this opinion.

Panelli, J., Arabian, J., and George, J., concurred.

LUCAS, C. J., Concurring and Dissenting.—I concur with the majority's conclusions regarding the constitutional obligations of the State of California (State) to assure educational equality. I would not, however, address the propriety of the sources approved by the trial court to provide an emergency loan.

In my view, we need not consider questions regarding the use of the Oakland Unified School District (OUSD) emergency appropriation or the unused appropriation for the Greater Avenues for Independence (GAIN) program because the issues are moot and their resolution will have no impact on the status quo in this case. As the majority notes, at the May 2, 1991, proceeding, the State continued to object to the trial court's order arising out of the April 29, 1991, hearing. That order required the State, Superintendent of Public Instruction (SPI) and Controller, at their discretion and "by whatever means they deem appropriate," to ensure Richmond students were not deprived of six weeks of education provided to other students within California. In addition to renewing its basic position on the merits of the

constitutional arguments, the State also objected to use of the specific funds proposed by the SPI and Controller. It offered no alternative sources of funding and appealed from both orders.

Before us, however, the State does not demand rescission of the court-approved loan or any change in the status of that funding. The funding was granted as a loan and a loan repayment agreement has been worked out by the parties. The State, acknowledging those facts, expressly asserts "We do not argue that the Controller must be compelled immediately to recover the money." In other words, it seeks no relief from the trial court's order granting payment from the challenged sources and compelling repayment of the funds under a prescribed repayment schedule.

Accordingly, as the SPI observes, the matter is moot. The State's response, found in its reply brief, is only that "the trial court in the next case will still be guided by, unless this court disapproves the test, the 'generally related' test set forth in *Carmel Valley [Fire Protection Dist. v. State of California]* (1987) 190 Cal.App.3d 521, 540-541 (234 Cal.Rptr. 795)] and *Long Beach [Unified Sch. Dist. v. State of California]* (1990) 225 Cal.App.3d 155, 181-182 (275 Cal.Rptr. 449)]." It does not assert that this issue is capable of evading review because of timing or that a present controversy over the use of these particular funds still exists. Instead, it seeks guidance only for the future. I would decline to render what would essentially be an advisory opinion here. (See *People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912 [83 Cal.Rptr. 670, 464 P.2d 126] ["The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court"].)

MOSK, J., Concurring and Dissenting.—I am in general agreement with the views expressed in Justice Kennard's concurring and dissenting opinion.

However, I cannot embrace the ill-advised concession that the trial court's order "did pose a potential for disruption of a function of the legislative branch" although the degree of potential disruption "is not great" and the purported infringement on the legislative function is "not substantial." (Kennard, J., *post*, conc. and dis. opn. at pp. 710, 711.)

The theory of potential interference with legislative functions to any extent is inconsistent with the ultimate conclusion that the funds used for the emergency loan were "reasonably related" to the educational purposes of the legislation, and, indeed, "the trial court's order furthered, rather than defeated, that valid legislative purpose." As persuasively observed in footnote 2, the "funds were appropriated for purposes reasonably and closely related

to the purpose for which the trial court ordered them to be used.” (Kennard, J., *post*, conc. and dis. opn. at p. 711.)

Under the foregoing circumstances—with which I agree—there cannot be some conceptual interference, even though “not great,” with the functions of the legislative branch.

With that caveat, I join the concurring and dissenting opinion.

KENNARD, J., Concurring and Dissenting.—I agree with the majority that the threatened closure of the schools of the Richmond Unified School District (District) was such an extreme departure from prevailing educational standards as to infringe on the students’ state constitutional rights to basic educational equality, requiring the State of California (State) to intervene to protect those rights.

I do not agree, however, that the trial court violated the separation of powers doctrine by ordering that emergency loan funds be made available from an unused special appropriation to the Department of Education and an unused emergency appropriation to the Oakland Unified School District (OUSD). The majority has, in effect, declared that although the students’ right to education is fundamental, no means may exist by which our judicial system can enforce that right. In my view, the trial court’s order was an appropriate and pragmatic resolution of a difficult case under extreme pressure. Because the Legislature had already appropriated the funds in question for educational purposes reasonably related to the District’s needs, I discern no constitutional violation, and would affirm the trial court’s orders in their entirety.

I

On April 17, 1991, the District, facing a \$23 million budgetary shortfall, announced its schools would close on May 1, 1991, rather than as scheduled on June 14, 1991. Parents of students in the District’s schools then filed a class action against the State and the District’s board of education, alleging the closure would deprive children of their fundamental right to education and would violate equal protection guarantees. The trial court granted plaintiffs’ motion for a preliminary injunction, finding that “education is a fundamental right in California [and] unless injunctive relief is granted children in the District will be denied six weeks of instruction that will be provided to every other child in the State.” The trial court ordered the State, the Superintendent of Public Instruction (Superintendent), and the State Controller “to ensure that the students in the District are not deprived of six

weeks of public education while others within the state are not so deprived." The trial court added that "how these defendants accomplish this is up to the discretion of the defendants."

Thereafter, the Superintendent and the Controller proposed a plan to keep the schools open. They proposed that \$19 million in unspent funds from two educational programs—from the Greater Avenues for Independence (GAIN) program and from an appropriation to the OUSD—be loaned to the District. After an evidentiary hearing, the trial court ordered the State Controller to disburse an emergency loan to the District from these funds. This court denied the State's motion to stay the order pending appeal, but transferred the case here.

F

The majority holds that the trial court's remedial order violated the doctrine of separation of powers. Essentially, the majority reasons that by ordering that the unused funds be loaned to the District, the trial court impermissibly engaged in the appropriation of funds, an area of exclusive legislative concern.

The majority's conclusion originates from a fundamental misunderstanding of the separation of powers doctrine. Implicit in the majority's discussion is the assumption that under our tripartite scheme of government, particular powers can be definitively categorized as belonging to one of the three branches, and that these powers can never be exercised by a branch other than the designated branch. Thus, under the majority's approach, appropriation is exclusively a legislative function, and unless the Legislature has either appropriated funds for a specific purpose, or made a "catchall" appropriation under which a specific use of funds may fall, funds are simply not available for any purpose, no matter what rights are at stake.

This formalistic interpretation of the separation of powers concept is, however, contrary to modern understanding. The opinions of the United States Supreme Court, although not binding on this court in interpreting the separation of powers principles of the California Constitution, supply a persuasive body of case authority. Just as our state Constitution provides for the separation of the powers of government into three branches (Cal. Const., art. III, § 3), so does the federal Constitution segregate the branches of government (U.S. Const., art. I, § 1, art. II, § 1, & art. III, § 1).

The United States Supreme Court has "squarely rejected the argument that the Constitution contemplates a complete division of authority between the

three branches.” (*Nixon v. Administrator of General Services* (1977) 433 U.S. 425, 443 [53 L.Ed.2d 867, 891, 97 S.Ct. 2777].) Rather than reading the federal Constitution as “‘requiring three airtight departments of government,’” the high court has adopted a “pragmatic, flexible approach.” (*Id.* at pp. 443, 442 [53 L.Ed.2d at pp. 891, 890-891].) This approach, the court has explained, is supported by historical understanding. James Madison, one of the principal architects of the United States Constitution, wrote that the concept of separation of powers “‘d[oes] not mean that these departments ought to have no *partial agency* in, or no *control* over the acts of each other,’” but instead that “‘where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted.’” (J. Madison, *The Federalist* No. 47, pp. 325-326 (J. Cooke ed. 1961) (original italics), quoted in *Mistretta v. United States* (1989) 488 U.S. 361, 380-381 [102 L.Ed.2d 714, 735-736, 109 S.Ct. 647].) Thus, the basic purpose of the separation of powers is to guard against the concentration of power in the hands of one branch, but it is important to distinguish “partial agency” from those aggrandizements of power that pose genuine threats to the constitutional scheme.

The pragmatic and flexible approach favored by the nation’s highest court is also appropriate because, in a society growing ever more complex, the practical requirements of efficient government action by each of the three branches must be considered. “‘While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government.’” (*Mistretta v. United States*, *supra*, 488 U.S. at p. 381 [102 L.Ed.2d at p. 736], quoting *Youngstown Sheet & Tube Co. v. Sawyer* (1952) 343 U.S. 579, 635 [96 L.Ed. 1153, 1199, 72 S.Ct. 863, 26 A.L.R.2d 1378] (conc. opn. of Jackson, J.)) In contemporary society, concerns about the workability of government are especially weighty.

Thus, the high court has not evolved a rigid classification of governmental powers as belonging exclusively to one branch or another. Instead, the court has stated that “the proper inquiry focuses on the extent to which [the act complained of] prevents [one of the three branches] from accomplishing its constitutionally assigned functions.” (*Nixon v. Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta v. United States*, *supra*, 488 U.S. at p. 383 [102 L.Ed.2d at pp. 737-738].) If the “potential for disruption is present,” the court must then “determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority” of the branch whose action is challenged. (*Nixon v. Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53

L.Ed.2d at p. 891]; *Mistretta v. United States*, *supra*, 488 U.S. at p. 383, fn. 13 [102 L.Ed.2d at p. 737].)

This court has expressed a similar understanding. We have recognized that the purpose of the doctrine of separation of powers "is to prevent one branch of government from exercising the *complete* power constitutionally vested in another [citation]; it is not intended to prohibit one branch from taking action properly within its sphere that has the *incidental* effect of duplicating a function or procedure delegated to another branch. [Citation.]" (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 117 [145 Cal.Rptr. 674, 577 P.2d 1014] [original italics].)

More recently, this court reiterated that the separation of powers doctrine "has not been interpreted as requiring the rigid classification of all the incidental activities of government, with the result that once a technique or method of procedure is associated with a particular branch of the government, it can never be used thereafter by another." . . . "From the beginning, each branch has exercised all three kinds of powers." (*Davis v. Municipal Court* (1988) 46 Cal.3d 64, 76 [249 Cal.Rptr. 300, 757 P.2d 11] [citations and italics omitted].)

III

A line of cases from California courts has established the principle that a court does not violate the separation of powers doctrine when it orders appropriate expenditures from already existing funds, if such funds are reasonably available for the expenditures in question. (*Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 180-181 [275 Cal.Rptr. 449]; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 538-539 [234 Cal.Rptr. 795]; *Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. 475].) The precise question in this case is whether funds can be considered "reasonably available" when they are not made part of a "catch-all" appropriation under which the specific use of the funds may fall. The majority concludes that unless the funds are part of a "catchall" appropriation, they are not reasonably available.¹

I would announce no such categorical rule. In my view, the proper inquiry is that set forth by the United States Supreme Court in *Nixon v. Administrator of General Services*, *supra*, 433 U.S. 425 and *Mistretta v. United States*,

¹The majority purports to reaffirm the rule of these cases, but in fact undermines it. The "catchall" appropriation exception to the majority's rule could easily be eliminated if the Legislature took the time to label more specifically the purpose of each appropriation in a particular area. If the Legislature did so, there would be no possible remedy for the failure to fund any program, no matter how essential.

supra, 488 U.S. 361: To what extent does the challenged act of one branch interfere with another branch's performance of its constitutionally assigned functions? If there is some potential disruption, the court must then determine whether the challenged act is "justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon v. Administrator of General Services, supra*, at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta v. United States, supra*, at p. 383, fn. 13 [102 L.Ed.2d at p. 737].)

Applying the principles followed by the high court in *Nixon v. Administrator of General Services, supra*, 433 U.S. 425 and *Mistretta v. United States, supra*, 488 U.S. 361, and by this court in cases such as *Younger v. Superior Court, supra*, 21 Cal.3d 102 and *Davis v. Municipal Court, supra*, 46 Cal.3d 64, I conclude that the trial court's order authorizing the Controller to disburse funds from the GAIN and OUSD accounts as an emergency loan to the District to assure the District's schools remained open did pose a potential for disruption of a function of the legislative branch.

The degree of potential disruption, however, is not great. As the trial court concluded, the funds that were the source of the emergency loan were appropriated for purposes reasonably related to the educational purposes served by the District.

The OUSD loan funds were appropriated by the Legislature for the precise purpose for which they were employed here—to alleviate a fiscal crisis in a local school district and prevent disruption of an ongoing educational program. (See Stats. 1989, ch. 1438, § 1.) Moreover, the trial court had before it an application for leave to intervene from the OUSD itself, in which the OUSD stated that the threatened closure of the nearby District "would place substantial and difficult burdens on OUSD as displaced Richmond students seek admission to Oakland Schools," that would be "extremely costly and disruptive" to the operation of the Oakland schools. The emergency loan fund for the OUSD was intended by the Legislature to avoid disruption of the educational program at the Oakland schools, and the trial court's order furthered, rather than defeated, that valid legislative purpose.

The GAIN program was enacted to address the problem of teenage parenting, basic educational deficiencies, and long-term welfare dependency. Specifically, GAIN was intended to "[p]rovide the education and training services needed by teenage parents to help them earn a high school diploma or its equivalent," and to "[l]ink teenagers to other needed health and social services." (Welf. & Inst. Code, § 11330, subd. (c).) The purpose of the particular appropriation to the Department of Education at issue in this case

was solely to meet educational needs, and not to provide health and social services. (Stats. 1989, ch. 93, § 22.00.) This goal is served by keeping the District's schools open. The trial court had before it uncontradicted evidence that a large number of the students in the District came from low-income families, many of whom were welfare-dependent. The court could rationally conclude that the otherwise unused GAIN funds were reasonably available to meet the basic educational needs of the District's students, a significant portion of whom were in the welfare-dependent population the GAIN program was targeted to assist. Under the circumstances, the funds were ordered to be used for a purpose reasonably congruent with the statutory purpose.²

Thus, because the trial court authorized the OUSD and GAIN funds to be used for a purpose that was reasonably related to the purposes for which the funds were appropriated, any infringement on the legislative function is not substantial. By contrast, we are not faced with a situation in which a trial court has ordered that funds appropriated for one purpose be used for some entirely unrelated purpose; nor are we confronted with a trial court order that funds actually in use for one program be diverted to another. It is vital that

²The majority asserts that this opinion "urges abandonment" of the rule of *Mandel v. Myers*, *supra*, 29 Cal.3d 531 (*Mandel*). This is incorrect.

In *Mandel*, *supra*, 29 Cal.3d 531, this court held that the separation of powers doctrine does not prevent the courts from ordering appropriate expenditures from already existing funds when such funds are "reasonably available for the expenditures in question . . ." (*Id.* at p. 542.) There, the court found that certain "catchall" funds were reasonably available for the expenditures in question, the payment of attorney fees in a case enforcing constitutional rights. But nothing in *Mandel* indicated that the only funds that might ever be reasonably available in any case were "catchall" funds. And, as later cases made clear, *Mandel*'s test of "reasonable availability" encompasses unused funds that have been appropriated for purposes closely related to the purposes for which they are sought to be expended. (*Long Beach Unified Sch. Dist. v. State of California*, *supra*, 225 Cal.App.3d at p. 181; *Carmel Valley Fire Protection Dist. v. State of California*, *supra*, 190 Cal.App.3d at p. 541.)

In this case, as my analysis has demonstrated, the OUSD and GAIN funds were appropriated for purposes reasonably and closely related to the purpose for which the trial court ordered them to be used. Thus, *Mandel* and its progeny were not violated. The analysis in this opinion is entirely consistent with both the *Mandel* line of cases, and the cases from the United States Supreme Court and this court that more fully and generally articulate the doctrine of separation of powers. *Mandel* and its progeny represent an area of specific application of general separation of powers principles; properly understood, there is no disjunction between the *Mandel* line of cases and cases such as *Nixon v. Administrator of General Services*, *supra*, 433 U.S. 425, and *Mistretta v. United States*, *supra*, 488 U.S. 361, that set forth a principled and coherent view of the separation of powers doctrine.

Thus, the majority's accusation that the approach to separation of powers questions set forth in this opinion, which is the same approach employed by our nation's highest court, would "stand the separation of powers clause on its head," is meritless.

trial courts take care to minimize any impingement on legislative prerogatives. But the trial court in this case did use the least intrusive means available to it to ensure the students' rights.³

As discussed earlier, if there is some cognizable interference with the functions of another branch, the reviewing court must then determine whether the act is "justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon v. Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta v. United States*, *supra*, 488 U.S. at p. 383, fn. 13 [102 L.Ed.2d at p. 737].) In my view, here the trial court's order was so justified.

The objective that the trial court sought to achieve by its orders in this case—to assure the protection of the fundamental rights of the District's students—was unquestionably within its constitutional authority. As this court has made clear on previous occasions, and as the majority reaffirms today, education is a fundamental right under the California Constitution. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608-609 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Serrano v. Priest* (1976) 18 Cal.3d 728, 766 [135 Cal.Rptr. 345, 557 P.2d 929].)

Moreover, the court, in acting to protect the students' rights to education, had no practical alternative to the remedial order it issued. It was the court's

³At the hearing on the preliminary injunction, an official of the Department of Education testified without contradiction that there were two sources from which department funds were available that could be employed to assist the District—the OUSD fund and the GAIN fund. No other funds were identified as available.

The funds appropriated to the Department of Education for the general support of elementary and secondary schools are not placed in a "catchall" fund subject to the discretion of Department of Education officials. Instead, under the Education Code, virtually all sums transferred from the state's general fund to the Department of Education for the general support of elementary and secondary education are transferred subject to a strict formula under which each local district is entitled to an amount computed on the basis of average daily student attendance. (Ed. Code, § 14000 et seq., § 46000 et seq.) No state official appears to have any discretion to vary the legislatively mandated allocation of funds.

My research reveals that the only funds that might have been considered reasonably available to aid the District under the majority's criteria at the time of the trial court's decision in this case were certain emergency funds under control of the Director of Finance. (Stats. 1990, ch. 467, § 2.00.) But there is nothing in the record to show that these funds had not been used for some other emergency purpose. Even assuming that none of these funds had been committed to some other use, however, the funds would have been grossly inadequate to meet the District's needs in any event. The total amount of funds available to the Director of Finance to meet all the emergency needs of the State under the then-current budget was \$7 million. (*Ibid.*) As we have seen, the District faced a \$23 million budget shortfall.

duty to act. As the United States Supreme Court has held, "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." (*Reynolds v. Sims* (1964) 377 U.S. 533, 566 [12 L.Ed.2d 506, 530, 84 S.Ct. 1362].)

When the other branches of government have failed to act, the courts have not flinched from their duty to fashion appropriate remedies when necessary to guarantee constitutional rights to the people of this state. Thus, in *Wilson v. Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306], we held that, although reapportionment is primarily a matter for the legislative branch, when that branch has failed to act and electoral rights will be irretrievably lost if no action is taken, "we must proceed forthwith to draft such [reapportionment] plans." And in *Crawford v. Board of Education* (1976) 17 Cal.3d 280, 307 [130 Cal.Rptr. 724, 551 P.2d 28], we held that when a recalcitrant school board failed to act to cure the harmful consequences of school segregation, the trial court could exercise "broad equitable powers" to frame a remedy that would assure the students' basic rights. (Accord, e.g., *Swann v. Board of Education* (1971) 402 U.S. 1, 15 [28 L.Ed.2d 554, 566, 91 S.Ct. 1267]; see *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 659 [180 Cal.Rptr. 297, 639 P.2d 939]; *Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765, 779 [269 Cal.Rptr. 796].)

No sound reason exists to hold that although some fundamental rights demand judicial protection when they are endangered because the other branches of government have failed to act, other rights, equally fundamental, do not. Yet that is the consequence of the majority's holding in this case that the trial court erred in ordering that an emergency loan be made to the District.

The practical consequences of the majority's holding should not be overlooked. In an era of fiscal constraint and uncertainty for local governments, including school districts, we cannot assume that the District's problems will prove to be unique. If another school district experiences financial difficulties and the other branches of government fail to act, parents may indeed bring a lawsuit to protect their children's right to education. Under today's decision, the trial court will declare that the children have a constitutional right to basic educational equality, and that the State bears responsibility for assuring this right is not denied. The court may then announce that no means

exist by which it can enforce that right. And the doors to the schoolhouse will close.

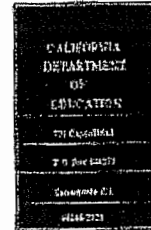
I would affirm the orders of the trial court in their entirety.

EXHIBIT D

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
FISCAL MANAGEMENT ADVISORY 97-02



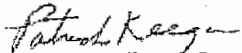
DELAINE BANTIN
State Superintendent of Public Instruction



FISCAL MANAGEMENT ADVISORY 97-02

October 30, 1997

TO: County and District Superintendents

FROM: 
Patrick Keegan, Deputy Superintendent
Finance, Technology, and Information Services

SUBJECT: Fees, Deposits, and Other Charges

School district administrators frequently ask the Department to provide additional guidance on the matter of fees. This Advisory which supersedes Fiscal Management Advisory 87-03 is provided for that purpose, and reflects the most recent legislation and California Supreme Court interpretations. The following narrative contains a number of conclusions based on legal references. Most of these references are to a particular case or opinion. Those conclusions without attribution represent the opinions of the Department's Legal Office.

TUITION, FEES, DEPOSITS, AND OTHER CHARGES IN CALIFORNIA
PUBLIC SCHOOLS, K-12 AND ADULT SCHOOLS

I. A Free Public School System

"A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law."¹

With this language the State Board of Education made clear that fees are not to be imposed except where specifically authorized by law. This administrative regulation, or "law" of the State Board was promulgated based on the authority of Article IX, Section 5 of the California Constitution. Article IX, Section 5 provides for a free school system:

"The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

The State Supreme Court in 1874 held that this provision entitled students to be educated at public expense.²

The Attorney General has, in several opinions,³ consistently ruled that school districts do not have authority to levy fees for any elective or compulsory class. Further, districts may not require security deposits for locks, lockers, books, class apparatus, musical instruments, uniforms, or other equipment.

The administrative regulation noted above prohibited fees except those "...specifically authorized by law." Certain fees have been authorized by law since the rule was promulgated.

The 1984 California Supreme Court decision, Hartzell v. Connell,⁴ raises serious questions about the imposition of a non-statutory fee for extracurricular activities. The lead opinion acknowledges that fees may be charged for "recreational" activities but not for "educational" activities. Extracurricular activities are described in the opinion as an integral component of public education; they are a part of the educational program according to this decision.

The court held that the "...imposition of fees for educational activities offered by public high school districts violates the free school guarantee. The constitutional defect in such fees can neither be corrected by providing waivers to indigent students nor justified by pleading financial hardship."

¹Title 5 California Code of Regulations, Section 350

²Wade v. Flood, 46 Cal. 36, 51 (1874)

³Ops. Cal. Atty. Gen. No. NS-4114, 1942

⁴35 Cal. 3d 899 (1984)

II. Fees Authorized by Law

The Education Code specifically authorizes certain fees. Except for home to school transportation fees discussed later, none of those Code sections have been challenged and the Hartzell v. Connell decision did not directly rule on their legality. Therefore, districts may continue to levy fees as authorized in the following Education Code sections:

- A. Fees that a district may collect for furnishing materials to a pupil for items the pupil has fabricated from such materials for his or her own use. Such fees may not exceed cost. (Education Code section 39526)
- B. Fees that a district may charge pupils for transportation to and from school under limited circumstances. (Education Code sections 38028, 39807.5 and 39837)
- C. Charges for food served to pupils. (Education Code sections 39870-39874, 39876)
- D. Charges to the parent or guardian of any pupil who loses a book, defaces books or other school property. Liability limits for lost items or damage are adjusted annually by the State Superintendent of Public Instruction pursuant to statute. (Education Code section 48904)
- E. Charges for field trips or excursions, principally for transportation. The authority to charge a fee for field trips or excursions is not directly stated in the Education Code. Rather, it provides that "No pupil shall be prevented from making the field trip or excursion because of lack of sufficient funds." (Education Code section 35330)
- F. Districts must make medical, hospital, or accident insurance available to pupils who may be injured while participating in field trips. The cost of the insurance may be paid by the pupil or his parents. (Education Code section 35331)
- G. Governing boards may expend from the general fund of the district any money which is budgeted for community services to establish and maintain community service classes. They may charge student fees not to exceed the cost of maintaining such classes. (Education Code section 51815)
- H. A governing board may charge a tuition fee to adults for any class except classes in English and citizenship for foreigners, classes in elementary subjects, and classes for which high school credit is granted when taken by a person not holding a high school diploma. (Education Code section 52612)

- I. Districts must provide, and each member of an athletic team must have, accidental death, injury and medical insurance coverage. The cost of such insurance may be paid by the pupil unless the pupil is unable to pay for such insurance. (Education Code sections 32220-32224)
- J. A school district may require a deposit from a borrower of school band instruments, music, uniforms, and other regalia for use on an excursion to a foreign country. (Education Code section 40015)
- K. Pupils whose parents are actual and legal residents of an adjacent foreign country or an adjacent state shall be charged a tuition fee. (Education Code sections 48050 and 48052)
- L. The regulations of the governing board may provide for the sale of materials purchased from the incidental expense account to pupils in classes for adults, for use in connection with such classes. The proceeds of all such sales shall be deposited in that account (Education Code section 52615). A high school district board may charge for textbooks used in classes for adults or impose a refundable deposit on loaned books. (Education Code section 60410)
- M. The governing board of a school district may sell class material to persons enrolled in classes for adults. This may include materials necessary for the making of articles by students enrolled in adult education. The materials shall be sold at not less than the cost to the district; any article made shall be the property of the person who made it. (Education Code section 39527)
- N. The governing board of any elementary, high, or unified school district may charge a fee for school camp programs, provided that payment of such fee is not mandatory. No pupil shall be denied the opportunity to participate in a school camp program because of non-payment of the fee. (Education Code section 35335)
- O. Families utilizing child care and development services shall be charged a fee by the school district, but no fees shall be assessed against families whose children are enrolled in the state preschool program, or for such services provided to severely handicapped children (Education Code sections 8263(e)(f) and 8250(d)). Standards for fees appear in Education Code section 8265. The school district may also impose a fee for a program of supervision of children before and after school. (Education Code section 8487 and 8488)
- P. School districts may offer a fingerprint program for children in kindergarten or newly enrolled children and shall assess a fee to the parent or guardian who chooses to participate. (Education Code section 32390)

III. District Obligation to Provide Without Charge

The opinions of the Attorney General mentioned earlier indicate that charges may not be levied for the following:

- A. A deposit in the nature of a guarantee that the district would be reimbursed for loss to the district on account of breakage, damage to, or loss of school property.
- B. An admission charge to an exhibit, fair, theater or similar activity for instruction or extracurricular purposes when a visit to such places is part of the district's educational program.
- C. A tuition fee or charge as a condition to enrollment in any class or course of instruction, including a fee for attendance in a summer or vacation school, a registration fee, a fee for a catalog of courses, a fee for an examination in a subject, a late registration or program change fee, a fee for the issuance of a diploma or certificate, or a charge for lodging.
- D. Membership fees in a student body or any student organization as a condition for enrollment or participation in athletic or other curricular or extracurricular activities sponsored by the school.
- E. Education Code section 48053 prohibits charging an apprentice, or his or her parents or guardian, for admission or attendance in any class.
- F. Textbooks and workbooks must be furnished without charge by elementary and high school districts except for classes for adults. A charge may not be made for their use (Education Code sections 60070 and 60410).

Education Code section 40011 provides:

"Writing and drawing paper, pens, inks, blackboard erasers, crayons, lead pencils, and other necessary supplies for the use of the schools, shall be furnished under direction of the governing board of the school district."

The Attorney General has issued an opinion interpreting this language. He was asked specifically whether a student could be required to furnish any or all of the following:

- A. Art material for art classes and mechanical drawing sets
- B. Cloth to be used in dressmaking classes and wood for carpentry classes
- C. Gym suits and shoes for physical education classes

- D. Bluebooks in which to write a final examination
- E. Paper on which to write a theme or report when such theme or report is a required assignment.

The Attorney General concluded that all the above-mentioned materials were "necessary supplies" and as such had to be furnished by the school district. He reasoned that the articles listed in A, B, C, and D, "appear to be supplies that must be available to students in order to participate in regular classroom work in the particular subjects involved." As to E, the Attorney General stated that "paper to be used on which to write a theme or report must also be furnished when required as a part of the classroom activity."⁵

The Attorney General limited his discussion to the questions specifically asked and did not state what materials a district is not obligated to furnish. However:

"[s]upplies,...must be furnished free of cost to students when the supplies are what might be termed 'school supplies' and are necessary in order for the students to pursue a course of study."

The Attorney General's use of the term "school supplies" is meant to exclude from the district's obligation those items or materials which, although necessary for class participation, are essential regardless of whether or not a person is a student. For example, a school district would not be obligated to furnish corrective lenses, clothes, and so forth. Such items are needed whether or not one is a student.

Specifically with respect to gym clothes, Education Code section 49066(b) states that: "No grade of a pupil participating in a physical education class, however, may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil," such as, for example, lack of funds.

It should be determined whether a fee for a particular item is specifically authorized by statute. If not, it should be determined whether a particular item is required by law to be furnished free or whether it comes under the category of "necessary supplies." If it does, then the district must furnish the item without charge.

It is the position of the Department that a school district may require its ~~students~~ to purchase their own gym clothes of a district specified design and color so long as the design and color are of a type sold for general wear outside of school. Once the required gym uniforms become specialized in terms of included logos, school name or other characteristics not found on clothing for general use outside of school, they are school supplies and the district must provide those uniforms free of charge.

It is the opinion of the Department's legal office that a school district may not charge a fee or require students to purchase necessary materials even if the

⁵Ops. Cal Atty. Gen. No. NS-4414, 1942

district maintains a special fund to assist students with financial need or waives such fee or charge for students with financial need. The fee or charge still remains a condition for all other students not so assisted. The court in Hartzell v. Connell, discussed below, held that a fee-waiver policy for needy students does not save the fee.

IV. Extracurricular Activities

On April 20, 1984, the California Supreme Court decided, in Hartzell v. Connell 35 Cal. 3d 899, that a public school district may not charge fees for educational programs simply because they are denominated "extracurricular." As expressed by the lead opinion, the court concluded that "the imposition of fees as a precondition for participation in non-statutory educational programs offered by public high schools on a noncredit basis violates the free schools guarantee of the California Constitution and the prohibition against school fees contained in Title 5, Section 350 of the California Administrative Code." (now California Code of Regulations).

Some significant observations by the various justices and ramifications of the decision are as follows:

- A. The lead opinion was written by Chief Justice Bird with Justices Broussard and Reynoso concurring specifically. The approach taken to the issue by the Chief Justice holds that the free school guarantee extends to all activities which constitute an integral, fundamental part of elementary and secondary education or which amount to necessary elements of any school's activity. The opinion concludes that extracurricular activities constitute an integral component of public education.
- B. The lead opinion holds that fee based extracurricular activities are also illegal under Title 5 California Code of Regulations 350 (5 CCR 350) which prohibits the imposition of "...any fee, deposit, or other charge not specifically authorized by law."
- C. Apart from the fee issue, this particular holding has wide reaching significance. Along with constitutional provisions and statutes, any regulation adopted by the State Board of Education or Superintendent of Public Instruction is a "law." Education Code section 35160, the so-called "permissive code" authority allows school districts to carry on any activity or act in any manner "...which is not in conflict with or inconsistent with, or preempted by, any law..."
- D. As noted above, several provisions of the Education Code permit school districts to impose charges or fees, e.g.: Section 35330 (field trips and excursions), Section 48909 (charge for lost textbook), Section 35335 (school camps), Sections 32220-32224 (requires members of athletic teams to purchase death, accident and hospital insurance), Section 40015 (deposit for use of a school musical instrument), Section 39804 (pupil transportation), and so forth. In

his separate opinion, in which he concurs in the judgment, Justice Kaus raised the question whether, under the decision, any of the statutory fees and charges (Paragraph II, supra) would be unconstitutional. Because none of the statutory fees were in issue, the court made no ruling in that respect. The Hartzell decision is binding precedent for invalidation of any non-statutory fees of the type examined by that court. Except for home to school transportation fees (Section 39807.5), the constitutionality of the statutory fees and charges is yet to be judicially decided.

- E. In a footnote the lead opinion states that the: "[e]ducational activities are to be distinguished from activities which are purely recreational in character. Examples of the latter might include attending weekend dances or athletic events." This statement may cause future litigation on the issue of whether the challenged fee based activity is educational or recreational. The issue is complicated by the fact that while citing an athletic event as possibly being recreational, the court invalidated a fee based athletic activity because it was held to be educational. This could be reconciled by interpreting the footnote as allowing a fee if the participation is solely as a spectator.
- F. The defendants argued that their fee-waiver policy for needy students satisfies the requirements of the free school requirement. They suggested that the right to be educated at public expense amounts merely to a right not to be financially prevented from enjoying educational opportunities. The court answered that such an argument plainly contradicts the plain free school language of the Constitution.

V. Home to School Transportation Fees

Education Code section 39807.5 allows school districts to charge parents a fee for home to school transportation provided to their children by the district. On a constitutional challenge the California Supreme Court in Arcadia School District v. State Department of Education,⁶ upheld the transportation fee statute. According to the court, permitting school districts to charge parents and guardians for the transportation of students to and from school does not violate the California Constitution free school guarantee. Unlike the extracurricular activities held to be free in Hartzell v. Connell (supra), transportation is neither an educational activity nor an essential part of school activity. Home to school transportation is not included within the free school guarantee.

⁶2 Cal.4th 251 (1992)

VI. Tuition for Summer School.

No statute specifically authorizes tuition for summer school. Therefore, tuition or any fee or charge is prohibited under Section 350 of Title 5 California Code of Regulations (supra at page 1), which according to the court in Hartzell v. Connell (supra), is a law within the meaning of the so-called permissive provisions of Education Code section 35160.

VII. Community Service Classes

The governing board of a school district is authorized to maintain community service classes and to charge fees to cover the costs of maintaining such classes (Education Code sections 51810 and 51815). These classes may be convened at any time during the school year as may be determined by the governing board (Education Code section 51812).

Community service classes are not intended to teach required courses that students in grades K-12 must complete as part of their instructional programs. Community service classes usually include classes in music, drama, art, handicraft, science, literature, nature study, nature contacting, aquatic sports, athletics, and other such classes of general interest to the community (See Education Code, section 51810). These classes are primarily intended for adults and are open only to those minors whom the governing board believes will profit from such classes (Education Code, section 51811). It is the Department's position, therefore, that community service classes may not be used as summer schools for K-12 students, except for the incidental attendance of students with special interest in the subjects being taught.

VIII. Summer Schools Conducted Under Contract by Private Parties

The provisions of law relating to contracts whereby private parties conduct a portion of the educational program are not entirely clear. Neither the California Constitution nor the Education Code specifically prohibits contracts for educational services. Education Code section 35160 authorizes districts to engage in any activity not prohibited by law.

Section 6, Article IX, of the California Constitution prohibits a school district from transferring, directly or indirectly, any part of the public school system, or the placing of any part of the public school system under the jurisdiction of any authority other than a public school authority. This constitutional provision was explained in CTA v. Fullerton.⁷ That case involved a school district which let a contract for a private vendor to conduct its driver training program. The court held that the district had not transferred a part of the school system, but only a part of the curriculum. The court's reasoning is that the curriculum is only a function of the system and not a part of the system. This reasoning would seem also to validate contracting for a summer school program. However, in discussing this constitutional prohibition, the court stated that the Constitution would be violated if the control and management of the driver training program were to be transferred to a private authority. This would be true because the various

⁷82 Cal.App.3d 249, 1978

administrative units authorized to maintain and administer the curriculum with the public school system constitute, along with the curriculum, a part of the system. Thus, contracting for a summer school program would be valid under Article IX, Section 6 only if the school district maintains exclusive control and management of the educational program.

The requirement for the maintenance of control and management, however, places the contracting district in a legally impossible position when tuition fees are charged. If the contractor providing the program charges tuition the district might thereby be in violation of the prohibition against tuition charges.

IX. Leasing School Buildings for Educational Use.

The Education Code provides authority for school districts to lease, or allow the use of, unneeded school buildings and classroom space, or to enter into joint occupancy or joint use agreements with private entities including private schools. (Education Code sections 39360, 39379, 39380, 39381, 39440, 39444, 39470, and 40040, et seq.)

When authorizing school buildings to be used by another entity for a summer school program, however, the district should consider the following:

- A. When leasing to a sectarian organization, the district must avoid violating the religious establishment prohibition of the First Amendment to the United States Constitution. According to the California Attorney General, a school district cannot lease or loan vacant classrooms to a sectarian institution for religious purposes while public school is concurrently in session.⁸
- B. The use granted under the Civic Center Act must not result in a monopoly for the benefit of any person or organization. (Education Code section 40041 et seq.) (Effective 1/1/98 renumbered to 38130)

X. Charter Schools.

Education Code section 47605(d) prohibits a charter school from charging tuition, but does not mention fees or other charges. Should it be argued that a certain educationally based fee or other charge is not in the nature of a tuition, the charter school would, nevertheless, be prohibited from assessing them. Although a charter school is exempt from the laws governing school districts (Education Code section 47610), the California Constitution, which is the highest law of the state, cannot be rendered inapplicable by the Legislature. Therefore, any tuition, fee or other charge relating to the charter school's educational program is prohibited by the free school guarantee of the California Constitution Article IX, Section 5, as interpreted in *Hartzell v. Connell*, supra.

⁸60 Ops. Cal. Atty. Gen. 269

XI. Educational Clinics.

A certified clinic may not charge any fee for services to any pupil or to the parent, guardian, or custodian of any pupil for which the clinic receives reimbursement (Education Code section 58557)

The purpose of this Advisory is to inform school districts and county superintendents of the existing law involving fees in the schools and of the various cases and opinions on the subject. Except with respect to citations and references to other regulations and court decisions, this advisory is merely exemplary and compliance therewith is not mandatory, nor is there any intent to suggest a particular course of action. Each local educational agency should seek the advice of its own legal counsel in the development of local policy.

Questions about this advisory may be directed to the Department's Legal Office
916-657-2453.

SixTen and Associates Mandate Reimbursement Services

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June 25, 2008

RECEIVED

JUN 25 2008

**COMMISSION ON
STATE MANDATES**

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

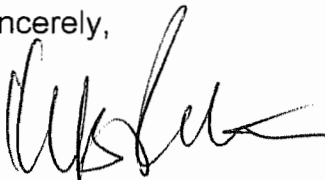
Re: CSM 02-TC-30
School Facilities Funding Requirements

Dear Ms. Higashi:

On January 17, 2008, I submitted to the Commission, on behalf of the test claimant, a supplement to the test claim filing, specifically, the history of the Title 2, CCR, sections included in the test claim, at the request of the Commission staff.

This letter transmits, on behalf of the test claimant, the list of registers and relevant section numbers, in the form of an amended attachment page to the CSM 2 form.

Sincerely,



Keith B. Petersen

C: Michael Johnston, Assistant Superintendent
Business Services
Clovis Unified School District
1450 Herndon Avenue
Clovis, CA 93611-0599

Chaptered Bills

Chapter 1168, Statutes of 2002	Chapter 1075, Statutes of 2002	Chapter 935, Statutes of 2002
Chapter 199, Statutes of 2002	Chapter 33, Statutes of 2002	Chapter 734, Statutes of 2001
Chapter 725, Statutes of 2001	Chapter 647, Statutes of 2001	Chapter 194, Statutes of 2001
Chapter 159, Statutes of 2001	Chapter 132, Statutes of 2001	Chapter 753, Statutes of 2000
Chapter 590, Statutes of 2000	Chapter 530, Statutes of 2000	Chapter 193, Statutes of 2000
Chapter 44, Statutes of 2000	Chapter 992, Statutes of 1999	Chapter 858, Statutes of 1999
Chapter 709, Statutes of 1999	Chapter 133, Statutes of 1999	Chapter 1076, Statutes of 1998
Chapter 957, Statutes of 1998	Chapter 941, Statutes of 1998	Chapter 848, Statutes of 1998
Chapter 741, Statutes of 1998	Chapter 691, Statutes of 1998	Chapter 485, Statutes of 1998
Chapter 407, Statutes of 1998	Chapter 940, Statutes of 1997	Chapter 893, Statutes of 1997
Chapter 513, Statutes of 1997	Chapter 277, Statutes of 1996	

Education Code Sections

15271	15272	15274	15276	15278	15280	15282
15284	15301	15302	15303	15320	15321	15322
15323	15324	15325	15326	15327	15336	15340
15341	15342	15343	15346	15347	15349	15349.1
15350	15351	15352	15354	15355	15359.2	15359.3
15380	15381	15384	15390	15391	17006	17008.3
17009	17009.5	17014	17015	17016	17017	17017.2
17017.5	17017.6	17017.7	17017.9	17018	17018.5	17018.7
17019.3	17019.5	17020	17021.3	17022	17022.7	17024
17025	17029	17029.5	17030	17030.5	17031	17032
17032.3	17032.5	17036	17038	17040	17040.1	17040.2
17040.3	17040.6	17040.7	17040.8	17041.1	17041.2	17041.8
17042.7	17042.9	17047	17047.5	17049	17056	17059
17059.1	17061	17062	17063	17064	17065	17066
17070.33	17070.50	17070.51	17070.60	17070.63	17070.70	17070.71
17070.75	17070.77	17070.80	17070.90	17070.95	17070.97	17070.98
17071.10	17071.25	17071.30	17071.33	17071.35	17071.40	17071.46
17071.75	17072.10	17072.12	17072.13	17072.20	17072.33	17072.35
17073.10	17074.10	17074.15	17074.16	17074.20	17074.25	17074.26
17074.30	17074.50	17074.52	17074.54	17074.56	17075.10	17075.15
17076.10	17076.11	17077.10	17077.30	17077.35	17077.40	17077.42
17077.45	17078.18	17078.20	17078.22	17078.24	17078.25	17088.3
17088.5	17088.7	17089	17089.2	17090	17092	17096
17110	17111	17150	17180	17183.5	17193.5	17194
17199.1	17199.4	100620				

California Code of Regulations Registers

Register 78-05

Title 2, Sections:	1865.1	1865.2	1865.3	1865.4	1865.5
	1865.6	1865.7	1865.8	1865.21	1865.22
	1865.23	1865.30	1865.31	1865.32	1865.33
	1865.34	1865.35	1865.36	1865.37	1865.38
	1865.39	1865.40	1865.41	1865.42	1865.43
	1865.50	1865.51	1865.52	1865.60	1865.61
	1865.70	1865.71	1865.75		

Register 79-34

Title 2, Sections: 1862.52 1862.53 1862.54 1862.55 1862.56

Register 80-12

Title 2, Sections: 1865.3 1865.32.5 1865.43 1865.50 1865.70

Register 80-26

Title 2, Sections: 1865.3 1865.33 1865.43 1865.50 1865.70

Register 81-19

Title 2, Sections: 1865.32.5 1865.33

Register 84-51

Title 2, Sections: 1865.32.5

Register 86-44

Title 2, Sections: 1862.52 1862.53

Register 98-49

Title 2, Sections: 1859.20 1859.21 1859.30 1859.31 1859.32
1859.33 1859.35 1859.40 1859.41 1859.42
1859.43 1859.50 1859.51 1859.60 1859.61
1859.70 1859.71 1859.72 1859.73 1859.74
1859.74.1 1859.75 1859.76 1859.77 1859.77.1
1859.78 1859.78.1 1859.79 1859.79.1 1859.79.2
1859.80 1859.81 1859.81.1 1859.82 1859.83
1859.90 1859.91 1859.92 1859.93 1859.94
1859.95 1859.100 1859.101 1859.102 1859.103
1859.104 1859.105 1859.106

Register 98-52

Title 2, Sections: 1859.20 1859.50 1859.60

Register 99-11

Title 2, Sections: 1859.35

Register 99-14

Title 2, Sections: 1859.20 1859.21 1859.30 1859.31 1859.32
1859.33 1859.35 1859.40 1859.41 1859.42
1859.43 1859.50 1859.51 1859.60 1859.61
1859.70 1859.71 1859.72 1859.73 1859.74
1859.74.1 1859.75 1859.76 1859.77 1859.77.1
1859.78 1859.78.1 1859.79 1859.79.1 1859.79.2
1859.80 1859.81 1859.81.1 1859.82 1859.83

1859.90	1859.91	1859.92	1859.93	1859.94
1859.95	1859.100	1859.101	1859.102	1859.103
1859.104	1859.105	1859.106		

Register 99-29

Title 2, Sections:	1859.21	1859.50	1859.70	1859.74.1	1859.81.1
	1859.100	1859.102			

Register 99-31

Title 2, Sections:	1859.20	1859.21	1859.30	1859.31	1859.32
	1859.33	1859.35	1859.40	1859.41	1859.42
	1859.43	1859.50	1859.51	1859.60	1859.61
	1859.70	1859.71	1859.72	1859.73	1859.74
	1859.74.1	1859.75	1859.76	1859.77	1859.77.1
	1859.78	1859.78.1	1859.79	1859.79.1	1859.79.2
	1859.80	1859.81	1859.81.1	1859.82	1859.90
	1859.91	1859.92	1859.93	1859.94	1859.95
	1859.100	1859.101	1859.102	1859.103	1859.104
	1859.105	1859.106			

Register 99-41

Title 2, Sections:	1859.20	1859.21	1859.30	1859.31	1859.32
	1859.33	1859.35	1859.40	1859.41	1859.50
	1859.60	1859.70	1859.72	1859.74.1	1859.75
	1859.79	1859.79.2	1859.81	1859.81.1	1859.82
	1859.90	1859.100	1859.102	1859.104	1859.105
	1859.106				

Register 99-52

Title 2, Sections:	1859.21	1859.50	1859.70	1859.74.1	1859.81.1
	1859.100	1859.102			

Register 2000-02

Title 2, Sections:	1859.32
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Register 2000-11

Title 2, Sections:	1859.81.1	1859.104	1859.105	1859.106	1859.107
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Register 2000-26

Title 2, Sections:	1859.20	1859.21	1859.30	1859.32	1859.33
	1859.35	1859.40	1859.50	1865.60	1865.70
	1859.74.1	1859.75.1	1859.79	1859.81	1859.81.1
	1859.82	1859.90	1859.100	1859.102	1859.104
	1859.105	1859.105.1	1859.106		

Register 2000-29

Title 2, Sections:	1859.20	1859.21	1859.30	1859.33	1859.50
	1859.60	1859.70	1859.72	1859.74.1	1859.75.1

1859.81 1859.81.1 1859.82 1859.90 1859.100
1859.102 1859.105. 1859.107

Register 2000-37

Title 2, Sections: 1859.79.3 1859.81.1

Register 2000-52

Title 2, Sections: 1859.20 1859.21 1859.30 1859.33 1859.50
1859.60 1859.70 1859.72 1859.74.1 1859.75.1
1859.81 1859.81.1 1859.82 1859.90 1859.100
1859.102 1859.105 1859.107

Register 2001-01

Title 2, Sections: 1859.20 1859.21 1859.30 1859.33 1859.40
1859.50 1859.60 1859.70 1859.72 1859.74.1
1859.75.1 1859.79.3 1859.81 1859.81.1 1859.82
1859.90 1859.100 1859.102 1859.105 1859.107

Register 2001-24

Title 2, Sections: 1859.20 1859.21 1859.30 1859.33 1859.40
1859.50 1859.60 1859.70 1859.72 1859.74.1
1859.75.1 1859.79.3 1859.81 1859.81.1 1859.82
1859.90 1859.100 1859.102 1859.105 1859.107

Register 2001-30

Title 2, Sections: 1859.21 1859.22 1859.50 1859.70 1859.74.1
1859.75.1 1859.79.3 1859.81 1859.81.1 1859.82
1859.100 1859.102 1859.107

Register 2001-33

Title 2, Sections: 1859.21 1859.50 1859.70 1859.74.1 1859.75.1
1859.79.3 1859.81 1859.81.1 1859.82 1859.100
1859.102 1859.107

Register 2001-51

Title 2, Sections: 1859.81

Register 2002-15

Title 2, Sections: 1859.20 1859.21 1859.30 1859.33 1859.40
1859.41 1859.50 1859.60 1859.70 1859.74.1
1859.75.1 1859.79.3 1859.81 1859.81.1 1859.82
1859.100 1859.102 1859.106 1859.107

Register 2002-18

Title 2, Sections: 1859.21 1859.50 1859.70 1859.74.1 1859.75.1
1859.79.3 1859.81 1859.81.1 1859.82 1859.100
1859.102 1859.104.1 1859.104.2 1859.104.3 1859.107

Register 2002-33

Title 2, Sections: 1859.50 1859.70 1859.72 1859.74.1 1859.75.1
1859.79.3 1859.81 1859.81.1 1859.82 1859.100
1859.102 1859.107

Register 2002-37

Title 2, Sections: 1859.104 1859.105 1859.107

Register 2002-38

Title 2, Sections: 1859.79 1859.79.3 1859.81.1 1859.107

Register 2002-40

Title 2, Sections: 1859.81

Register 2002-45

Title 2, Sections: 1859.20 1859.21 1859.22 1859.30 1859.31
1859.32 1859.33 1859.35 1859.40 1859.41
1859.50 1859.60 1859.70 1859.72 1859.74.1
1859.75 1859.75.1 1859.79 1859.79.2 1859.79.3
1859.81 1859.81.1 1859.82 1859.90 1859.100
1859.102 1859.104 1859.104.1 1859.104.3 1859.105
1859.106 1859.107

Register 2003-03

Title 2, Sections 1859.50 1859.70 1859.72 1859.74.1 1859.75.1
1859.79.3 1859.81 1859.81.1 1859.82 1859.100
1859.102 1859.107

Register 2003-06

Title 2, Sections: 1859.81.1 1859.90 1859.104

Register 2003-07

Title 2, Sections: 1859.106

Register 2003-08

Title 2, Sections: 1859.79 1859.79.3 1859.81.1 1859.107

Register 2003-09

Title 2, Sections: 1859.20 1859.21 1859.75 1859.75.1 1859.79
1859.81.1 1859.107

Register 2003-18

Title 2, Sections: 1859.105 1859.106

Register 2003-24

Title 2, Sections: 1859.106

Title 2 Sections Originally Listed

Section 1859.20	Section 1859.21	Section 1859.22	Section 1859.30	Section 1859.31
Section 1859.32	Section 1859.33	Section 1859.35	Section 1859.40	Section 1859.41
Section 1859.50	Section 1859.60	Section 1859.70	Section 1859.72	Section 1859.74.1
Section 1859.75	Section 1859.75.1	Section 1859.79	Section 1859.79.2	Section 1859.79.3
Section 1859.81	Section 1859.81.1	Section 1859.82	Section 1859.90	Section 1859.100
Section 1859.102	Section 1859.104	Section 1859.104.1	Section 1859.104.2	Section 1859.104.3
Section 1859.105	Section 1859.105.1	Section 1859.106	Section 1859.107	Section 1862.52
Section 1862.53	Section 1865.3	Section 1865.8	Section 1865.32.5	Section 1865.33
Section 1865.39	Section 1865.42	Section 1865.43	Section 1865.50	Section 1865.70

Implementing Guidelines Sections

Substantial Progress and Expenditure Audit Guide of May 2003
School Facility Program Guidebook of January 2003
State Relocatable Classroom Program Handbook of January 2003
The Lease-Purchase Applicant Handbook of April 1988

SixTen and Associates

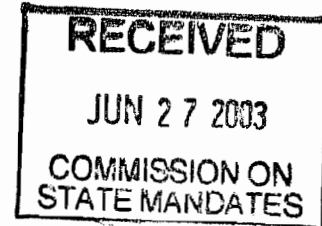
Mandate Reimbursement Services

Exhibit F

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

June 25, 2003



Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Clovis Unified School District
Statutes of 2002/Chapter 935
Hazardous Material Assessments

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Clovis Unified School District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

William McGuire
Associate Superintendent
Clovis Unified School District
1450 Herndon Avenue
Clovis, California 93611

The Commission regulations provide for an informal conference of the interested parties:

Paula Higashi, Executive Director,
Commission on State Mandates

June 25, 2003

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

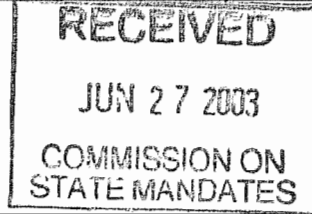
A handwritten signature in black ink, appearing to read "K. Petersen", written in a cursive style.

Keith B. Petersen

C: William McGuire
Associate Superintendent
Clovis Unified School District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only



TEST CLAIM FORM

Claim No.

Local Agency or School District Submitting Claim

CLOVIS UNIFIED SCHOOL DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, California 92117

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

Clovis Unified School District
1450 Herndon Avenue
Clovis, CA 93611

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

935/02 Hazardous Material Assessments
See: Attachment

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

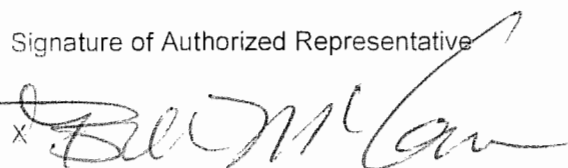
Telephone No.

William McGuire, Associate Superintendent

Voice: 559-327-9110
Fax: 559-327-9129

Signature of Authorized Representative

Day:

x 

June 23, 2003

Attachment To:
COSM Form CSM 2 (1/91)
Test Claim of Clovis Unified School District
Chapter 935, Statutes of 2002
Hazardous Material Assessment

Chapter 935, Statutes of 2002
Chapter 865, Statutes of 2001
Chapter 422, Statutes of 2001
Chapter 159, Statutes of 2001
Chapter 443, Statutes of 2000
Chapter 1002, Statutes of 1999
Chapter 992, Statutes of 1999
Chapter 277, Statutes of 1996
Chapter 1183, Statutes of 1991
Chapter 1602, Statutes of 1990
Chapter 735, Statutes of 1982
Chapter 362, Statutes of 1978
Chapter 242, Statutes of 1977
Chapter 557, Statutes of 1976

Education Code Section 17072.13
Education Code Section 17210
Education Code Section 17210.1
Education Code Section 17211
Education Code Section 17212
Education Code Section 17212.5
Education Code Section 17213
Education Code Section 17213.1
Education Code Section 17213.2
Education Code Section 17251
Education Code Section 17315

Health & Safety Code Section 25358.7
Health & Safety Code Section 25358.7.1

1 Claim Prepared By:
2 Keith B. Petersen
3 SixTen and Associates
4 5252 Balboa Avenue, Suite 807
5 San Diego, CA 92117
6 Voice: (858) 514-8605
7

8 BEFORE THE
9
10 COMMISSION ON STATE MANDATES
11
12 STATE OF CALIFORNIA
13

14 Test Claim of:)
15) No. CSM _____
16 Clovis Unified School District)
17 Test Claimant) Chapter 935, Statutes of 2002
18) Chapter 865, Statutes of 2001
19) Chapter 422, Statutes of 2001
20) Chapter 159, Statutes of 2001
21) Chapter 443, Statutes of 2000
22) Chapter 1002, Statutes of 1999
23) Chapter 992, Statutes of 1999
24) Chapter 277, Statutes of 1996
25) Chapter 1183, Statutes of 1991
26) Chapter 1602, Statutes of 1990
27) Chapter 735, Statutes of 1982
28) Chapter 362, Statutes of 1978
29) Chapter 242, Statutes of 1977
30) Chapter 557, Statutes of 1976
31)
32) Education Code Sections 17072.13
33) 17210, 17210.1, 17211, 17212, 17212.5,
34) 17213, 17213.1, 17213.2, 17251, 17315
35)
36) Health & Safety Code Sections
37) 25358.7, 25358.7.1
38)
39) Hazardous Materials Assessments
40 _____)
41
42

43 PART 1. AUTHORITY FOR THE CLAIM

44 The Commission on State Mandates has the authority pursuant to Government
Code section 17551(a) to "...hear and decide upon a claim by a local agency or school

1 district that the local agency or school district is entitled to be reimbursed by the state
2 for costs mandated by the state as required by Section 6 of Article XIII B of the
3 California Constitution.” Clovis Unified School District is a “school district” as defined in
4 Government Code section 17519.¹

5 PART II. LEGISLATIVE HISTORY OF THE CLAIM

6 This test claim alleges mandated costs subject to reimbursement by the state for
7 school districts to establish and implement policies and procedures to comply with
8 “Hazardous Materials Assessments” pursuant to Education Code, Title 1, Division 1,
9 Part 10.5.

10 SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

11 Education Code Section 15002 allowed the governing board of a school district,
12 when directed by a vote of the voters within the district, to purchase or improve school
13 lands.

14 Education Code Section 15002.1 required the governing board of a school
15 district to have a building site investigated by competent personnel, prior to acquisition,
16 to ensure that the final site selection was determined by an evaluation of all factors
17 affecting the public interest and not limited to selection on the basis of raw land cost
18 only. The investigation was to include geological and soil engineering studies to assess

¹ Government Code Section 17519, as added by Chapter 1459/84:

“School District” means any school district, community college district, or county superintendent of schools.”

1 the potential for earthquake or other geological characteristics that would require an
2 economically unfeasible construction effort to make a building safe for occupancy. The
3 evaluation was to include location of the site with respect to population, transportation,
4 water supply, waste disposal facilities, utilities, traffic hazards, surface drainage
5 conditions, and all cost factors of the total project. No school building was to be
6 constructed on the trace of a geological fault along which surface rupture could
7 reasonably be expected to occur within the life of the school building. Other geological
8 and soil investigations were required by the Department of General Services if
9 construction cost was expected to exceed \$10,000. No studies were required to be
10 made if the site had been the subject of adequate prior studies. A copy of the report of
11 each investigation was to be submitted to the Department of General Services and to
12 the Department of Education. The cost of the studies and investigations conducted
13 pursuant to this section were to be treated as a capital expenditure.

14 SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

15 Chapter 557, Statutes of 1976, Section 2, added Education Code Section
16 15002.2² which requires geological and soil engineering studies within the boundaries

² Education Code Section 15002.2, as added by Chapter 557, Statutes of 1976, Section 2:

“Geological and soil engineering studies as described in Section 15002.1 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 15452, or if the estimated cost exceeds ten thousand dollars (\$10,000), for the reconstruction or alteration of or addition to any such school building for work which alters structural elements. The Department of General Services may require similar geological and soil engineering studies for the

1 of any special studies zone if the estimated cost exceeds ten thousand dollars
2 (\$10,000) for the reconstruction, or alteration of, or addition to, any such school building
3 for work which alters structural elements, or as otherwise required by the Department of
4 General Services. A copy of the report of each investigation conducted pursuant to this
5 section shall be submitted to the Department of General Services and to the
6 Department of Education. The cost of geological and soil engineering studies and
7 investigations may be treated as a capital expenditure.

8 Chapter 1010, Statutes of 1976, Section 2, recodified and renumbered the above
9 Education Code Sections, operative April 30, 1977, as follows:

<u>Former Education Code:</u>	<u>Renumber Education Code:</u>
15002	39001
15002.1	39002
15002.2	39002.5

14 Chapter 242, Statutes of 1977, Section 12, amended Education Code Section
15 39002.5 to update code section references.

construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 4 (commencing with Section 15451) of Chapter 2 of this division and to the Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure."

1 Chapter 362, Statutes of 1978, Section 1, amended Education Code Section
2 39002.5 to increase the reconstruction estimated cost threshold from \$10,000 to
3 \$20,000 before geological and soil engineering studies are required by the Department
4 of General Services.

5 Chapter 735, Statutes of 1982, Section 2, added Education Code Section
6 39157³. Subdivision (a) requires a school district to submit all required fees and the

³ Education Code Section 39157 as added by Chapter 735, Statutes of 1982,
Section 2:

“(a) When a school building constructed in accordance with plans and specifications approved by the Department of General Services is completed, the notice of completion is filed, and all final verified reports and all testing and inspection documents, as required by this article or as required by the rules and regulations adopted pursuant to this article, are submitted to and on file with the Department of General Services, and all required fees paid by the school district, the department shall issue a certification that the school building complies with the requirements of this article. Nothing in this article shall prevent beneficial occupancy by a school district prior to the issuance of this certification.

(b) When a school building, constructed in accordance with approved plans and specifications, is completed but final verified reports, as are required under Section 39151, have not been submitted to the Department of General Services due to the incapacitating illness, death, or the default of any persons required to file such reports, the Department of General Services shall, upon written request of the school district, review all of the project records and make such examinations as it deems necessary to enable it to certify that the school building otherwise complies with the requirements of this article. The Department of General Services may request the school district to have made, reported, and verified any other tests and inspections which the department deems necessary to complete its examinations of the construction.

(c) The costs incurred by the Department of General Services in connection with this section shall be paid by the school district. The actual costs to perform the examinations, tests, and inspections shall be an appropriate cost of the project to be paid from the building funds of the district. Certification of the project by the Department of General Services shall be withheld until all the costs have been paid by the school district.

(d) This section shall not relieve any individual of his or her responsibility to file

1 notice of completion, all final verified reports and all testing and inspection documents
2 to the Department of General Services. When these requirements are received, the
3 Department shall issue a certification that the school building complies with the
4 requirements of the article. Subdivision (b) provides that, when a school building
5 constructed in accordance with approved plans and specifications is completed, but
6 final verified reports have not been submitted to the Department due to the
7 incapacitating illness, death, or the default of any persons required to file such reports,
8 the school district shall request the Department to review all of the project records and
9 make such examination as necessary to certify that the school building otherwise
10 complies with the requirements of the article. The Department of General Services may
11 request the school district to have made, reported, and verified any other tests and
12 inspections which the department deems necessary to complete its examination of the
13 construction. Subdivision (c) requires the school district to pay the costs incurred by the
14 Department. The actual costs to perform the examinations, tests, and inspections shall
15 be an appropriate cost of the project to be paid from the building funds of the district.
16 Certification of the project by the Department shall be withheld until all the costs have
17 been paid by the school district. Subdivision (d) provides that no individual is relieved
18 of his or her responsibility to file verified reports or any other documents required by the
19 rules and regulations adopted pursuant to this article.

verified reports, as required in Section 39151, or any other documents required by the
rules and regulations adopted pursuant to this article. This section shall not abrogate
the provisions of Section 39154."

1 Chapter 1602, Statutes of 1990, Section 1, added Education Code Section
2 39003⁴ which requires the governing board of a school district to ensure that all

⁴ Education Code Section 39003 as added by Chapter 1602, Statutes of 1990, Section 1:

"The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency preparing the environmental impact report or negative declaration has consulted with the city in which the proposed schoolsite is located, or the county in which the proposed schoolsite is located if the proposed site is in an unincorporated area, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions.

(c) The governing board of the school district makes either of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but the health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer,

1 schoolsite acquisitions are free from environmental defect. Subdivision (a)(1) requires
2 the site not to be a current or former hazardous waste disposal site or solid waste
3 disposal site unless the governing board of the school district concludes that the wastes
4 have been removed. Subdivision (a)(2) requires the site not be identified by the State
5 Department of Health Services as a hazardous substance release site in a current list
6 for removal or remedial action. Subdivision (a)(3) requires the site not to contain one or
7 more pipelines, situated underground or aboveground, which carries hazardous
8 substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a
9 natural gas line which is used only to supply natural gas to that school or neighborhood.
10 Subdivision (b) requires the lead agency preparing the environmental impact report or
11 negative declaration to consult with the city or county in which the proposed schoolsite
12 is located and with any air pollution control district or air quality management district
13 having jurisdiction in the area, to identify facilities within one-fourth of a mile of the
14 proposed schoolsite which might reasonably be anticipated to emit hazardous air
15 emissions. Subdivision (c) requires the governing board of the school district to make

hazardous air emissions may also mean emissions into the ambient air from any substance identified in Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" has the same meaning as defined in Section 25114 of the Health and Safety Code."

1 either of the following written findings: (1) consultation identified none of the facilities
2 specified in subdivision (b), or (2) the facilities specified in subdivision (b) exist, but the
3 health risks from the facilities do not and will not constitute an actual or potential
4 endangerment of public health to persons who would attend or be employed at the
5 school. Subdivision (d) provides relevant definitions.

6 Chapter 1183, Statutes of 1991, Section 1, amended Education Code Section
7 39003⁵. Subdivision (b) was amended to add hazardous or acutely hazardous material,

⁵ Education Code Section 39003 as amended by Chapter 1183, Statutes of 1991, Section 1:

“The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency, as defined in Section 21067 of the Public Resources Code, preparing the environmental impact report or negative declaration has consulted with the city administering agency in which the proposed schoolsite is located, or the county in which the proposed schoolsite is located if the proposed site is in an unincorporated area, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead

agency shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes ~~either~~ one of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located.

As determined by the air pollution control officer, hazardous air emissions ~~may also mean~~ means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" ~~has the same meaning as~~ means any substance defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" ~~has the same meaning as~~ means any material defined in pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" ~~has the same meaning as~~ means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" ~~has the same meaning as~~ means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code."

1 substances or waste to the conditions for which consultations are to be made.
2 Subparagraph (2)(B) was added to subdivision (c) to add the additional condition where
3 the governing board of the school district may additionally find that corrective measures
4 required under an existing order by another jurisdiction which has jurisdiction over the
5 facilities will, before the school is occupied, result in the mitigation of all chronic or
6 accidental hazardous air emissions to levels that do not constitute an actual or potential
7 endangerment of public health to persons who would attend or be employed at the
8 proposed school. If the governing board makes this finding, the governing board shall
9 also make a subsequent finding, prior to the occupancy of the school, that the
10 emissions have been mitigated to these levels.

11 Chapter 277, Statutes of 1996, Section 3 added Education Code Section 17251⁶.

⁶ Education Code Section 17251, as added by Chapter 277, Statutes of 1996, Section 3, operative Jan. 1, 1998:

“The State Department of Education shall:

(a) Upon the request of the governing board of any school district, advise the governing board on the acquisition of new schoolsites and, after a review of available plots, give the governing board in writing a list of the recommended locations in the order of their merit, considering especially the matters of educational merit, safety, reduction of traffic hazards, and conformity to the land use element in the general plan of the city, county, or city and county having jurisdiction. The governing board may purchase a site deemed unsuitable for school purposes by the State Department of Education only after reviewing the department's report on proposed sites at a public hearing. The department shall charge the school district a reasonable fee for each schoolsite reviewed not to exceed the actual administrative costs incurred for that purpose.

(b) Develop standards for use by a school district in the selection of schoolsites, in accordance with the objectives set forth in subdivision (a). The department shall

1 Subdivision (a) requires the governing board of any school district to request advice
2 from the State Department of Education on the acquisition of new schoolsites. The
3 governing board may purchase a site deemed unsuitable for school purposes by the
4 State Department of Education only after reviewing the department's report on
5 proposed sites at a public hearing. The school district is required to pay a reasonable
6 fee for each schoolsite reviewed to the department. Subdivision (b) requires the State
7 Department of Education to develop standards for use by a school district in the
8 selection of schoolsites. The department shall investigate complaints of noncompliance
9 with site selection standards and shall notify the governing board of the results of the
10 investigation. If that notification is received prior to the acquisition of the site, the

investigate complaints of noncompliance with site selection standards and shall notify the governing board of the results of the investigation. If that notification is received prior to the acquisition of the site, the governing board shall discuss the findings of the investigation in a public hearing.

(c) Establish standards for use by school districts to ensure that the design and construction of school facilities are educationally appropriate and promote school safety.

(d) Upon the request of the governing board of any school district, review plans and specifications for school buildings in the district.

The department shall charge governing boards of school districts, for the review of plans and specifications, a reasonable fee not to exceed the actual administrative costs incurred for that purpose.

(e) Upon the request of the governing board of any school district, make a survey of the building needs of the district, advise the governing board concerning the building needs, suggest plans for financing a building program to meet the needs. The department shall charge the district, for the cost of the survey, a reasonable fee not to exceed the actual administrative costs incurred for that purpose.

(f) Provide information relating to the impact or potential impact upon any schoolsite of hazardous substances, solid waste, safety, hazardous air emissions, and other information as the department may deem appropriate. "

1 governing board shall discuss the findings of the investigation in a public hearing.

2 Subdivision (c) requires the State Department of Education to establish standards for
3 use by school districts to ensure that the design and construction of school facilities are
4 educationally appropriate and promote school safety. Subdivision (d) requires the
5 governing board of any school district to request the State Department of Education to
6 review plans and specifications for school buildings in the district. The school district is
7 required to pay a reasonable fee for the review of plans and specifications to the
8 department. Subdivision (e) requires the governing board of any school district to
9 request the State Department of Education to make a survey of the building needs of
10 the district, advise the governing board concerning the building needs, and suggest
11 plans for financing a building program to meet the needs. The school district is required
12 to pay a reasonable fee for the cost of the survey to the department. Subdivision (f)
13 requires the State Department of Education to provide information relating to the impact
14 or potential impact upon any schoolsite of hazardous substances, solid waste, safety,
15 hazardous air emissions, and other information as the department may deem
16 appropriate.

17 Chapter 277, Statutes of 1996, Section 6, repealed Education Code Section
18 39001 and Section 3 renumbered and amended it as Section 17211. As amended,
19 Section 17211⁷ requires the governing board of a school district to evaluate real

⁷ Education Code Section 17211, formerly 39001, as added by Chapter 277, Statutes of 1996, Section 3, operative Jan. 1, 1998:

1 property for a new schoolsite, or direct the district's advisory committee to do so on its
2 behalf, using the site selection standards established by the State Department of
3 Education pursuant to Education Code Section 17251. Findings shall be reported to
4 the governing board at a public hearing.

5 Chapter 277, Statutes of 1996, Section 6, repealed Education Code Section
6 39002 and Section 3 renumbered and amended it as Section 17212. As amended,
7 Section 17212⁸ provides that, if the prospective schoolsite is located within the

"Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of any a school district may, and when so directed by a vote of the voters within the district shall, purchase or improve school lands." shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the property pursuant to those site selection standards and to report its findings to the governing board at the public hearing."

⁸ Education Code Section 17212, formerly 39002, as added by Chapter 277, Statutes of 1996, Section 3, operative Jan. 1, 1998:

"The governing board of a school district; prior to acquiring any site on which it proposes to construct any school building as defined in Section ~~15452~~ 17283 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective schoolsite is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include ~~such any~~ geological and soil engineering studies by competent personnel ~~as are~~ needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature that as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the site school

1 boundaries of any special studies zone or within an area designated as geologically
2 hazardous in the safety element of the local general plan as provided in subdivision (g)
3 of Section 65302 of the Government Code, the investigation shall include any
4 geological and soil engineering studies needed to provide an assessment of the nature
5 of the site and potential for earthquake or other geological hazard damage. The last
6 three paragraphs were deleted and a new paragraph was added to define "special
7 studies zone."

8 Chapter 277, Statutes of 1996, Section 6, repealed Education Code Section

building safe for occupancy is economically unfeasible. No studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation also shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

~~No school building shall be constructed or situated on the trace of an active geological fault. For purposes of this section, an active geological fault is defined as one along which surface rupture can reasonably be expected to occur within the life of the building.~~

~~Similar geological and soil engineering investigations shall be made as deemed necessary by the Department of General Services for the construction of any school building as defined in Section 15452 or, if the estimated cost exceeds ten thousand dollars (\$10,000), the reconstruction or alteration of or addition to any such school building for work which alters structural elements. No such study be made if the site or sites under consideration have been the subject of adequate prior study.~~

~~A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services and to the Department of Education pursuant to Article 4 (commencing with Section 15451) of Chapter 2 of this division. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure."~~

For the article, a special studies zone is an area which is identified as a special studies zone on any map, or maps, compiled by the State Geologist pursuant to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code."

1 39002.5 and Section 3 renumbered and amended it as Section 17212.5. As amended,
2 Section 17212.5 provided updated code section references.

3 Chapter 277, Statutes of 1996, Section 6, repealed Education Code Section
4 39003 and Section 3 renumbered it as Section 17213, without change.

5 Chapter 277, Statutes of 1996, Section 6, repealed Education Code Section
6 39157 and Section 3 renumbered and amended it as Section 17315. As amended,
7 Section 17315 provided updated code section references.

8 Chapter 1002, Statutes of 1999, Section 1, added Education Code Section
9 17210⁹, which provides relevant definitions for the article.

⁹ Education Code Section 17210, as added by Chapter 1002, Statutes of 1999,
Section 1:

"As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, a contractor who conducts Phase I environmental assessments shall have a least two years experience in the preparation of those assessments and a contractor who conducts a preliminary endangerment assessment shall have at least three years experience in conducting those assessments.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

schoolsites at concentrations that could pose a significant risk to children or adults, and the school district owns the proposed schoolsite, the school district shall enter into an agreement with the Department of Toxic Substances Control to oversee response action at the site and shall take response action pursuant to the requirements of the state act as may be required by the Department of Toxic Substances Control.

(b) Notwithstanding subdivision (a), a school district need not take action in response to a release of hazardous material to groundwater underlying the schoolsite if the release occurred at a site other than the schoolsite and if the following conditions apply:

(1) The school district did not cause or contribute to the release of a hazardous material to the groundwater.

(2) Upon the request of the Department of Toxic Substances Control or its authorized representative the school district provides the Department of Toxic Substances Control or its authorized representative with access to the schoolsite.

(3) The school district does not interfere with the response action activities.

(c) If at anytime during the response action the school district determines that there has been a significant increase in the estimated cost of the response action, the school district shall notify the State Department of Education.

(d) A school district that is required by the Department of Toxic Substances Control to take response action at a proposed schoolsite is subject to both of the following prohibitions:

(1) The school district may not begin construction of a school building until the Department of Toxic Substances Control determines all of the following:

(A) That the construction will not interfere with the response action.

(B) That site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the school building.

(C) That the nature and extent of any release or threatened release of hazardous materials or the presence of any naturally occurring hazardous materials have been fully characterized.

(2) The school district may not occupy a school building following construction until it obtains from the Department of Toxic Substances Control a certification that all response actions, except for operation and maintenance activities, necessary to ensure that hazardous materials at the schoolsite no longer pose a significant risk to children and adults at the schoolsite have been completed and that the response action standards and objectives established in the final removal action work plan or remedial action plan have been met and are being maintained. After a school building is constructed and occupied, a school district may continue with ongoing operation and maintenance activities if the Department of Toxic Substances Control certifies before occupancy that neither site conditions nor the ongoing operation and

1 through the Leroy F. Greene School Facilities Act of 1998, to act with a focus on the
2 risks to children's health posed by hazardous materials on the schoolsite. Subdivision
3 (b) requires school districts to provide notice to local residents prior to the
4 commencement of a preliminary endangerment assessment utilizing a format
5 developed by the Department of Toxic Substances Control. Subdivision (c) provides
6 that nothing in the section limits the authority of Department of Toxic Substances
7 Control or the State Department of Education to take action. Subdivision (d) requires
8 the Department of Toxic Substances Control to recover costs incurred from the parties
9 responsible for the required cleanup. Subdivision (e) eliminates the need for the usual
10 documentation required by the Health and Safety Code if all of the necessary response
11 actions have been completed.

12 Chapter 992, Statutes of 1999, Section 3, added Education Code Section
13 17213.2¹¹ which provides conditions for the receipt of state funds. Subdivision (a)

(d) The Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed."

¹¹ Education Code Section 17213.2, as added by Chapter 992, Statutes of 1999, Section 3:

"As a condition of receiving state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all of the following apply:

(a) If a preliminary endangerment assessment prepared pursuant to Section 17213.1 discloses the presence of a hazardous materials release, or threatened release, or the presence of naturally occurring hazardous materials, at a proposed

1 Chapter 1002, Statutes of 1999, Section 2, added Education Code Section
2 17210.1¹⁰. Subdivision (a) requires that school districts that elect to receive state funds

Section 25532 of the Health and Safety Code.

(k) "Release" has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(l) "Remedial action plan" means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) "State act" means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code)."

¹⁰ Education Code Section 17210.1, as added by Chapter 1002, Statutes of 1999, Section 2:

"(a) Notwithstanding any other provision of law:

(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), the state act applies to schoolsites where naturally occurring hazardous materials are present, regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) at sites addressed by this article shall include a focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, the Department of Toxic Substances Control shall comply with Sections 25358.7 and 25358.7.1 of the Health and Safety Code.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action" and "site" have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A Phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the Phase I environmental assessment.

(h) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site, may pose to children's health, public health, or the environment, and shall be conducted in a manner that complies with the guidelines published by the Department of Toxic Substances Control entitled "Preliminary Endangerment Assessment: Guidance Manual," including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) "Proposed schoolsite" means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) "Regulated substance" means any material defined in subdivision (g) of

1 requires, in the event that the preliminary endangerment assessment discloses the
2 presence of hazardous materials that could pose a significant health risk, and the

maintenance activities pose a significant risk to children or adults at the schoolsite.

(e) If, at any time during construction at a schoolsite, a previously unidentified release or threatened release of a hazardous material or the presence of a naturally occurring hazardous material is discovered, the school district shall cease all construction activities at the sites notify the Department of Toxic Substances Control, and take actions required by subdivision (a) that are necessary to address the release or threatened release or the presence of any naturally occurring hazardous materials. Construction may be resumed if the Department of Toxic Substances Control determines that the construction will not interfere with any response action necessary to address the hazardous material release or threatened release or the presence of a naturally occurring hazardous material, determines that the site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the schoolsite, and certifies that the nature and extent of the release, threatened release, or presence of a naturally occurring hazardous material have been fully characterized.

(f) Construction may proceed at any portions of the site that the Department of Toxic Substances Control determines are not affected by the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials, provided that all of the following apply:

(1) Those portions of the site have been fully characterized.

(2) The Department of Toxic Substances Control determines that the construction will not interfere with any response action necessary to address the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials.

(3) The site conditions will not pose a significant threat to the health and safety of workers involved with construction.

(g) The Department of Toxic Substances Control shall notify the State Department of Education, the Division of the State Architect, and the Office of Public School Construction when the Department of Toxic Substances Control certifies that all necessary response actions have been completed at a schoolsite.

(h) The school district shall reimburse the Department of Toxic Substances Control for all response costs incurred by the department.

(i) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13."

1 district already owns the schoolsite, the school district shall enter into an agreement
2 with the Department of Toxic Substances Control to oversee response action at the site
3 and shall take response actions as may be required by the Department of Toxic
4 Substances Control. Subdivision (b) releases the district from required action when a
5 release of hazardous material to groundwater underlying the schoolsite occurred at a
6 site other than the schoolsite and the school district did not cause or contribute to the
7 release. The school district will provide access to the schoolsite to an authorized
8 representative of the Department of Toxic Substances Control and will not interfere with
9 the response action activities. Subdivision (c) requires the school district to notify the
10 State Department of Education if there has been a significant increase in the estimated
11 cost of the response action. Subdivision (d) prohibits construction until the Department
12 of Toxic Substances Control determines that the construction will not interfere with the
13 response action, the site conditions will not pose a significant threat to the health and
14 safety of the construction workers, and the nature and extent of the hazardous
15 materials has been fully characterized. Further, the school district may not occupy a
16 school building following construction until it obtains from the Department of Toxic
17 Substances Control a certification that all response actions necessary to ensure that
18 hazardous materials at the schoolsite no longer pose a significant risk to children and
19 adults have been completed. Subdivision (e) requires a school district to cease all
20 construction activities at the site and notify the Department of Toxic Substances Control
21 if, during construction, a previously unidentified hazardous material is discovered.

1 Subdivision (f) provides that construction may proceed in any area of the site
2 unaffected by hazardous materials when those portions are fully characterized, it will
3 not interfere with the response action, and site conditions are not a health risk.
4 Subdivision (g) requires the Department of Toxic Substances Control to notify the State
5 Department of Education, the Division of the State Architect, and the Office of Public
6 School Construction when all response actions have been completed at a schoolsite.
7 Subdivision (h) requires the school district to reimburse the Department of Toxic
8 Substances Control for all response costs incurred. Subdivision (i) provides that the
9 costs incurred by a school district are allowable costs and may be reimbursed under the
10 Leroy F. Greene School Facilities Act of 1998.

11 Chapter 1002, Statutes of 1999, Section 3, added Education Code Section
12 17213.1¹². Subdivision (a) requires school districts, as a condition of receiving state

¹² Education Code Section 17213.1, as added by Chapter 1002, Statutes of 1999, Section 3:

“As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10) the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite the governing board shall contract with an environmental assessor to conduct a Phase I environmental assessment of the proposed schoolsite.

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so,

the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment together with all documentation related to the proposed acquisition or use of the proposed schoolsite shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days of receipt of the Phase I environmental assessment, the State Department of Education shall transmit the Phase I environmental assessment to the Department of Toxic Substances Control for its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of the assessment. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify the State Department of Education and the governing board of the school district of the approval.

(3) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to prepare a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The preliminary endangerment assessment shall contain one of the following conclusions:

(A) A further investigation of the site is not required.

(B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(4) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval. The school district shall also make the preliminary endangerment assessment available to the public for review for not less than 30 calendar days.

(5) The Department of Toxic Substances Control shall complete its review within 60 calendar days of receipt of the preliminary endangerment assessment

and shall either approve or disapprove the preliminary endangerment assessment.

(6) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the preliminary endangerment assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(7) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(8) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(9) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with

1 funding, prior to acquiring a schoolsite, to contract with an environmental assessor to
2 conduct a Phase I environmental assessment of the proposed schoolsite. The Phase I
3 environmental assessment will recommend that either no further investigation is
4 required or a preliminary endangerment assessment is needed. Pursuant to subdivision
5 (a)(2), if the Phase I environmental assessment concludes that further investigation of
6 the site is not required, the fee, assessment results and all documentation related to the
7 proposed acquisition shall be submitted to the State Department of Education. The
8 State Department of Education will forward the fee and information to the Department
9 of Toxic Substances Control for its review. The Department of Toxic Substances
10 Control may concur that no further investigation is needed and inform the school district
11 of its approval. Alternatively, it may find the assessment incomplete or disapprove it
12 entirely. The school district must then take actions necessary to secure the approval of
13 the Phase I environmental assessment, elect to conduct a preliminary endangerment
14 assessment, or elect not to pursue the acquisition or the construction project. Pursuant
15 to subdivision (a)(3), if a preliminary endangerment assessment is to be performed, the
16 school district shall contract with an environmental assessor to supervise the

Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a preliminary endangerment assessment, or information concerning a preliminary endangerment assessment, required by this section, may not be held liable in any action filed against the school district for making the preliminary endangerment assessment available for public review.”

1 preparation of and sign a preliminary endangerment assessment of the proposed
2 schoolsite and enter into an agreement with the Department of Toxic Substances
3 Control to oversee the preparation of the preliminary endangerment assessment,
4 entitled an "Environmental Oversight Agreement". A school district may, with the
5 concurrence of the Department of Toxic Substances Control, enter into an agreement
6 with the Department of Toxic Substances Control to oversee the preparation of a
7 preliminary endangerment assessment without first having prepared a Phase I
8 environmental assessment. Upon request from the school district, the Director of the
9 Department of Toxic Substances Control shall exercise its authority to designate a
10 person to enter the site and inspect and obtain samples if that will assist in
11 expeditiously completing the preliminary endangerment assessment. The preliminary
12 endangerment assessment will conclude either that a further investigation of the site is
13 not required or that hazardous materials are or may be present. Pursuant to
14 subdivision (a)(4), the school district shall submit a preliminary draft of the preliminary
15 endangerment assessment to the Department of Toxic Substances Control for its
16 review and approval and a copy to the State Department of Education for its files. At
17 the same time, a school district shall publish a notice in a local newspaper and post the
18 notice at the proposed schoolsite announcing that the assessment has been submitted
19 and is available for public review and comment. The school district may choose to
20 make the assessment available while the Department of Toxic Substances Control is
21 conducting its review and the district can choose to receive written comments from the
22 public for at least 30 calendar days before a public hearing. The school district will

1 make any correspondence and interim documentation of changes available upon
2 request. Copies of public comments will be sent to the Department of Toxic
3 Substances Control. The school district can also choose to wait until the Department of
4 Toxic Substances Control completes its review before releasing the assessment to the
5 public. If the final draft preliminary endangerment assessment is approved and the
6 school district chooses to proceed with site acquisition, the school district shall make
7 the final draft preliminary endangerment assessment available to the public on the
8 same basis and at the same time it makes available the draft environmental impact
9 report or negative declaration pursuant to the California Environmental Quality Act
10 (Section 21000 of the Public Resources Code). The school district shall hold a public
11 hearing on the final draft preliminary endangerment assessment and the draft
12 environmental impact report or negative declaration at the same time and all public
13 comments will be forwarded to the Department of Toxic Substances Control. Pursuant
14 to subdivision (a)(6), if the Department of Toxic Substances Control disapproves the
15 preliminary endangerment assessment, it shall inform the district of the basis of its
16 decision and actions necessary to secure approval. If the Department of Toxic
17 Substances Control approves the assessment but concludes that hazardous materials
18 are or may be present, the school district should prepare a financial analysis of the cost
19 of response action, assess the benefits and suitability of the proposed schoolsite
20 compared to any alternative school sites, and obtain approval from the State
21 Department of Education. The school district shall reimburse the Department of Toxic
22 Substances Control for all of the department's response costs. Subdivision (b)

1 provides that the costs incurred by the school districts may be reimbursed in
2 accordance with Education Code Section 17072.13¹³.

¹³ Education Code Section 17072.13, as amended by Chapter 935, Statutes of 2002, Section 4:

“In addition to the amounts provided pursuant to Sections 17072.10 and 17072.12, the board may provide funding as follows:

(a) For 50 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and for 50 percent of the other response costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other remedial action in connection with hazardous substances at that site. Except as provided in subdivision (b), the funding provided pursuant to this section may not exceed 50 percent of a number calculated by subtracting the school district's cost of the site from what the appraised value of the site would be after the response action is completed.

(b) The board may provide funding for up to 100 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district eligible for financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10) and for up to 100 percent of the other response costs for the site. The funding provided pursuant to this subdivision may not exceed 100 percent of a number calculated by subtracting the school district's cost of the site from what the appraised value of the site would be after the response action is completed.

(c) A school district with a site that meets the environmental hardship criteria set forth in paragraph (1) may apply to the board for site acquisition funding for that site prior to having construction plans for that site approved by the Division of the State Architect and State Department of Education. The site acquisition funding is subject to the funding limits provided in subdivisions (a) or (b) and may not result in an increase in the funding limits available to a school district under this section.

(1) A project is eligible for environmental hardship site acquisition funding if both of the following apply:

(A) The remedial action plan for the site approved by the Department of Toxic Substances Control, pursuant to Section 17213, is estimated by the Department of Toxic Substances Control to take six months or more to complete.

(B) The State Department of Education determines that the site is the best available alternative site.

(2) The initial site-specific reservation pursuant to this subdivision shall be for a period of one year. Extension may be approved in one-year intervals upon demonstration to the State Allocation Board of progress toward acquisition. In the event there is not demonstrable progress, the State Allocation Board shall

1 Chapter 443, Statutes of 2000, Section 2, amended Education Code Section
2 17210¹⁴ to expand the definition of "Phase I environmental assessment" to allow a

have the option of rescinding the reservation.

(3) Environmental hardship site acquisition funds approved by the State Allocation Board can be used only for the site identified in the remedial action plan approved by the Department of Toxic Substances Control.

(4) The date that the State Allocation Board approves the environmental hardship site acquisition funding will become the State Allocation Board approval date for the project's construction funding for that site.

(5) A school district may apply to the State Allocation Board for construction funding for the environmental hardship site when the project has received final Division of the State Architect plan approval and final State Department of Education site and plan approval.

(d) The cost incurred by the school districts when complying with any requirement identified in this section are allowable costs for purposes of an applicant under this chapter and may be reimbursed in accordance with Section 17072.12. The site acquisition funding is subject to the funding limits provided in subdivision (a) or (b) and may not result in an increase in the funding limits available to a school district under this section.

(e) The State Allocation Board shall develop regulations that allow school districts with financial hardship site acquisition funding prior to ownership of the site or evidence that the site is in escrow."

¹⁴ Education Code Section 17210, as amended by Chapter 443, Statutes of 2000, Section 2, effective Sept. 14, 2000:

"As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code, a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, a

~~contractor~~ any person who conducts Phase I environmental assessments shall have a least two years experience in the preparation of those assessments and ~~a contractor~~ any person who conducts a preliminary endangerment assessment shall have at least three years experience in conducting those assessments.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action" and "site" have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. -A Phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the Phase I environmental assessment. A Phase I environmental assessment conducted pursuant to the requirements adopted by the American Society for Testing and Materials for due diligence for commercial real estate transactions and that includes a review of all reasonably available records and data bases regarding current and prior gas or oil wells and naturally occurring hazardous materials located on the site or located where they could potentially effect the site, satisfies the requirements of this article for conducting a Phase I environmental assessment unless and until the Department of Toxic Substances Control adopts final regulations that establish guidelines for a Phase I environmental assessment for purposes of schoolsites that impose different requirements from those imposed by the American Society for Testing and Materials.

(h) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of

1 review of all reasonably available records and data bases regarding current and prior
2 gas or oil wells and naturally occurring hazardous materials located on the site or
3 located where they could potentially effect the site to satisfy the requirements of this
4 article for conducting a Phase I environmental assessment unless and until the
5 Department of Toxic Substances Control adopts final regulations that establish
6 guidelines for a Phase I environmental assessment for purposes of schoolsites that
7 impose different requirements from those imposed by the American Society for Testing
8 and Materials. The amendment also made technical changes.

9 Chapter 443, Statutes of 2000, Section 3, amended Education Code Section

hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site may pose to children's health, public health, or the environment, and shall be conducted in a manner that complies with the guidelines published by the Department of Toxic Substances Control entitled "Preliminary Endangerment Assessment: Guidance Manual," including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) "Proposed schoolsite" means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) "Regulated substance" means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) "Release" has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(l) "Remedial action plan" means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) "State act" means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code)."

17210.1¹⁵, to require a school district to provide a notice to residents in the immediate
area, approved in form by the Department of Toxic Substances Control, prior to the
commencement of work on a preliminary endangerment assessment.

¹⁵ Education Code Section 17210.1, as amended by Chapter 443, Statutes of 2000, Section 3, effective Sept. 14, 2000:

"(a) Notwithstanding any other provision of law:

(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), the state act applies to schoolsites where naturally occurring hazardous materials are present, regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) at sites addressed by this article shall include a focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, a school district shall provide a notice to residents in the immediate area, approved in form by the Department of Toxic Substances Control, prior to the commencement of work on a preliminary endangerment assessment.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) Unless the Legislature otherwise funds its costs for overseeing actions taken pursuant to this article, the Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed."

1 Chapter 443, Statutes of 2000, Section 4, amended Education Code Section
2 17213.1¹⁶ . As amended, subdivision (a) requires the environmental assessor to

¹⁶ Education Code Section 17213.1, as amended by Chapter 443, Statutes of 2000, Section 4, effective Sept. 14, 2000:

"As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10) the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite the governing board shall contract with an environmental assessor to conduct supervise the preparation of and sign a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment together with all documentation related to the proposed acquisition or use of the proposed schoolsite shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days of receipt of the Phase I environmental assessment and of the fee to be forwarded to the Department of Toxic Substances Control for its review, the State Department of Education shall transmit the Phase I environmental assessment to the Department of Toxic Substances Control for its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of the assessment and of sufficient information to allow the Department of Toxic Substances Control to confirm that the environmental assessor signing the assessment meets the qualifications set forth in subdivision (b) of Section 17210. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I

environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to prepare supervise the preparation of and sign a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(A) A further investigation of the site is not required.

(B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(45) The school district shall submit a preliminary draft of the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district shall also make ~~may~~ entitle a document that is meant to fulfill the requirements of a "preliminary endangerment assessment" available to the public for review for not less than 30 calendar days. ~~(and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.~~

(6) The Department of Toxic Substances Control shall complete its review within 60 calendar days of receipt of the preliminary endangerment assessment and shall either ~~approve or disapprove~~ return the preliminary draft to the school district with comments and requested modifications or requested further assessment or approve the preliminary endangerment assessment ~~(6 as a final draft preliminary endangerment assessment.~~ If the final draft preliminary endangerment assessment is approved and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the final draft preliminary endangerment assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the final draft preliminary endangerment assessment is approved, in which case the school district shall, within 60 days of the approval of the final draft of the preliminary endangerment assessment, separately publish a notice of the availability of the final draft for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the final draft preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All comments pertaining to the final draft preliminary endangerment assessment and the draft environmental impact report or negative declaration shall be forwarded to the Department of Toxic Substances Control immediately. If the district has complied with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public

Resources Code) prior to initiating the preliminary endangerment assessment, the district shall reconsider the adequacy of its approved environmental impact report or negative declaration in light of the approved final draft of the preliminary endangerment assessment and determine whether a further environmental document is necessary. The district shall hold a public hearing on the final draft preliminary endangerment assessment and its determination on the adequacy of the existing environmental documents at the same time and in the same manner as it would for a draft environmental impact report or draft negative declaration as previously set forth in this section. The Department of Toxic Substances Control shall approve or disapprove the final preliminary endangerment assessment within 30 days of the district's approval action on the environmental document prepared under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall issue notice of its determination accompanied by a statement of the basis of the determination. The school district shall consider whether any changes between the final draft and final preliminary endangerment assessment require any change in its determination pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). The school district shall not file its notice of determination under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) until after the Department of Toxic Substances Control has approved the final preliminary endangerment assessment. The public participation process set forth in this section shall be used by the school district and the Department of Toxic Substances Control instead of procedures set forth in Sections 25358.7 and 25358.7.1 of the Health and Safety Code with respect to preliminary endangerment assessments. If further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project, the district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions.

(7) If the Department of Toxic Substances Control disapproves the final draft preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the preliminary endangerment assessment. -The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(78) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic

1 supervise the preparation of and sign the Phase I environmental assessment rather
2 than conduct it. The governing board may choose to eliminate this step and proceed
3 directly to a preliminary endangerment assessment. As amended, subdivision (a)(2)

Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(89) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. -If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(910) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning a preliminary endangerment assessment either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making the preliminary endangerment assessment either of these assessments available for public review."

1 requires the governing board pay a fee to the Department of Toxic Substances Control
2 at the same time the Phase I environmental assessment is submitted. Subdivision
3 (a)(2) further allows the Department of Toxic Substances Control to request additional
4 information and extend their deadline for review and approval to 30 days after the
5 receipt of that information. As added, subdivision (a)(3) requires the school district to
6 take actions necessary to secure the approval of the Phase I environmental
7 assessment, elect to conduct a preliminary endangerment assessment, or elect not to
8 pursue the acquisition or the construction project if the Department of Toxic Substances
9 Control determines that the Phase I environmental assessment is not complete or
10 disapproves the Phase I environmental assessment. As amended, subdivision (a)(4)
11 allows the school district, with the concurrence of the Department of Toxic Substances
12 Control, to enter into an agreement with the Department to oversee the preparation of a
13 preliminary endangerment assessment without first having prepared a Phase I
14 environmental assessment. As amended, subdivision (a)(5) allows the school district
15 to submit a preliminary draft of the preliminary endangerment assessment to the
16 Department of Toxic Substances Control and to the State Department of Education.
17 As amended, subdivision (a)(6) requires the school district to make the approved final
18 draft preliminary endangerment assessment available to the public on the same basis
19 and at the same time or separately. If the document developed pursuant to the
20 California Environmental Quality Act is delayed, publish a notice of the availability of the
21 final draft for public review in a local newspaper of general circulation. The school
22 district shall hold a public hearing on the final draft preliminary endangerment

1 assessment and the draft environmental impact report or negative declaration at the
2 same time. All comments pertaining to the final draft preliminary endangerment
3 assessment and the draft environmental impact report or negative declaration shall be
4 forwarded to the Department of Toxic Substances Control immediately. If the district
5 has complied with the California Environmental Quality Act prior to initiating the
6 preliminary endangerment assessment, the district shall reconsider the adequacy of its
7 approved environmental impact report or negative declaration in light of the approved
8 final draft of the preliminary endangerment assessment and determine whether a
9 further environmental document is necessary. The district shall hold a public hearing on
10 the final draft preliminary endangerment assessment and its determination on the
11 adequacy of the existing environmental documents at the same time and in the same
12 manner as it would for a draft environmental impact report or draft negative declaration
13 as previously set forth in this section. The Department of Toxic Substances Control
14 shall approve or disapprove the final preliminary endangerment assessment within 30
15 days of the district's approval action on the environmental document prepared under
16 the California Environmental Quality Act and shall issue notice of its determination
17 accompanied by a statement of the basis of the determination. The school district shall
18 consider whether any changes between the final draft and final preliminary
19 endangerment assessment require any change in its determination pursuant to the
20 California Environmental Quality Act. The school district shall not file its notice of
21 determination under the California Environmental Quality Act until after the Department
22 of Toxic Substances Control has approved the final preliminary endangerment

1 assessment. If further response actions beyond a preliminary endangerment
2 assessment are required and the district determines that it will proceed with the
3 acquisition or construction project, the district shall comply with the public participation
4 requirements of Sections 25358.7¹⁷ and

¹⁷ Health and Safety Code Section 25358.7:

“(a) The department or the regional board, as appropriate, shall take the actions specified in this section to provide an opportunity for meaningful public participation in response actions undertaken for sites listed pursuant to Section 25356.

(b) The department, or the regional board, as appropriate, shall inform the public, and in particular, persons living in close proximity to a hazardous substance release site listed pursuant to Section 25356, of the existence of the site and the department's or regional board's intention to conduct a response action at the site, and shall conduct a baseline community survey to determine the level of public interest and desire for involvement in the department's or regional board's activities, and to solicit concerns and information regarding the site from the affected community. Based on the results of the baseline survey, the department or regional board shall develop a public participation plan that shall establish appropriate communication and outreach measures commensurate with the level of interest expressed by survey respondents. The public participation plan shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

(c) The department or regional board shall provide any person affected by a response action undertaken for sites listed pursuant to Section 25356 with the opportunity to participate in the department's or regional board's decisionmaking process regarding that action by taking all of the following actions:

(1) Provide access to information which the department or regional board is required to release pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), relating to the action, except for the following:

(A) Trade secrets, as defined in subdivision (a) of Section 25358.2.

(B) Business financial data and information, as specified in subdivision (c) of Section 25358.6.

(C) Information which the department or regional board is prohibited from releasing pursuant to any state or federal law.

(2) Provide factsheets, based on the expressed level of public interest, regarding plans to conduct the major elements of the site investigation and response actions. The factsheets shall present the relevant information in

1 25358.7.1¹⁸ of the Health and Safety Code and other applicable provisions of the state

nontechnical language and shall be detailed enough to provide interested persons with a good understanding of the planned activities. The factsheets shall be made available in languages other than English if appropriate.

(3) Provide notification, upon request, of any public meetings held by the department or regional board concerning the action.

(4) Provide the opportunity to attend and to participate at those public meetings.

(5) Based on the results of the baseline community survey, provide opportunities for public involvement at key stages of the response action process, including the health risk assessment, the preliminary assessment, the site inspection, the remedial investigation, and the feasibility study stages of the process. If the department or regional board determines that public meetings or other opportunities for public comment are not appropriate at any of the stages listed in this section, the department or regional board shall provide notice of that decision to the affected community.

(d) The department or regional board shall develop and make available to the public a schedule of activities for each site for which remedial action is expected to be taken by the department or regional board pursuant to this chapter and shall make available to the public any plan provided to the department or regional board by any responsible party, unless the department is prohibited from releasing the information pursuant to any state or federal law.

(e) In making decisions regarding the methods to be used for removal or remedial actions taken pursuant to this chapter, the department or regional board shall incorporate or respond in writing to the advice of persons affected by the actions.

(f) This section does not apply to emergency actions taken pursuant to Section 25354.”

¹⁸ Health and Safety Code Section 25358.7.1:

“(a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory committee. The department or regional board shall also advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment. If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site or a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the petitioners or the legislative

1 act with respect to those response actions. As amended, subdivision (c) requires the
2 school district to make the Phase I environmental assessment or preliminary
3 endangerment assessment available for public review.

4 Chapter 443, Statutes of 2000, Section 5, amended Education Code Section
5 17213.2¹⁹. Subdivision (g), was amended to require the Department of Toxic

body to establish a community advisory group to review the response action at the site.

(b) To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(1) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(2) Individuals from the local business community.

(3) Local political or government agency representatives.

(4) Local citizen, civic, environmental, or public interest group members residing in the community.

(c) The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

(1) The department or regional boards.

(2) Representatives of local environmental regulatory agencies.

(3) The potentially responsible parties or other persons who are conducting the response action.

(d) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 25358.7. Nothing in this section shall affect the status of any citizen advisory group formed before the enactment of this section, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board."

¹⁹Education Code Section 17213.2, as amended by Chapter 443, Statutes of 2000, Section 5, effective Sept. 14, 2000:

"(g) The Department of Toxic Substances Control shall notify the State Department of Education, the Division of the State Architect, and the Office of Public School Construction when the Department of Toxic Substances Control certifies that all necessary response actions have been completed at a schoolsite. The Department of

1 Substances Control to notify the Division of the State Architect whenever a response
2 action has an impact on the design of a school facility and shall specify the conditions
3 that must be met in the design of the school facility in order to protect the integrity of the
4 response action.

5 Chapter 159, Statutes of 2001, Section 56, amended Education Code Section
6 17210 to make technical changes.

7 Chapter 422, Statutes of 2001, Section 1, amended Education Code Section
8 17212.5 to increase the reconstruction estimated cost threshold from \$20,000 to
9 \$25,000 before geological and soil engineering studies are required by the Department
10 of General Services.

11 Chapter 865, Statutes of 2001, Section 1, effective Oct. 14, 2001, amended
12 Education Code Section 17210.1 to make technical changes.

13 Chapter 865, Statutes of 2001, Section 2, effective Oct. 14, 2001, amended
14 Education Code Section 17213.1²⁰. As amended, subdivision (a)(2) requires the

Toxic Substances Control shall also notify the Division of the State Architect whenever a response action has an impact on the design of a school facility and shall specify the conditions that must be met in the design of the school facility in order to protect the integrity of the response action.

²⁰ Education Code Section 17213.1, as amended by Chapter 865, Statutes of 2001, Section 2, effective Oct. 14, 2001:

“As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10), the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite, the governing board shall contract with an environmental assessor to supervise the preparation of, and sign, a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment, together with all documentation related to the proposed acquisition or use of the proposed schoolsite, shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education and proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210 prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days after the State Department of receipt of Education receives the Phase I environmental assessment, the proof of the environmental assessor's qualifications, and of the fee to be forwarded to the Department of Toxic Substances Control for its review of the Phase I environmental assessment, the State Department of Education shall transmit the Phase I that assessment and that proof of the environmental assessment assessor's qualifications to the Department of Toxic Substances Control for its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of the that assessment and of sufficient information to allow the Department of Toxic Substances Control to confirm that the environmental assessor signing the assessment meets the qualifications set forth in subdivision (b) of Section 17210 that proof of qualifications. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic

Substances Control shall approve the Phase I environmental assessment and shall notify the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of, and sign, a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(A) A further investigation of the site is not required.

(B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit a preliminary draft of the preliminary

endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a "preliminary environmental assessment" and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

~~(6) The~~At the same time a school district submits a preliminary endangerment assessment to the Department of Toxic Substances Control shall complete its review within 60 calendar days of receipt of the preliminary endangerment assessment and shall either return the preliminary draft to the school district with comments and requested modifications or requested further assessment or approve the preliminary endangerment assessment as a final draft preliminary endangerment assessment. If the final draft preliminary endangerment assessment is approved and the school district proposes to proceed with site acquisition or a construction project pursuant to paragraph (5), the school district shall publish a notice that the assessment has been submitted to the department in a local newspaper of general circulation, and shall post the notice in a prominent manner at the proposed school site that is the subject of that notice. The notice shall state the school district's determination to make the final draft preliminary endangerment assessment available to thefor public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the final draft preliminary endangerment assessment is approved; in which case review and comment pursuant to subparagraph (A) or (B):

(A) If the school district shall, within 60 days of the approval of the final draft of the preliminary endangerment assessment, separately publish a notice of the availability of the final draftchooses to make the assessment available for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the final draft preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All comments pertaining to the final draft preliminary endangerment assessment and the draft environmental impact report or negative declaration shall be forwarded and comment pursuant to this subparagraph, it shall offer to receive written comments for a period of at least 30 calendar days after the assessment is

submitted to the Department of Toxic Substances Control immediately. If the district has complied with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) prior to initiating the, commencing on the date the notice is originally published, and shall hold a public hearing to receive further comments. The school district shall make all of the following documents available to the public upon request through the time of the public hearing:

(i) The preliminary endangerment assessment, the district shall reconsider the adequacy of its approved environmental impact report or negative declaration in light of the approved final draft of the preliminary endangerment assessment and determine whether a further environmental document is necessary. The district shall hold a public hearing on the final draft preliminary endangerment assessment and its determination on the adequacy of the existing environmental documents at the same time and in the same manner as it would for a draft environmental impact report or draft negative declaration as previously set forth in this section. The Department of Toxic Substances Control shall approve or disapprove the final preliminary endangerment assessment within 30 days of the district's approval action on the environmental document prepared under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall issue notice of its determination accompanied by a statement of the basis of the determination. The school district shall consider whether any changes between the final draft and final preliminary endangerment assessment require any change in its determination pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). The school district shall not file its notice of determination under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) until after.

(ii) The changes requested by the Department of Toxic Substances Control has approved for the final preliminary endangerment assessment. The public participation process set forth in this section shall be used by, if any.

(iii) Any correspondence between the school district and the Department of Toxic Substances Control instead of procedures set forth in Sections 25358.7 and 25358.7.1 of the Health and Safety Code with respect to that relates to the preliminary endangerment assessments. If further response actions beyond a assessment. For the purposes of this subparagraph, the notice of the public hearing shall include the date and location of the public hearing, and the location where the public may

review the documents described in clauses (i) to (iii), inclusive. If the preliminary endangerment assessment is revised or altered following the public hearing, the school district shall make those revisions or alterations available to the public. The school district shall transmit a copy of all public comments received by the school district on the preliminary endangerment assessment to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall complete its review of the preliminary endangerment assessment ~~are required and the district~~ and public comments received thereon and shall either approve or disapprove the assessment within 30 calendar days of the close of the public review period. If the Department of Toxic Substances Control determines that it ~~will proceed with the~~ is likely to disapprove the assessment prior to its receipt of the public comments, it shall inform the school district of that determination and of any action that the school district is required to take for the Department of Toxic Substances Control to approve the assessment.

(B) If the school district chooses to make the preliminary endangerment assessment available for public review and comment pursuant to this subparagraph, the Department of Toxic Substances Control shall complete its review of the assessment within 60 calendar days of receipt of the assessment and shall either return the assessment to the school district with comments and requested modifications or requested further assessment or concur with the adequacy of the assessment pending review of public comment. If the Department of Toxic Substances Control concurs with the adequacy of the assessment, and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the assessment is approved, in which case the school district shall, within 60 days of the approval of the assessment, separately publish a notice of the availability of the assessment for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13

(commencing with Section 21000) of the Public Resources Code). All public comments pertaining to the preliminary endangerment assessment shall be forwarded to the Department of Toxic Substances Control immediately. The Department of Toxic Substances Control shall review the public comments forwarded by the school district and shall approve or disapprove the preliminary endangerment assessment within 30 days of the district's approval action of the environmental impact report or the negative declaration.

(7) The school district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project.

(78) If the Department of Toxic Substances Control disapproves the ~~final draft~~ preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the ~~preliminary endangerment~~ assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(89) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(910) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the

1 school district to submit proof that the environmental assessor meets the qualifications
2 specified in subdivision (b) of Section 17210. As amended, subdivision (a)(6) requires
3 the school district to publish a notice that the preliminary endangerment assessment
4 has been submitted to to the Department of Toxic Substances Control. The notice shall
5 be published in a local newspaper of general circulation, and posted in a prominent
6 manner at the proposed schoolsite. As amended, subdivision (a)(6)(A) requires the
7 school district to receive written comments for 30 days and to hold a public hearing to

recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(~~1011~~) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs. (b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

(d) The changes made to this section by the act amending this section during the 2001 portion of the 2001-02 Regular Session do not apply to a schoolsite acquisition project or a school construction project, if either of the following occurred on or before the effective date of the act amending this section during the 2001 portion of the 2001-02 Regular Session:

(1) The final preliminary endangerment assessment for the project was approved by the Department of Toxic Substances Control pursuant to this section as this section read on the date of the approval.

(2) The school district seeking state funding for the project completed a public hearing for the project pursuant to this section, as this section read on the date of the hearing."

1 receive further comments. The school district shall make the preliminary endangerment
2 assessment, any changes requested by the Department of Toxic Substances Control,
3 and any correspondence between the school district and the Department of Toxic
4 Substances Control available to the public upon request prior to the public hearing. Any
5 revisions or alterations to the preliminary endangerment assessment after the public
6 hearing will also be made available to the public. The school district shall transmit a
7 copy of all public comments to the Department of Toxic Substances Control.

8 Subdivision (d) was added to provide that changes made to this section apply only to
9 schoolsite acquisitions where either the final preliminary endangerment assessment
10 was not approved, or public hearing for the project had not yet been held prior to this
11 amendment's effective date of October 14, 2001.

12 Chapter 935, Statutes of 2002, Section 16, amended Education Code Section
13 17213.1²¹. As amended, subdivision (a)(2) requires the school district to pay a renewal

²¹ Education Code Section 17213.1 as amended by Chapter 935, Statutes of
2002, Section 16:

"As a condition of receiving state funding pursuant to Chapter 12.5 (commencing
with Section 17070.10), the governing board of a school district shall comply with
subdivision (a), and is not required to comply with subdivision (a) of Section 17213,
prior to the acquisition of a schoolsite, or if the school district owns or leases a
schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite, the governing board shall contract with an
environmental assessor to supervise the preparation of, and sign, a Phase I
environmental assessment of the proposed schoolsite unless the governing board
decides to proceed directly to a preliminary endangerment assessment, in which case it
shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following
recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, ~~the assessment, together with all documentation related to the proposed acquisition or use of the proposed schoolsite, shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education and signed assessment, proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210 prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days after the State Department of Education receives the Phase I environmental assessment, the proof of the environmental assessor's qualifications, and the renewal fee to shall be forwarded submitted to the Department of Toxic Substances Control for its review of the Phase I environmental assessment, the State Department of Education shall transmit that assessment and that proof of the environmental assessor's qualifications to the. The Department of Toxic Substances Control for shall conduct its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of that assessment and that, proof of qualifications, and the renewal fee.~~ In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 calendar days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify, in writing, the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4)(A) If the Department of Toxic Substances Control concludes after its review of a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the Department of Toxic Substances Control shall notify, in writing, the State Department of Education and the governing board of the school district of that decision and the basis for that decision. The school district shall submit to the State Department of Education the Phase I environmental assessment and requested additional information, if any, that was reviewed by the Department of Toxic Substances Control pursuant to that subparagraph. Submittal of the Phase I assessment and additional information, if any, to the State Department of Education shall be prior to the State Department of Education issuance of final site or plan approvals affect by that Phase I assessment.

(B) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of, and sign, a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(A) A further investigation of the site is not required.

(B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a "preliminary environmental assessment" and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions

whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

(6) At the same time a school district submits a preliminary endangerment assessment to the Department of Toxic Substances Control pursuant to paragraph (5), the school district shall publish a notice that the assessment has been submitted to the department in a local newspaper of general circulation, and shall post the notice in a prominent manner at the proposed schoolsite that is the subject of that notice. The notice shall state the school district's determination to make the preliminary endangerment assessment available for public review and comment pursuant to subparagraph (A) or (B):

(A) If the school district chooses to make the assessment available for public review and comment pursuant to this subparagraph, it shall offer to receive written comments for a period of at least 30 calendar days after the assessment is submitted to the Department of Toxic Substances Control, commencing on the date the notice is originally published, and shall hold a public hearing to receive further comments. The school district shall make all of the following documents available to the public upon request through the time of the public hearing:

(i) The preliminary endangerment assessment.

(ii) The changes requested by the Department of Toxic Substances Control for the preliminary endangerment assessment, if any.

(iii) Any correspondence between the school district and the Department of Toxic Substances Control that relates to the preliminary endangerment assessment. For the purposes of this subparagraph, the notice of the public hearing shall include the date and location of the public hearing, and the location where the public may review the documents described in clauses (i) to (iii), inclusive. If the preliminary endangerment assessment is revised or altered following the public hearing, the school district shall make those revisions or alterations available to the public. The school district shall transmit a copy of all public comments received by the school district on the preliminary endangerment assessment to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall complete its review of the preliminary endangerment assessment and public comments received thereon and shall either approve or disapprove the assessment within 30 calendar days of the close of the public review period. If the Department of Toxic Substances Control determines that it is likely to disapprove the assessment prior to its receipt of the public comments, it shall inform the school district of that determination and of any action that the school district is required to take for the Department of Toxic Substances Control to approve the assessment.

(B) If the school district chooses to make the preliminary endangerment assessment available for public review and comment pursuant to this subparagraph, the Department of Toxic Substances Control shall complete its review of the assessment within 60 calendar days of receipt of the assessment and shall either return

1

the assessment to the school district with comments and requested modifications or requested further assessment or concur with the adequacy of the assessment pending review of public comment. If the Department of Toxic Substances Control concurs with the adequacy of the assessment, and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the assessment is approved, in which case the school district shall, within 60 days of the approval of the assessment, separately publish a notice of the availability of the assessment for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All public comments pertaining to the preliminary endangerment assessment shall be forwarded to the Department of Toxic Substances Control immediately. The Department of Toxic Substances Control shall review the public comments forwarded by the school district and shall approve or disapprove the preliminary endangerment assessment within 30 days of the district's approval action of the environmental impact report or the negative declaration.

(7) The school district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project.

(8) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(10) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous

1 fee to the Department of Toxic Substances Control when no further investigation is

materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(11) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

(d) The changes made to this section by the act amending this section during the 2001 portion of the 2001-02 Regular Session do not apply to a schoolsite acquisition project or a school construction project, if either of the following occurred on or before the effective date of the act amending this section during the 2001 portion of the 2001-02 Regular Session:

(1) The final preliminary endangerment assessment for the project was approved by the Department of Toxic Substances Control pursuant to this section as this section read on the date of the approval.

(2) The school district seeking state funding for the project completed a public hearing for the project pursuant to this section, as this section read on the date of the hearing."

1 required after the Phase I environmental assessment.

2 PART III. STATEMENT OF THE CLAIM

3 SECTION 1. COSTS MANDATED BY THE STATE

4 The Statutes and Code sections referenced in this test claim result in school
5 districts incurring costs mandated by the state, as defined in Government Code section
6 17514²², by creating new state-mandated duties related to the uniquely governmental
7 function of providing public services and these statutes apply to school districts and do
8 not apply generally to all residents and entities in the state.²³

9 The new duties mandated by the state upon school districts and county offices of
10 education require state reimbursement of the direct and indirect costs of labor,
11 materials and supplies, data processing services and software, contracted services and

²² Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

²³ Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

1 consultants, equipment and capital assets, staff and student training and travel to
2 implement the following activities:

- 3 A) Pursuant to Article 1 of Chapter 1, commencing with Education Code Section
4 17210 and related sections, to develop and implement policies and procedures,
5 and periodically revise those policies and procedures, to comply with all
6 requirements relative to the discovery and removal of hazardous materials at
7 proposed schoolsites.
- 8 B) Pursuant to Education Code Section 17072.13, subdivision (a), funding 50
9 percent, or more, of the cost of the evaluation of hazardous materials at a site to
10 be acquired by a school district and for 50 percent, or more, of the other
11 response action costs for the removal of hazardous waste or solid waste, the
12 removal of hazardous substances, or other response action in connection with
13 hazardous substances at proposed schoolsites.
- 14 C) Pursuant to Education Code Section 17072.13, subdivision (b), for school
15 districts eligible for financial hardship assistance pursuant to Article 8
16 (commencing with Section 17075.10), funding the balance of the cost of the
17 evaluation of hazardous materials at a site to be acquired by a school district and
18 for the other response action costs for the site not funded by the State Allocation
19 Board.
- 20 D) Pursuant to Education Code Section 17210.1, subdivision (a)(3), focusing on the
21 risks to children's health posed by a hazardous materials release or threatened
22 release, or the presence of naturally occurring hazardous materials, when

1 conducting risk assessments at prospective schoolsites.

2 E) Pursuant to Education Code Section 17210.1, subdivision (a)(4), when taking
3 response actions pursuant to the article to be, at a minimum, protective of
4 children's health, with an ample margin of safety

5 F) Pursuant to Education Code Section 17210.1, subdivision (b), providing a notice
6 to residents in the immediate area prior to the commencement of work on a
7 preliminary endangerment assessment utilizing a format developed by the
8 Department of Toxic Substances Control.

9 G) Pursuant to Education Code Section 17211, evaluating the real property for a
10 new schoolsite, or an addition to an existing schoolsite, at a public hearing using
11 site selection standards established by the State Department of Education
12 pursuant to subdivision (b) of Section 17251, prior to commencing the acquisition
13 of that real property.

14 H) Pursuant to Education Code Section 17212, prior to acquiring any site on which
15 it proposes to construct any school building, investigating the site, or sites, under
16 consideration by competent personnel to ensure that the final site selection is
17 determined by an evaluation of all factors affecting the public interest and is not
18 limited to selection on the basis of raw land cost only. The evaluation shall also
19 include location of the site with respect to population, transportation, water
20 supply, waste disposal facilities, utilities, traffic hazards, surface drainage
21 conditions, and other factors affecting the operating costs, as well as the initial
22 costs, of the total project.

- 1 I) Pursuant to Education Code Section 17212, if the prospective schoolsite is
2 located within the boundaries of any special studies zone, or within an area
3 designated as geologically hazardous in the safety element of the local general
4 plan as provided in subdivision (g) of Section 65302 of the Government Code,
5 the investigation shall include any geological and soil engineering studies by
6 competent personnel needed to provide an assessment of the nature of the site
7 and potential for earthquake or other geologic hazard damage.
- 8 J) Pursuant to Education Code Section 17212.5, making geological and soil
9 engineering studies, as described in Section 17212, for the reconstruction, or
10 alteration of, or addition to, any school building for work which alters structural
11 elements if the estimated cost exceeds twenty-five thousand dollars (\$25,000),
12 or as increased according to a construction costs inflation index recognized by
13 the Department of General Services.
- 14 K) Pursuant to Education Code Section 17212.5, making geological and soil
15 engineering studies, as described in Section 17212, when required by the
16 Department of General Services for the construction or alteration of any school
17 building on a site located outside of the boundaries of any special studies zone.
- 18 L) Pursuant to Education Code Section 17212.5, submitting a copy of the report of
19 each investigation conducted pursuant to the section to the Department of
20 General Services pursuant to Article 3 (commencing with Section 17280) and to
21 the State Department of Education.
- 22 M) Pursuant to Education Code Section 17213, subdivision (a), verifying, prior to

1 approval of a project, that the lead agency, as defined in Section 21067 of the
2 Public Resources Code, has determined that the property purchased or to be
3 built upon is not any of the following:

4 (1) The site of a current or former hazardous waste disposal site or
5 solid waste disposal site unless, if the site was a former solid waste
6 disposal site, the governing board of the school district concludes that the
7 wastes have been removed.

8 (2) A hazardous substance release site identified by the State Department of
9 Health Services in a current list adopted pursuant to Section 25356 for
10 removal or remedial action pursuant to Chapter 6.8 (commencing with
11 Section 25300) of Division 20 of the Health and Safety Code.

12 (3) A site which contains one or more pipelines, situated underground or
13 aboveground, which carries hazardous substances, acutely hazardous
14 materials, or hazardous wastes, unless the pipeline is a natural gas line
15 which is used only to supply natural gas to that school or neighborhood.

16 N) Pursuant to Education Code Section 17213, subdivision (b), verifying, prior to
17 approval of a project, that the lead agency, as defined in Section 21067 of the
18 Public Resources Code, has consulted with the administering agency in which
19 the proposed schoolsite is located and with any air pollution control district or air
20 quality management district having jurisdiction in the area, to identify facilities
21 within one-fourth of a mile of the proposed schoolsite which might reasonably be
22 anticipated to emit hazardous air emissions, or to handle hazardous or acutely

1 hazardous materials, substances, or waste and has included a list of the
2 locations for which information was sought.

3 O) Pursuant to Education Code Section 17213, subdivision (b), prior to approval of
4 a project, making one of the following written findings: (1) Consultation
5 identified none of the facilities specified in subdivision (b).

6 (2) The facilities specified in subdivision (b) exist, but one of the following
7 conditions applies:

8 (A) The health risks from the facilities do not and will not constitute an
9 actual or potential endangerment of public health to persons who
10 would attend or be employed at the school.

11 (B) The governing board finds that corrective measures required under
12 an existing order by another jurisdiction which has jurisdiction over
13 the facilities will, before the school is occupied, result in the
14 mitigation of all chronic or accidental hazardous air emissions to
15 levels that do not constitute an actual or potential endangerment of
16 public health to persons who would attend or be employed at the
17 proposed school. If the governing board makes this finding, the
18 governing board shall also make a subsequent finding, prior to the
19 occupancy of the school, that the emissions have been mitigated to
20 these levels.

21 P) Pursuant to Education Code Section 17213.1, subdivision (a), prior to acquiring a
22 schoolsite, contracting with an environmental assessor to supervise the

1 preparation of, and sign, a Phase I environmental assessment of the proposed
2 schoolsite unless the governing board decides to proceed directly to a
3 preliminary endangerment assessment.

4 (1) The Phase I environmental assessment shall contain one of the following
5 recommendations:

6 (A) A further investigation of the site is not required.

7 (B) A preliminary endangerment assessment is needed, including
8 sampling or testing.

9 Q) Pursuant to Education Code Section 17213.1, subdivision (a)(2), if the Phase I
10 environmental assessment concludes that further investigation of the site is not
11 required, submitting the signed assessment, proof that the environmental
12 assessor meets the qualifications specified in subdivision (b) of Section 17210,
13 and the required fee to the Department of Toxic Substances Control.

14 R) Pursuant to Education Code Section 17213.1, subdivision (a)(3), if the
15 Department of Toxic Substances Control determines that the Phase I
16 environmental assessment is not complete, or disapproves the Phase I
17 environmental assessment, taking actions necessary to secure the approval of
18 the Phase I environmental assessment, elect to conduct a preliminary
19 endangerment assessment, or elect not to pursue the acquisition or the
20 construction project.

21 S) Pursuant to Education Code Section 17213.1, subdivision (a)(4)(A), if the
22 Department of Toxic Substances Control concludes, after its review of a Phase I

1 environmental assessment pursuant to this section that a preliminary
2 endangerment assessment is needed (or when a district elects to forego a
3 Phase I environmental assessment and proceed directly to a preliminary
4 endangerment assessment), submitting to the State Department of Education
5 the Phase I environmental assessment and requested additional information, if
6 any, that was reviewed by the Department of Toxic Substances Control.

7 T) Pursuant to Education Code Section 17213.1, subdivision (a)(4)(B), if the Phase
8 I environmental assessment concludes that a preliminary endangerment
9 assessment is needed, or if the Department of Toxic Substances Control
10 concludes after it reviews a Phase I environmental assessment pursuant to this
11 section that a preliminary endangerment assessment is needed, contracting with
12 an environmental assessor to supervise the preparation of, and sign, a
13 preliminary endangerment assessment of the proposed schoolsite and entering
14 into an agreement with the Department of Toxic Substances Control to oversee
15 the preparation of the preliminary endangerment assessment or electing not to
16 pursue the acquisition or construction project. The preliminary endangerment
17 assessment shall contain one of the following conclusions:

18 (i) A further investigation of the site is not required.

19 (ii) A release of hazardous materials has occurred, and if so, the extent of the
20 release, that there is the threat of a release of hazardous materials, or
21 that a naturally occurring hazardous material is present, or any
22 combination thereof.

- 1 U) Pursuant to Education Code Section 17213.1, subdivision (a)(5), submitting the
2 preliminary endangerment assessment to the Department of Toxic Substances
3 Control for its review and approval and to the State Department of Education for
4 its files.
- 5 V) Pursuant to Education Code Section 17213.1, subdivision (a)(6), at the same
6 time a school district submits a preliminary endangerment assessment to the
7 Department of Toxic Substances Control pursuant to paragraph (5), publishing a
8 notice that the assessment has been submitted to the department in a local
9 newspaper of general circulation, and posting the notice in a prominent manner
10 at the proposed schoolsite that is the subject of that notice. The notice shall state
11 the school district's determination to make the preliminary endangerment
12 assessment available for public review and comment.
- 13 W) Pursuant to Education Code Section 17213.1, subdivision (a)(7), complying with
14 the public participation requirements of Sections 25358.7 and 25358.7.1 of the
15 Health and Safety Code and other applicable provisions of the state act with
16 respect to those response actions only if further response actions beyond a
17 preliminary endangerment assessment are required and the district determines
18 that it will proceed with the acquisition or construction project.
- 19 X) Pursuant to Education Code Section 17213.1, subdivision (a)(8), if the
20 Department of Toxic Substances Control disapproves the preliminary
21 endangerment assessment, taking actions necessary to secure the approval of
22 the Department of Toxic Substances Control of the preliminary endangerment

1 assessment or electing not to pursue the acquisition or construction project.

2 Y) Pursuant to Education Code Section 17213.1, subdivision (a)(9), if the
3 preliminary endangerment assessment determines that a further investigation of
4 the site is not required and the Department of Toxic Substances Control
5 approves this determination, then proceeding with the acquisition or construction
6 project.

7 Z) Pursuant to Education Code Section 17213.1, subdivision (a)(10), if the
8 preliminary endangerment assessment determines that a release of hazardous
9 material has occurred, that there is the threat of a release of hazardous
10 materials, that a naturally occurring hazardous material is present, or any
11 combination thereof, that requires further investigation, and the Department of
12 Toxic Substances Control approves this determination, either electing not to
13 pursue the acquisition or construction project, or, electing to pursue the
14 acquisition or construction project. If electing to pursue the acquisition, doing all
15 of the following:

16 (A) Preparing a financial analysis that estimates the cost of response
17 action that will be required at the proposed schoolsite.

18 (B) Assesses the benefits that accrue from using the proposed
19 schoolsite when compared to the use of alternative schoolsites, if
20 any.

21 (C) Obtaining the approval of the State Department of Education that
22 the proposed schoolsite meets the schoolsite selection standards

1 adopted by the State Department of Education pursuant to
2 subdivision (b) of Section 17251.

3 (D) Evaluating the suitability of the proposed schoolsite in light of the
4 recommended alternative schoolsite locations in order of merit if
5 the school district has requested the assistance of the State
6 Department of Education, based upon the standards of the State
7 Department of Education, pursuant to subdivision (a) of Section
8 17251.

9 AA) Pursuant to Education Code Section 17213.1, subdivision (a)(11), reimbursing
10 the Department of Toxic Substances Control for all of the department's response
11 costs.

12 BB) Pursuant to Education Code Section 17213.2, subdivision (a), if a preliminary
13 endangerment assessment prepared pursuant to Section 17213.1 discloses the
14 presence of a hazardous materials release, or threatened release, or the
15 presence of naturally occurring hazardous materials, at a proposed schoolsite at
16 concentrations that could pose a significant risk to children or adults, and the
17 school district owns the proposed schoolsite, entering into an agreement with the
18 Department of Toxic Substances Control to oversee response action at the site
19 and taking response action pursuant to the requirements of the state act as may
20 be required by the Department of Toxic Substances Control.

21 CC) Pursuant to Education Code Section 17213.2, subdivision (c), if at anytime
22 during the response action the school district determines that there has been a

1 significant increase in the estimated cost of the response action, notifying the
2 State Department of Education.

3 DD) Pursuant to Education Code Section 17213.2, subdivision (d)(2), before
4 occupying a school building following construction, obtaining from the
5 Department of Toxic Substances Control a certification that all response actions,
6 except for operation and maintenance activities, necessary to ensure that
7 hazardous materials at the schoolsite no longer pose a significant risk to children
8 and adults at the schoolsite have been completed and that the response action
9 standards and objectives established in the final removal action work plan or
10 remedial action plan have been met and are being maintained.

11 EE) Pursuant to Education Code Section 17213.2, subdivision (e), if, at anytime
12 during construction at a schoolsite, a previously unidentified release or
13 threatened release of a hazardous material or the presence of a naturally
14 occurring hazardous material is discovered, ceasing all construction activities at
15 the sites, notifying the Department of Toxic Substances Control, and taking
16 actions required by subdivision (a) that are necessary to address the release or
17 threatened release or the presence of any naturally occurring hazardous
18 materials, and resuming construction only if the Department of Toxic Substances
19 Control determines that the construction will not interfere with any response
20 action necessary to address the hazardous material release or threatened
21 release or the presence of a naturally occurring hazardous material, determines
22 that the site conditions will not pose a significant threat to the health and safety

1 of workers involved in the construction of the schoolsite, and certifies that the
2 nature and extent of the release, threatened release, or presence of a naturally
3 occurring hazardous material have been fully characterized.

4 FF) Pursuant to Education Code Section 17213.2, subdivision (h), reimbursing the
5 Department of Toxic Substances Control for all response costs incurred by the
6 department.

7 GG) Pursuant to Education Code Section 17251, subdivision (a), reimbursing the
8 State Department of Education for fees incurred and charged for advising the
9 governing board on the acquisition of new schoolsites and, after a review of
10 available plots, giving the governing board, in writing, a list of the recommended
11 locations in the order of their merit, considering especially the matters of
12 educational merit, safety, reduction of traffic hazards, and conformity to the land
13 use element in the general plan of the city, county, or city and county having
14 jurisdiction.

15 HH) Pursuant to Education Code Section 17251, subdivision (b), complying with
16 standards developed by the State Department of Education to be used in the
17 selection of schoolsites, in accordance with the objectives set forth in subdivision
18 (a). If notification is received prior to the acquisition of the site that the
19 department has investigated complaints of noncompliance with site selection
20 standards, discussing the findings of the investigation in a public hearing.

21 II) Pursuant to Education Code Section 17251, subdivision (c), complying with
22 standards established by the State Department of Education for use by school

1 districts to ensure that the design and construction of school facilities are
2 educationally appropriate and promote school safety.

3 JJ) Pursuant to Education Code Section 17251, subdivision (d), reimbursing the
4 State Department of Education for the review of plans and specifications.

5 KK) Pursuant to Education Code Section 17251, subdivision (e), reimbursing the
6 State Department of Education for making a survey of the building needs of the
7 district, advising the governing board concerning building needs, and suggesting
8 plans for financing a building program to meet the needs.

9 LL) Pursuant to Education Code Section 17315, subdivision (a), filing the notice of
10 completion, submitting all final verified reports and all testing and inspection
11 documents, and paying all required fees when a school building is constructed in
12 accordance with plans and specifications approved by the Department of
13 General Services.

14 MM) Pursuant to Education Code Section 17315, subdivision (b), when a school
15 building, constructed in accordance with approved plans and specifications, is
16 completed but final verified reports, as are required under Section 39151, have
17 not been submitted to the Department of General Services due to the
18 incapacitating illness, death, or the default of any persons required to file such
19 reports, requesting the Department of General Services to review all of the
20 project records and make such examinations as it deems necessary to enable it
21 to certify that the school building otherwise complies with the requirements of the
22 article. When requested by the Department of General Services to making,

1 reporting, and verifying any other tests and inspections which the department
2 deems necessary to complete its examinations of the construction.

3 NN) Pursuant to Education Code Section 17315, subdivision (c), reimbursing the
4 costs incurred by the Department of General Services to perform the
5 examinations, tests, and inspections required by the section.

6 SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

7 None of the Government Code Section 17556²⁴ statutory exceptions to a finding

²⁴ Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

“The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction,

1 of costs mandated by the state apply to this test claim. Note, that to the extent school
2 districts may have previously performed functions similar to those mandated by the
3 referenced code sections, such efforts did not establish a preexisting duty that would
4 relieve the state of its constitutional requirement to later reimburse school districts when
5 these activities became mandated.²⁵

6 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

7 No funds are appropriated by the state for reimbursement of these costs
8 mandated by the state and there is no other provision of law for recovery of costs from
9 any other source.

10 PART IV. ADDITIONAL CLAIM REQUIREMENTS

11 The following elements of this claim are provided pursuant to Section 1183, Title
2 2, California Code of Regulations:

13 Exhibit 1: Declaration of William McGuire
14 Associate Superintendent of Administrative Services
15 Clovis Unified School District

16
17 Exhibit 2: Copies of Statutes Cited

18 Chapter 935, Statutes of 2002

19 Chapter 865, Statutes of 2001
20

or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.”

²⁵ Government Code section 17565, added by Chapter 879, Statutes of 1986:
“If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

- 1 Chapter 422, Statutes of 2001
- 2 Chapter 159, Statutes of 2001
- 3 Chapter 443, Statutes of 2000
- 4 Chapter 1002, Statutes of 1999
- 5 Chapter 992, Statutes of 1999
- 6 Chapter 277, Statutes of 1996
- 7 Chapter 1183, Statutes of 1991
- 8 Chapter 1602, Statutes of 1990
- 9 Chapter 735, Statutes of 1982
- 10 Chapter 362, Statutes of 1978
- 11 Chapter 242, Statutes of 1977
- 12 Chapter 557, Statutes of 1976

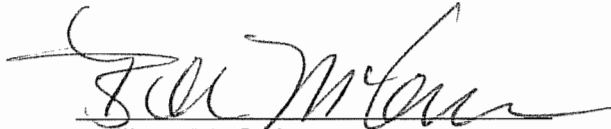
13
14 Exhibit 3: Copies of Code Sections Cited

- 15
- 16 Education Code Section 17072.13
- 17 Education Code Section 17210
- 18 Education Code Section 17210.1
- 19 Education Code Section 17211
- 20 Education Code Section 17212
- 21 Education Code Section 17212.5
- 22 Education Code Section 17213
- 23 Education Code Section 17213.1
- 24 Education Code Section 17213.2
- 25 Education Code Section 17251
- 26 Education Code Section 17315
- 27
- 28 Health & Safety Code Section 25358.7
- 29 Health & Safety Code Section 25358.7.1

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 23, 2003, at Clovis, California by:



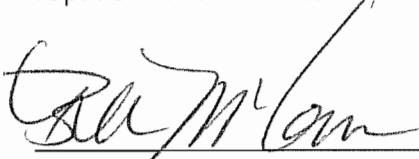
William McGuire
Associate Superintendent

Voice: 559-327-3110

Fax: 559-327-9129

PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



William McGuire
Associate Superintendent

6/23/2003
Date

Exhibit 1
Declaration of William McGuire

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DECLARATION OF William McGuire

Clovis Unified School District

Test Claim of Clovis Unified School District

COSM No. _____

Chapter 935, Statutes of 2002	Education Code Section 17072.13
Chapter 865, Statutes of 2001	Education Code Section 17210
Chapter 422, Statutes of 2001	Education Code Section 17210.1
Chapter 159, Statutes of 2001	Education Code Section 17211
Chapter 443, Statutes of 2000	Education Code Section 17212
Chapter 1002, Statutes of 1999	Education Code Section 17212.5
Chapter 992, Statutes of 1999	Education Code Section 17213
Chapter 277, Statutes of 1996	Education Code Section 17213.1
Chapter 1183, Statutes of 1991	Education Code Section 17213.2
Chapter 1602, Statutes of 1990	Education Code Section 17251
Chapter 735, Statutes of 1982	Education Code Section 17315
Chapter 362, Statutes of 1978	
Chapter 242, Statutes of 1977	Health & Safety Code Section 25358.7
Chapter 557, Statutes of 1976	Health & Safety Code Section 25358.7.1

935/02 Hazardous Materials Assessments

I, William McGuire, Associate Superintendent, Clovis Unified School District,
make the following declaration and statement.

In my capacity as Associate Superintendent, I am responsible for the processing
of Hazardous Materials Assessments for the district. I am familiar with the provisions
and requirements of the Statutes, Education Code Sections and Government Code
Sections enumerated above.

These Education Code sections require Clovis Unified School District to:

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- 1 A) Pursuant to Article 1 of Chapter 1, commencing with Education Code Section
2 17210 and related sections, to develop and implement policies and procedures,
3 and periodically revise those policies and procedures, to comply with all
4 requirements relative to the discovery and removal of hazardous materials at
5 proposed schoolsites.
- 6 B) Pursuant to Education Code Section 17072.13, subdivision (a), funding 50
7 percent, or more, of the cost of the evaluation of hazardous materials at a site to
8 be acquired by a school district and for 50 percent, or more, of the other
9 response action costs for the removal of hazardous waste or solid waste, the
10 removal of hazardous substances, or other response action in connection with
11 hazardous substances at proposed schoolsites.
- 12 C) Pursuant to Education Code Section 17072.13, subdivision (b), for school
13 districts eligible for financial hardship assistance pursuant to Article 8
14 (commencing with Section 17075.10), funding the balance of the cost of the
15 evaluation of hazardous materials at a site to be acquired by a school district and
16 for the other response action costs for the site not funded by the State Allocation
17 Board.
- 18 D) Pursuant to Education Code Section 17210.1, subdivision (a)(3), focusing on the
19 risks to children's health posed by a hazardous materials release or threatened
20 release, or the presence of naturally occurring hazardous materials, when
21 conducting risk assessments at prospective schoolsites.

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- 1 E) Pursuant to Education Code Section 17210.1, subdivision (a)(4), when taking
2 response actions pursuant to the article to be, at a minimum, protective of
3 children's health, with an ample margin of safety
- 4 F) Pursuant to Education Code Section 17210.1, subdivision (b), providing a notice
5 to residents in the immediate area prior to the commencement of work on a
6 preliminary endangerment assessment utilizing a format developed by the
7 Department of Toxic Substances Control.
- 8 G) Pursuant to Education Code Section 17211, evaluating the real property for a
9 new schoolsite, or an addition to an existing schoolsite, at a public hearing using
10 site selection standards established by the State Department of Education
11 pursuant to subdivision (b) of Section 17251, prior to commencing the acquisition
12 of that real property.
- 13 H) Pursuant to Education Code Section 17212, prior to acquiring any site on which
14 it proposes to construct any school building, investigating the site, or sites, under
15 consideration by competent personnel to ensure that the final site selection is
16 determined by an evaluation of all factors affecting the public interest and is not
17 limited to selection on the basis of raw land cost only. The evaluation shall also
18 include location of the site with respect to population, transportation, water
19 supply, waste disposal facilities, utilities, traffic hazards, surface drainage
20 conditions, and other factors affecting the operating costs, as well as the initial
21 costs, of the total project.

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- 1 I) Pursuant to Education Code Section 17212, if the prospective schoolsite is
2 located within the boundaries of any special studies zone, or within an area
3 designated as geologically hazardous in the safety element of the local general
4 plan as provided in subdivision (g) of Section 65302 of the Government Code,
5 the investigation shall include any geological and soil engineering studies by
6 competent personnel needed to provide an assessment of the nature of the site
7 and potential for earthquake or other geologic hazard damage.
- 8 J) Pursuant to Education Code Section 17212.5, making geological and soil
9 engineering studies, as described in Section 17212, for the reconstruction, or
10 alteration of, or addition to, any school building for work which alters structural
11 elements if the estimated cost exceeds twenty-five thousand dollars (\$25,000),
12 or as increased according to a construction costs inflation index recognized by
13 the Department of General Services.
- 14 K) Pursuant to Education Code Section 17212.5, making geological and soil
15 engineering studies, as described in Section 17212, when required by the
16 Department of General Services for the construction or alteration of any school
17 building on a site located outside of the boundaries of any special studies zone.
- 18 L) Pursuant to Education Code Section 17212.5, submitting a copy of the report of
19 each investigation conducted pursuant to the section to the Department of
20 General Services pursuant to Article 3 (commencing with Section 17280) and to
21 the State Department of Education.

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- 1 M) Pursuant to Education Code Section 17213, subdivision (a), verifying, prior to
2 approval of a project, that the lead agency, as defined in Section 21067 of the
3 Public Resources Code, has determined that the property purchased or to be
4 built upon is not any of the following:
- 5 (1) The site of a current or former hazardous waste disposal site or
6 solid waste disposal site unless, if the site was a former solid waste
7 disposal site, the governing board of the school district concludes that the
8 wastes have been removed.
- 9 (2) A hazardous substance release site identified by the State Department of
10 Health Services in a current list adopted pursuant to Section 25356 for
11 removal or remedial action pursuant to Chapter 6.8 (commencing with
12 Section 25300) of Division 20 of the Health and Safety Code.
- 13 (3) A site which contains one or more pipelines, situated underground or
14 aboveground, which carries hazardous substances, acutely hazardous
15 materials, or hazardous wastes, unless the pipeline is a natural gas line
16 which is used only to supply natural gas to that school or neighborhood.
- 17 N) Pursuant to Education Code Section 17213, subdivision (b), verifying, prior to
18 approval of a project, that the lead agency, as defined in Section 21067 of the
19 Public Resources Code, has consulted with the administering agency in which
20 the proposed schoolsite is located and with any air pollution control district or air
21 quality management district having jurisdiction in the area, to identify facilities

1 within one-fourth of a mile of the proposed schoolsite which might reasonably be
2 anticipated to emit hazardous air emissions, or to handle hazardous or acutely
3 hazardous materials, substances, or waste and has included a list of the
4 locations for which information was sought.

5 O) Pursuant to Education Code Section 17213, subdivision (b), prior to approval of
6 a
7 project, making one of the following written findings:

8 (1) Consultation identified none of the facilities specified in subdivision (b).

9 (2) The facilities specified in subdivision (b) exist, but one of the following
10 conditions applies:

11 (A) The health risks from the facilities do not and will not constitute an
12 actual or potential endangerment of public health to persons who
13 would attend or be employed at the school.

14 (B) The governing board finds that corrective measures required under
15 an existing order by another jurisdiction which has jurisdiction over
16 the facilities will, before the school is occupied, result in the
17 mitigation of all chronic or accidental hazardous air emissions to
18 levels that do not constitute an actual or potential endangerment of
19 public health to persons who would attend or be employed at the
20 proposed school. If the governing board makes this finding, the
21 governing board shall also make a subsequent finding, prior to the

1 occupancy of the school, that the emissions have been mitigated to
2 these levels.

3 P) Pursuant to Education Code Section 17213.1, subdivision (a), prior to acquiring a
4 schoolsite, contracting with an environmental assessor to supervise the
5 preparation of, and sign, a Phase I environmental assessment of the proposed
6 schoolsite unless the governing board decides to proceed directly to a
7 preliminary endangerment assessment.

8 (1) The Phase I environmental assessment shall contain one of the following
9 recommendations:

10 (A) A further investigation of the site is not required.

11 (B) A preliminary endangerment assessment is needed, including
12 sampling or testing.

13 Q) Pursuant to Education Code Section 17213.1, subdivision (a)(2), if the Phase I
14 environmental assessment concludes that further investigation of the site is not
15 required, submitting the signed assessment, proof that the environmental
16 assessor meets the qualifications specified in subdivision (b) of Section 17210,
17 and the required fee to the Department of Toxic Substances Control.

18 R) Pursuant to Education Code Section 17213.1, subdivision (a)(3), if the
19 Department of Toxic Substances Control determines that the Phase I
20 environmental assessment is not complete, or disapproves the Phase I
21 environmental assessment, taking actions necessary to secure the approval of

1 the Phase I environmental assessment, elect to conduct a preliminary
2 endangerment assessment, or elect not to pursue the acquisition or the
3 construction project.

4 S) Pursuant to Education Code Section 17213.1, subdivision (a)(4)(A), if the
5 Department of Toxic Substances Control concludes, after its review of a Phase I
6 environmental assessment pursuant to this section that a preliminary
7 endangerment assessment is needed (or when a district elects to forego a
8 Phase I environmental assessment and proceed directly to a preliminary
9 endangerment assessment), submitting to the State Department of Education
10 the Phase I environmental assessment and requested additional information, if
11 any, that was reviewed by the Department of Toxic Substances Control.

12 T) Pursuant to Education Code Section 17213.1, subdivision (a)(4)(B), if the Phase
13 I environmental assessment concludes that a preliminary endangerment
14 assessment is needed, or if the Department of Toxic Substances Control
15 concludes after it reviews a Phase I environmental assessment pursuant to this
16 section that a preliminary endangerment assessment is needed, contracting with
17 an environmental assessor to supervise the preparation of, and sign, a
18 preliminary endangerment assessment of the proposed schoolsite and entering
19 into an agreement with the Department of Toxic Substances Control to oversee
20 the preparation of the preliminary endangerment assessment or electing not to

1 pursue the acquisition or construction project. The preliminary endangerment
2 assessment shall contain one of the following conclusions:

- 3 (i) A further investigation of the site is not required.
- 4 (ii) A release of hazardous materials has occurred, and if so, the extent of the
5 release, that there is the threat of a release of hazardous materials, or
6 that a naturally occurring hazardous material is present, or any
7 combination thereof.

8 U) Pursuant to Education Code Section 17213.1, subdivision (a)(5), submitting the
9 preliminary endangerment assessment to the Department of Toxic Substances
10 Control for its review and approval and to the State Department of Education for
11 its files.

12 V) Pursuant to Education Code Section 17213.1, subdivision (a)(6), at the same
13 time a school district submits a preliminary endangerment assessment to the
14 Department of Toxic Substances Control pursuant to paragraph (5), publishing a
15 notice that the assessment has been submitted to the department in a local
16 newspaper of general circulation, and posting the notice in a prominent manner
17 at the proposed schoolsite that is the subject of that notice. The notice shall state
18 the school district's determination to make the preliminary endangerment
19 assessment available for public review and comment.

20 W) Pursuant to Education Code Section 17213.1, subdivision (a)(7), complying with

1 the public participation requirements of Sections 25358.7 and 25358.7.1 of the
2 Health and Safety Code and other applicable provisions of the state act with
3 respect to those response actions only if further response actions beyond a
4 preliminary endangerment assessment are required and the district determines
5 that it will proceed with the acquisition or construction project.

6 X) Pursuant to Education Code Section 17213.1, subdivision (a)(8), if the
7 Department of Toxic Substances Control disapproves the preliminary
8 endangerment assessment, taking actions necessary to secure the approval of
9 the Department of Toxic Substances Control of the preliminary endangerment
10 assessment or electing not to pursue the acquisition or construction project.

11 Y) Pursuant to Education Code Section 17213.1, subdivision (a)(9), if the
12 preliminary
13 endangerment assessment determines that a further investigation of the site is
14 not required and the Department of Toxic Substances Control approves this
15 determination, then proceeding with the acquisition or construction project.

16 Z) Pursuant to Education Code Section 17213.1, subdivision (a)(10), if the
17 preliminary endangerment assessment determines that a release of hazardous
18 material has occurred, that there is the threat of a release of hazardous
19 materials, that a naturally occurring hazardous material is present, or any
20 combination thereof, that requires further investigation, and the Department of
21 Toxic Substances Control approves this determination, either electing not to

1 pursue the acquisition or construction project, or, electing to pursue the
2 acquisition or construction project. If electing to pursue the acquisition, doing all
3 of the following:

4 (A) Preparing a financial analysis that estimates the cost of response
5 action that will be required at the proposed schoolsite.

6 (B) Assesses the benefits that accrue from using the proposed
7 schoolsite when compared to the use of alternative schoolsites, if
8 any.

9 (C) Obtaining the approval of the State Department of Education that
10 the proposed schoolsite meets the schoolsite selection standards
11 adopted by the State Department of Education pursuant to
12 subdivision (b) of Section 17251.

13 (D) Evaluating the suitability of the proposed schoolsite in light of the
14 recommended alternative schoolsite locations in order of merit if
15 the school district has requested the assistance of the State
16 Department of Education, based upon the standards of the State
17 Department of Education, pursuant to subdivision (a) of Section
18 17251.

19 AA) Pursuant to Education Code Section 17213.1, subdivision (a)(11), reimbursing
20 the Department of Toxic Substances Control for all of the department's response
21 costs.

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1 BB) Pursuant to Education Code Section 17213.2, subdivision (a), if a preliminary
2 endangerment assessment prepared pursuant to Section 17213.1 discloses the
3 presence of a hazardous materials release, or threatened release, or the
4 presence of naturally occurring hazardous materials, at a proposed schoolsite at
5 concentrations that could pose a significant risk to children or adults, and the
6 school district owns the proposed schoolsite, entering into an agreement with the
7 Department of Toxic Substances Control to oversee response action at the site
8 and taking response action pursuant to the requirements of the state act as may
9 be required by the Department of Toxic Substances Control.

10 CC) Pursuant to Education Code Section 17213.2, subdivision (c), if at anytime
11 during the response action the school district determines that there has been a
12 significant increase in the estimated cost of the response action, notifying the
13 State Department of Education.

14 DD) Pursuant to Education Code Section 17213.2, subdivision (d)(2), before
15 occupying a school building following construction, obtaining from the
16 Department of Toxic Substances Control a certification that all response actions,
17 except for operation and maintenance activities, necessary to ensure that
18 hazardous materials at the schoolsite no longer pose a significant risk to children
19 and adults at the schoolsite have been completed and that the response action
20 standards and objectives established in the final removal action work plan or
21 remedial action plan have been met and are being maintained.

1 EE) Pursuant to Education Code Section 17213.2, subdivision (e), if, at anytime
2 during construction at a schoolsite, a previously unidentified release or
3 threatened release of a hazardous material or the presence of a naturally
4 occurring hazardous material is discovered, ceasing all construction activities at
5 the sites, notifying the Department of Toxic Substances Control, and taking
6 actions required by subdivision (a) that are necessary to address the release or
7 threatened release or the presence of any naturally occurring hazardous
8 materials, and resuming construction only if the Department of Toxic Substances
9 Control determines that the construction will not interfere with any response
10 action necessary to address the hazardous material release or threatened
11 release or the presence of a naturally occurring hazardous material, determines
12 that the site conditions will not pose a significant threat to the health and safety
13 of workers involved in the construction of the schoolsite, and certifies that the
14 nature and extent of the release, threatened release, or presence of a naturally
15 occurring hazardous material have been fully characterized.

16 FF) Pursuant to Education Code Section 17213.2, subdivision (h), reimbursing the
17 Department of Toxic Substances Control for all response costs incurred by the
18 department.

19 GG) Pursuant to Education Code Section 17251, subdivision (a), reimbursing the
20 State Department of Education for fees incurred and charged for advising the
21 governing board on the acquisition of new schoolsites and, after a review of

1 available plots, giving the governing board, in writing, a list of the recommended
2 locations in the order of their merit, considering especially the matters of
3 educational merit, safety, reduction of traffic hazards, and conformity to the land
4 use element in the general plan of the city, county, or city and county having
5 jurisdiction.

6 HH) Pursuant to Education Code Section 17251, subdivision (b), complying with
7 standards developed by the State Department of Education to be used in the
8 selection of schoolsites, in accordance with the objectives set forth in subdivision
9 (a). If notification is received prior to the acquisition of the site that the
10 department has investigated complaints of noncompliance with site selection
11 standards, discussing the findings of the investigation in a public hearing.

12 II) Pursuant to Education Code Section 17251, subdivision (c), complying with
13 standards established by the State Department of Education for use by school
14 districts to ensure that the design and construction of school facilities are
15 educationally appropriate and promote school safety.

16 JJ) Pursuant to Education Code Section 17251, subdivision (d), reimbursing the
17 State Department of Education for the review of plans and specifications.

18 KK) Pursuant to Education Code Section 17251, subdivision (e), reimbursing the
19 State Department of Education for making a survey of the building needs of the
20 district, advising the governing board concerning building needs, and suggesting
21 plans for financing a building program to meet the needs.

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1 LL) Pursuant to Education Code Section 17315, subdivision (a), filing the notice of
2 completion, submitting all final verified reports and all testing and inspection
3 documents, and paying all required fees when a school building is constructed in
4 accordance with plans and specifications approved by the Department of
5 General Services.

6 MM) Pursuant to Education Code Section 17315, subdivision (b), when a school
7 building, constructed in accordance with approved plans and specifications, is
8 completed but final verified reports, as are required under Section 39151, have
9 not been submitted to the Department of General Services due to the
10 incapacitating illness, death, or the default of any persons required to file such
11 reports, requesting the Department of General Services to review all of the
12 project records and make such examinations as it deems necessary to enable it
13 to certify that the school building otherwise complies with the requirements of the
14 article. When requested by the Department of General Services to making,
15 reporting, and verifying any other tests and inspections which the department
16 deems necessary to complete its examinations of the construction.

17 NN) Pursuant to Education Code Section 17315, subdivision (c), reimbursing the
18 costs incurred by the Department of General Services to perform the
19 examinations, tests, and inspections required by the section.

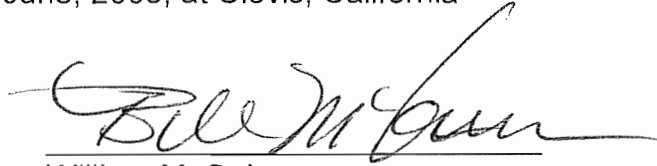
20 It is estimated that the Clovis Unified School District incurred at least \$1,000 in
21 staffing and other costs in excess of any funding provided for the period from July 1,

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1 2001 through June 30, 2002 to implement these new duties mandated by the state for
2 which the district has not been reimbursed by any federal, state, or local government
3 agency, and for which it cannot otherwise obtain reimbursement.

4 The foregoing facts are known to me personally and, if so required, I could testify
5 to the statements made herein. I hereby declare under penalty of perjury that the
6 foregoing is true and correct except where stated upon information and belief and
7 where so stated I declare that I believe them to be true.

8 EXECUTED this 23 day of June, 2003, at Clovis, California

9 

10 William McGuire
11 Associate Superintendent
12 Clovis Unified School District
13

Exhibit 2
Copies of Statutes Cited

CHAPTER 557

An act to amend Section 15002.1 of, to amend and renumber Section 15002.2 of, and to add Section 15002.2 to, the Education Code, relating to school building sites.

[Approved by Governor August 24, 1976. Filed with
Secretary of State August 25, 1976.]

The people of the State of California do enact as follows:

03884 288640 772

SECTION 1. Section 15002.1 of the Education Code is amended to read:

15002.1. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 15452 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective school site is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the seismic safety element of the local general plan as provided in subdivision (f) of Section 65302 of the Government Code, the investigation shall include such geological and soil engineering studies by competent personnel as are needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No such studies need be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is defined as one which is shown on any map, or maps, compiled by the State Geologist pursuant to the provisions of Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code. A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of Education.

SEC. 2. Section 15002.2 is added to the Education Code, to read:

15002.2. Geological and soils engineering studies as described in Section 15002.1 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 15452 or, if the estimated cost exceeds ten thousand dollars (\$10,000), the reconstruction or alteration of or addition to any such school building for work which alters structural elements. The Department of General Services may require similar geological and soils engineering studies for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No such studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 4 (commencing with Section 15451) of Chapter 2 of this division and to the Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure.

SEC. 3. Section 15002.2 of the Education Code is amended and renumbered to read:

15002.3. The reconstruction of any school on all or a portion of a site which has been used for public school purposes uninterruptedly since prior to 1890 may be financed through the State School Building Aid and Earthquake Reconstruction and Replacement Bond Law of 1972 (Chapter 15.8 (commencing with Section 19946) of Division 14), if the legal title to such site or a portion thereof is held either by: (a) a city school district, or (b) a charter city, and a city school district has obtained or is in the process of obtaining a lease of not less than 50 years on such site or portion thereof from the charter city.

CHAPTER 242

An act to amend Sections 10550, 16084, 16320, 16323, 22603.3, 35146, 45259, 52302, 52343, 54483, 68130, 69642, 72122, 72332, 72340, 72425, 76001, 76002, 76004, 76403, 76425, 84500, and 87660 of the Education Code, to amend Sections 8203, 8330, 8367, 16044, 21189, 39002.5, 39602, 41201, 41856, 49063, 52327.5, 69532, 76140, 78452, 78601, 81165, 81602, 84520, 85233, 85235, 85237.5, 85243, 87009, and 89546 of the Education Code, as proposed by the 1977 Education Code Supplemental Act, to amend the heading of Article 6 (commencing with Section 76110), Chapter 1, Part 47 of, to amend and renumber the second Section 48607 of, to add Sections 39016, 39017, 39170.5, 41841.5, 52302.5, and 89758 to, to repeal Sections 72335 and 74370 of, and to repeal Chapter 21 (commencing with Section 17600) of Part 10 of, and to repeal and add Article 5 (commencing with Section 51260), Chapter 2 of Part 28 of, the Education Code, and to amend Section 41 of Chapter 1011 of Statutes of 1976, relating to education and recodification of the laws pertaining thereto, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 7, 1977. Filed with
Secretary of State July 7, 1977.]

The people of the State of California do enact as follows:

SECTION 1. Section 8203 of the Education Code, as proposed by the 1977 Education Code Supplemental Act, is amended to read:

8203. It is the intent of the Legislature that in providing child development programs the Superintendent of Public Instruction will give priority to children of families who qualify under applicable federal statutes or regulations as recipients of public assistance and other low-income and disadvantaged families. Federal reimbursement shall be claimed for any child receiving services under this division for whom federal funds are available.

It is further the intent of the Legislature to maximize the Department of Education's capacity to stimulate and coordinate resources, provide technical assistance, monitor program implementation, generate maximum federal reimbursement wherever possible for the federally eligible children, and to provide alternative funding from state and local agencies for those children for whom federal reimbursement may not be available.

SEC. 2. Section 8330 of the Education Code, as amended by the 1977 Education Code Supplemental Act, is amended to read:

8330. The county superintendent of schools maintaining a child development program may include in its budget the amount necessary to carry out its program pursuant to this chapter. The county board of supervisors shall levy a county tax necessary to raise such amount in only those school districts, or community college districts for which the county superintendent of schools is providing

or maintaining a child development program pursuant to Section 8321. Such tax shall be at a rate not to exceed ten cents (\$.10) per one hundred dollars (\$100) of assessed valuation and shall be in addition to any other county tax authorized by law to be collected. The revenue derived from taxes levied pursuant to this section may be used to purchase real property and fixtures, to make alterations or additions to existing buildings, and to purchase furniture, apparatus or equipment for child development facilities maintained by the taxing county superintendent of schools. As used in this section, "purchase" includes the acquisition of property under a lease-purchase agreement.

SEC. 3. Section 8367 of the Education Code, as amended by the 1977 Education Code Supplemental Act, is amended to read:

8367. Any city, county, or city and county charter provision to the contrary notwithstanding, each person employed by an agency on July 1, 1955, and each person employed by an agency on September 11, 1957, who was theretofore excluded, solely by reason of the provisions of the predecessor of Section 8366 in effect prior to July 1, 1955, or who was therefore excluded solely by reason of the provisions of the predecessor of this section prior to September 11, 1957, from membership in any retirement system in which the agency participates or to which it contributes for the purpose of providing retirement rights and benefits for employees of the agency not employed in a status requisite for membership in the State Teachers' Retirement System, shall become a member of the retirement system from which he was excluded, on July 1, 1955, or on September 11, 1957, if theretofore excluded solely by reason of the provisions of the predecessor of this section in effect prior to that date. Every such member shall be entitled to credit for service in child development programs rendered prior to July 1, 1955, or prior to September 11, 1957, if theretofore excluded, and before he became a member of the system, in the same manner as if he had not theretofore been excluded from membership in the retirement system, except that he shall not be required to make any contributions to the retirement system in respect to such service rendered prior to his membership, and all contributions necessary to provide benefits on account of such service shall be paid to the retirement system by the agency by which the member is employed. For the purpose of computing benefits for services rendered prior to July 1, 1955, as provided in this section, the average monthly salary earned by such employee in the fiscal year 1954-55 shall be used and for the purpose of computing benefits for service rendered between July 1, 1955, and September 11, 1957, for members receiving credit for service between those dates under the provisions of the predecessor of this section as amended by Chapter 1238 of the Statutes of 1957, the average monthly salary earned by such employees in the fiscal year 1956-57 shall be used.

Notwithstanding any other provisions of this section, for the purpose of computing benefits for any person retired on and after

district, if a public hearing upon such question would lead to the giving out of information concerning school pupils which would be in violation of Article 5 (commencing with Section 49073) of Chapter 6.5 of Part 27 of this code.

Before calling such executive session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the pupil is a minor, notify the pupil and his parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board of the district to call and hold such executive session. Unless the pupil, or his parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider such matters shall be conducted by the governing board in executive session. If such written request is served upon the clerk or secretary of the governing board, the meeting shall be public except that any discussion at such meeting that might be in conflict with the right to privacy of any pupil other than the pupil requesting the public meeting or on behalf of whom such meeting is requested, shall be in executive session. Whether the matter is considered at an executive session or at a public meeting, the final action of the governing board of the school district shall be taken at a public meeting and the result of such action shall be a public record of the school district.

SEC. 12. Section 39002.5 of the Education Code, as proposed by the 1977 Education Code Supplemental Act, is amended to read:

39002.5. Geological and soils engineering studies as described in Section 39002 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 39141, or if the estimated cost exceeds ten thousand dollars (\$10,000), the reconstruction or alteration of or addition to any such school building for work which alters structural elements. The Department of General Services may require similar geological and soils engineering studies for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No such studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 3 (commencing with Section 39140) of this chapter and to the Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure.

SEC. 13. Section 39016 is added to the Education Code, to read:
39016. The State Controller shall, during the next fiscal year

following that in which the executive officer of the State Allocation Board certifies to him the amount of payment, deduct the total amount of the payment of each district in equal amounts from each of the February, March, April and May installments of the apportionments made to such district from the State School Fund under Sections 46304, 46305, and 41050, Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive, whichever are in effect; provided, however, that in no event shall such deductions exceed an amount which would result in a district's receiving, in any school year, from the State School Fund, less than one hundred twenty dollars (\$120) per pupil in average daily attendance in the district during the preceding school year. On order of the State Controller, the amount so deducted shall be transferred to the State School Site Utilization Fund which is hereby created.

SEC. 14. Section 39017 is added to the Education Code, to read:
39017. Whenever the State Allocation Board certifies to the State Controller that a school district, within two years of the date the State Allocation Board determines that such site is unused, has either begun to use a site affected by Sections 39015 and 39016 or has sold such site, the State Controller shall cease to withhold any additional payments and shall return to the district from the State School Site Utilization Fund all of the payments, without interest, which had been withheld for the particular site. If the school district begins to use or sell such site more than two years after the aforesaid determination, the State Allocation Board shall so certify to the State Controller and no further payments shall be withheld as specified in Section 39016.

SEC. 14.5. Section 39170.5 is added to the Education Code, to read:

39170.5. In bidding on contracts to be made pursuant to Section 39246, bidders may include in their bids abstractions of their quotations indicating the pricing structure used to compute the annual lease or rental payments for the sole purpose of identifying that portion of each annual lease or rental payment which may represent tax exemption reimbursement to the vendor, lessor or to their assignees.

SEC. 15. Section 39602 of the Education Code, as proposed by the 1977 Education Code Supplemental Act, is amended to read:

39602. The governing board of any school district may, by resolution, establish a fund or funds for losses, including, but not limited to, school district property, any liability, and workers' compensation in the county treasury for the purpose of covering the deductible amount under deductible types of insurance policies or losses due to noninsured perils. In the fund or funds shall be placed such sums, to be provided in the budget of the school district, as will create an amount which, together with investments made from the fund or funds, will be sufficient in the judgment of the governing board to protect the school district from such losses on the deductible amount under deductible types of insurance policies or losses due to

subsequent personnel actions.

SEC. 57. Section 89758 is added to the Education Code, to read:

89758. Notwithstanding any other provision of law, obligations may be incurred for the summer quarter operation in the California State University and Colleges at campuses on year-round operations, subsequent to enactment of a Budget Act and prior to July 1, payable from the appropriations contained in such Budget Act for such purposes. Such obligations and the payment thereof shall be subject to Section 89753.

SEC. 58. Section 41 of Chapter 1011 of the Statutes of 1976 is amended to read:

Sec. 41. The first Section 41380 of the Education Code, as proposed by Assembly Bill No. 3100, is repealed.

SEC. 59. This act shall become operative on April 30, 1977, or the effective date of this act, whichever is the later date.

SEC. 60. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The reorganization of the Education Code effected by Chapter 1010 of the Statutes of 1976, inadvertently omits and erroneously omits, various provisions of prior law which should be restored to the statutes, makes various other technical and related errors, and becomes operative April 30, 1977, which is long before the effective date of ordinary statutes enacted in 1977 at the 1977-78 Regular Session of the Legislature. In order that the various technical, corrective, and clarifying changes made by this act may take effect on the effective date of the new reorganized Education Code, it is necessary that this act take effect immediately.

CHAPTER 362

An act to amend Sections 39002.5 and 81033.5 of the Education Code, relating to school districts.

[Approved by Governor July 6, 1978. Filed with
Secretary of State July 7, 1978.]

The people of the State of California do enact as follows:

SECTION 1. Section 39002.5 of the Education Code is amended to read:

39002.5. Geological and soil engineering studies as described in Section 39002 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 39141, or if the estimated cost exceeds twenty thousand dollars (\$20,000), for the reconstruction or alteration of or addition to any such school building for work which alters structural elements.

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The Department of General Services may require similar geological and soil engineering studies for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No such studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 3 (commencing with Section 39140) of this chapter and to the Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure.

SEC. 2. Section 81033.5 of the Education Code is amended to read:

81033.5. Geological and soil engineering studies as described in Section 81033 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 81131 or, if the estimated cost exceeds twenty thousand dollars (\$20,000), for the reconstruction or alteration of or addition to any such school building for work which alters structural elements. The Department of General Services may require similar geological and soil engineering studies for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No such studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 7 (commencing with Section 81130) of this chapter of this division and to the Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure.

CHAPTER 735

An act to amend Sections 39148 and 81138 of, and to add Sections 39157 and 81147 to, the Education Code, relating to public education.

[Approved by Governor September 7, 1982. Filed with
Secretary of State September 8, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 39148 of the Education Code is amended to read:

39148. (a) Except as provided in subdivision (b), all plans, specifications, and estimates shall be prepared by a licensed architect holding a valid certificate under Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code or by a structural engineer holding a valid certificate to use the title

structural engineer under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and the observation of the work of construction shall be under the responsible charge of such an architect or structural engineer.

(b) For the purposes of this section, a mechanical or electrical engineer holding a valid certificate under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code may be in responsible charge of preparation of plans, specifications, and estimates, and observation of the work of construction where the work is, as determined by the Department of General Services, of the kind normally performed by engineers certified in the particular branch of engineering for which the engineer is certified. Any architectural or structural work involved shall be the respective responsibility of a licensed architect holding a valid certificate under Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, or a structural engineer holding a valid certificate to use the title structural engineer under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code.

SEC. 2. Section 39157 is added to the Education Code, to read:

39157. (a) When a school building constructed in accordance with plans and specifications approved by the Department of General Services is completed, the notice of completion is filed, and all final verified reports and all testing and inspection documents, as required by this article or as required by the rules and regulations adopted pursuant to this article, are submitted to and on file with the Department of General Services, and all required fees paid by the school district, the department shall issue a certification that the school building complies with the requirements of this article. Nothing in this article shall prevent beneficial occupancy by a school district prior to the issuance of this certification.

(b) When a school building, constructed in accordance with approved plans and specifications, is completed but final verified reports, as are required under Section 39151, have not been submitted to the Department of General Services due to the incapacitating illness, death, or the default of any persons required to file such reports, the Department of General Services shall, upon written request of the school district, review all of the project records and make such examinations as it deems necessary to enable it to certify that the school building otherwise complies with the requirements of this article. The Department of General Services may request the school district to have made, reported, and verified any other tests and inspections which the department deems necessary to complete its examinations of the construction.

(c) The costs incurred by the Department of General Services in connection with this section shall be paid by the school district. The actual costs to perform the examinations, tests, and inspections shall be an appropriate cost of the project to be paid from the building funds of the district. Certification of the project by the Department

of General Services shall be withheld until all the costs have been paid by the school district.

(d) This section shall not relieve any individual of his or her responsibility to file verified reports, as required in Section 39151, or any other documents required by the rules and regulations adopted pursuant to this article. This section shall not abrogate the provisions of Section 39154.

SEC. 3. Section 81138 of the Education Code is amended to read:

81138. (a) Except as provided in subdivision (b), all plans, specifications, and estimates shall be prepared by a licensed architect holding a valid certificate under Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code or by a structural engineer holding a valid certificate to use the title structural engineer under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and the observation of the work of construction shall be under the responsible charge of such an architect or structural engineer.

(b) For the purposes of this section, a mechanical or electrical engineer holding a valid certificate under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code may be in responsible charge of preparation of plans, specifications, and estimates, and observation of the work of construction where the work is, as determined by the Department of General Services, of the kind normally performed by engineers certified in the particular branch of engineering for which the engineer is certified. Any architectural or structural work involved shall be the respective responsibility of a licensed architect holding a valid certificate under Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, or a structural engineer holding a valid certificate to use the title structural engineer under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code.

SEC. 4. Section 81147 is added to the Education Code, to read:

81147. (a) When a school building constructed in accordance with plans and specifications approved by the Department of General Services is completed, the notice of completion is filed, and all final verified reports and all testing and inspection documents, as required by this article or as required by the rules and regulations adopted pursuant to this article, are submitted to and on file with the Department of General Services, and all required fees paid by the community college district, the department shall issue a certification that the school building complies with the requirements of this article. Nothing in this article shall prevent beneficial occupancy by a community college district prior to the issuance of this certification.

(b) When a school building, constructed in accordance with approved plans and specifications, is completed but final verified reports, as are required under Section 81141, have not been submitted to the Department of General Services due to the incapacitating illness, death, or the default of any persons required

to file such reports, the Department of General Services shall, upon written request of the community college district, review all of the project records and make such examinations as it deems necessary to enable it to certify that the school building otherwise complies with the requirements of this article. The Department of General Services may request the community college district to have made, reported, and verified any other tests and inspections which the department deems necessary to complete its examinations of the construction.

(c) The costs incurred by the Department of General Services in connection with this section shall be paid by the community college district. The actual costs to perform the examinations, tests, and inspections shall be an appropriate cost of the project to be paid from the building funds of the district. Certification of the project by the Department of General Services shall be withheld until all the costs have been paid by the community college district.

(d) This section shall not relieve any individual of his or her responsibility to file verified reports, as required in Section 81141, or any other documents required by the rules and regulations adopted pursuant to this article. This section shall not abrogate the provisions of Section 81144.

CHAPTER 1602

An act to add Sections 39003 and 39120 to the Education Code, and to add Section 21151.8 to the Public Resources Code, relating to hazardous materials.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 39003 is added to the Education Code, to read:

39003. The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public

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Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency preparing the environmental impact report or negative declaration has consulted with the city in which the proposed schoolsite is located, or with the county in which the proposed schoolsite is located if the proposed site is in an unincorporated area, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions.

(c) The governing board of the school district makes either of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but the health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution officer, hazardous air emissions may also mean emissions into the ambient air from any substance identified in Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" has the same meaning as

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defined in Section 25114 of the Health and Safety Code.

SEC. 2. Section 39120 is added to the Education Code, to read:

39120. The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency complies with the same requirements specified in Section 39003 for schoolsite acquisition.

SEC. 3. Section 21151.8 is added to the Public Resources Code, to read:

21151.8. (a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless the environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) As used in this section:

(1) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" has the same meaning as defined in Section 25114 of the Health and Safety Code.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

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operative on the same date that the act takes effect pursuant to the
California Constitution.

CHAPTER 1183

An act to amend Sections 39003 and 39120 of the Education Code, to amend Section 65759 of, and to repeal and add Section 65850.2 of, the Government Code, to amend Sections 13143.9, 25534.1, 25535, 25538, 25541, 42301.6, and 42301.9 of, and to add Sections 25501.3, 25507.10, 25514.3, and 25534.2 to, the Health and Safety Code, and to amend Sections 21151.4 and 21151.8 of, and to repeal Section 21151.3 of, the Public Resources Code, relating to hazardous materials.

[Approved by Governor October 14, 1991. Filed with
Secretary of State October 14, 1991.]

The people of the State of California do enact as follows:

SECTION 1. Section 39003 of the Education Code is amended to read:

39003. The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency, as defined in Section 21067 of the Public Resources Code, preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

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(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

SEC. 2. Section 39120 of the Education Code is amended to read:

39120. (a) The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency comply with the same requirements specified in subdivision (a) of Section 39003 for schoolsite acquisition.

(b) For purposes of this section, the acceptance of construction bids shall constitute approval of the project.

SEC. 3. Section 65759 of the Government Code is amended to

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read:

65759. In any action brought under this section:

(a) The California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, does not apply to any action necessary to bring its general plan or relevant mandatory elements of the plan into compliance with any court order or judgment under this article.

(1) The local agency shall, however, prepare an initial study, within the time limitations specified in Section 65754, to determine the environmental effects of the proposed action necessary to comply with the court order. The initial study shall contain substantially the same information as is required for an initial study pursuant to subdivision (c) of Section 15080 of Title 14 of the California Code of Regulations.

(2) If as a result of the initial study, the local agency determines that the action may have a significant effect on the environment, the local agency shall prepare, within the time limitations specified in Section 65754, an environmental assessment, the content of which substantially conforms to the required content for a draft environmental impact report set forth in Article 9 (commencing with Section 15140) of Title 14 of the California Code of Regulations. The local agency shall include notice of the preparation of the environmental assessment in all notices provided for the amendments to the general plan proposed to comply with the court order.

(3) The environmental assessment shall be deemed to be a part of the general plan and shall only be reviewable as provided in this article.

(4) The local agency may comply with the provisions of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, in any action necessary to bring its general plan or the plan's relevant mandatory elements into compliance with any court order or judgment under this section so long as it does so within the time limitations specified in Section 65754.

(b) The court for good cause shown may grant not more than two extensions of time, not to exceed a total of 240 days, in order to meet the requirements imposed by Section 65754.

SEC. 4. Section 65850.2 of the Government Code is repealed:

SEC. 5. Section 65850.2 is added to the Government Code, to read:

65850.2. (a) Each city and each county shall include in its information list compiled pursuant to Section 65940 for development projects, or application form for projects which do not require a development permit other than a building permit, both of the following:

(1) The requirement that the owner or authorized agent shall indicate whether the owner or authorized agent will need to comply with the applicable requirements of Sections 25505, 25533, and 25534

with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

SEC. 19. Sections 3, 5, 10, 10.5, 11, 14, 15, and 17 of this act shall not apply to projects for which an application is submitted pursuant to Section 65943 of the Government Code prior to January 1, 1992.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for those other costs.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 21. If any provision of this act or its application to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

BILL NUMBER: SB 1562 CHAPTERED 07/25/96

CHAPTER 277
 FILED WITH SECRETARY OF STATE JULY 25, 1996
 APPROVED BY GOVERNOR JULY 24, 1996
 PASSED THE ASSEMBLY JULY 11, 1996
 PASSED THE SENATE APRIL 25, 1996
 AMENDED IN SENATE APRIL 18, 1996

INTRODUCED BY Senator Greene

FEBRUARY 15, 1996

An act to add Part 10.5 (commencing with Section 17211) and Part 23 (commencing with Section 38000) to, to repeal and add Part 10 (commencing with Section 15100) of, and to repeal Part 10.5 (commencing with Section 17900) and Part 23 (commencing with Section 39001) of, the Education Code, and to repeal Sections 53080, 53080.1, 53080.15, 53080.2, 53080.3, 53080.4, 53080.6, and 53081 of the Government Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1562, Greene. School facilities.

(1) Existing law includes various state general obligation bond acts, as approved by the voters, that provide for the issuance of bonds to raise revenues for, among other purposes, elementary and secondary school facility construction.

This bill would repeal and reenact the provisions governing state school bonds including the State School Building Aid Law of 1949, the State School Building Aid Law of 1952, the State School Construction Law of 1957, and the Urban School Construction Aid Law of 1968.

(2) Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976, provides bond funding for the construction, reconstruction, modernization, and replacement of school facilities and the performance of deferred maintenance activities on school facilities.

This bill would repeal and reenact this law and would make technical, nonsubstantive changes in those provisions.

(3) Existing law also provides for the Emergency School Classroom Law of 1979, school district revenue bonds, the Archie-Hudson and Cunneen School Technology Revenue Bond Act, and the California School Finance Authority.

This bill would repeal and reenact those bodies of law and would make technical, nonsubstantive changes in those provisions.

(4) Existing law sets forth specific requirements for the location and construction of school buildings including, among other provisions, the Field Act.

This bill would repeal and reenact those provisions and would make technical, nonsubstantive changes in those provisions.

(5) Under existing law, the governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the school district for the purpose of funding the construction or reconstruction of school facilities.

This bill would repeal and add those provisions and would make technical, nonsubstantive changes in those provisions.

of any of the matters permitted by this section or any other provision of this chapter. Notwithstanding any other provision of law, the agent shall have the powers granted by the resolution for purposes of this chapter. The resolution shall be deemed to bind the school district or community college district, as the case may be, to any contract, agreement, instrument, or other document executed by the agent on behalf of the school district or community college district, and all duties, obligations, or responsibilities contained therein on the part of the school district or community college district, to the same extent as if duly authorized, executed, and delivered by the school district or community college district.

(d) This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this section, and the issuance of bonds to, borrowing of money from, or sale or purchase or lease of educational facilities from or to, the authority. Any agreement entered into in connection with the issuance of bonds, the borrowing of money or the sale, purchase, or lease of educational facilities, including, without limitation, any agreement for liquidity or credit enhancement under this section, need not comply with the requirements of any other law applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge, encumbrance, or credit, as the case may be, by a school district or community college district, or by a county or city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges.

17199.2. An action may be commenced under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any issuance or proposed issuance of revenue bonds, the loan of the proceeds thereof, the sale, purchase, or lease of facilities under this chapter, or the legality and validity of any proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of the bonds, for the use of the proceeds thereof, or for the payment of the principal and interest thereon.

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time under this chapter shall not exceed four hundred million dollars (\$400,000,000).

(b) For purposes of subdivision (a), bonds which meet any of the following conditions shall not be deemed to be outstanding:

- (1) Bonds which have been refunded pursuant to Section 17188.
- (2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.
- (3) Bonds which have been issued to provide working capital.

SEC. 3. Part 10.5 (commencing with Section 17211) is added to the Education Code, to read:

PART 10.5. SCHOOL FACILITIES
 CHAPTER 1. SCHOOLSITES
 Article 1. General Provisions

17211. Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the

property pursuant to those site selection standards and to report its findings to the governing board at the public hearing.

17212. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 17283 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective schoolsite is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is an area which is identified as a special studies zone on any map, or maps, compiled by the State Geologist pursuant to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.

17212.5. Geological and soil engineering studies as described in Section 17212 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 17283, or if the estimated cost exceeds twenty thousand dollars (\$20,000), for the reconstruction or alteration of or addition to any school building for work which alters structural elements. The Department of General Services may require similar geological and soil engineering studies for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 3 (commencing with Section 17280) of this chapter and to the State Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure.

17213. The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built

upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency, as defined in Section 21067 of the Public Resources Code, preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located.

As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

17215. (a) In order to promote the safety of pupils, comprehensive community planning, and greater educational usefulness of schoolsites before acquiring title to property for a new schoolsite, the governing board of each school district, including any district governed by a city board of education, shall give the Department of Transportation written notice of the proposed acquisition and shall submit any information required by the department if the proposed site is within two miles, measured by air line, of that point on an airport runway or a potential runway included in an airport master plan that is nearest to the site.

(b) If the Department of Transportation is no longer in operation, the governing board of the school district shall, in lieu of notifying the Department of Transportation, notify the United States Department of Transportation or any other appropriate agency, in writing, of the proposed acquisition for the purpose of obtaining from the department or other agency any information or assistance that it may desire to give.

(c) The Department of Transportation shall investigate the proposed site and, within 30 working days after receipt of the notice, shall submit to the governing board a written report and its recommendations concerning acquisition of the site. As part of the investigation, the Department of Transportation shall give notice thereof to the owner and operator of the airport who shall be granted the opportunity to comment upon the proposed schoolsite.

(d) The governing board shall not acquire title to the property until the report of the Department of Transportation has been received. If the report does not favor the acquisition of the property for a schoolsite or an addition to a present schoolsite, the governing board shall not acquire title to the property until 30 days after the department's report is received and until the department's report has been read at a public hearing duly called after 10 days' notice published once in a newspaper of general circulation within the school district or, if there is no newspaper of general circulation within the school district, in a newspaper of general circulation within the county in which the property is located.

(e) Except as provided in subdivision (e), if the Department of Transportation in its report submitted to a governing board of a school district does not favor acquisition of a proposed site that is within two miles of the centerline of an active runway, no state funds or local funds shall be apportioned or expended for the acquisition of that site, construction of any school building on that site, or for the expansion of any existing site to include that site.

(f) This section does not apply to sites acquired prior to January 1, 1966, nor to any additions or extensions to those sites.

(g) If the recommendations of the Department of Transportation are unfavorable, the recommendations shall not be overruled without the express approval of the State Allocation Board.

17216. No action undertaken by the State Department of Education or by any other state agency or by any political subdivision pursuant to this chapter, or in compliance with this chapter, shall be construed to affect any rights arising under the provisions of

Section 19 of Article 1 of the California Constitution.

17217. The governing board of a school district may acquire a site for a school building contiguous to the boundaries of the district and upon the acquisition of the site it shall become a part of the district. The site shall not be acquired until the county committee on school district organization of the county or of each of the counties concerned has received the proposal for acquisition of the site and reported its recommendations thereon to the governing boards of the districts concerned and to each county superintendent of schools concerned. The report of the county committee shall be made within 60 days from the time the proposal for acquisition of the site was submitted to it. The power of eminent domain may be used for the purposes of this section.

A schoolsite is contiguous for the purpose of this section although separated from the boundaries of the district by a road, street, stream, or other natural or artificial barrier or right-of-way.

17218. The governing board of a school district which has been included in a school district unification proposal approved by the electors of the territory involved pursuant to Chapter 2 (commencing with Section 4206) of Part 3, may, prior to the time the new unified school district becomes effective for all purposes, acquire a site for a school building at any place within the new unified school district, and upon the acquisition of the site it shall become a part of the district pending the date when the new unified school district becomes effective for all purposes. The site shall not be acquired until the county committee on school district organization of the county or of each of the counties concerned has received the proposal for acquisition of the site and reported its recommendations thereon to the governing boards of the districts concerned and to each county superintendent of schools concerned. The report of the county committee shall be made within 60 days from the time the proposal for acquisition of the site was submitted to it.

17219. (a) Whenever a school district acquires or has acquired a site for school purposes, as determined by the State Allocation Board, and does not use the site within (1) five years of the date of acquisition for the kindergarten, if any, and any of grades 1 to 8, inclusive, maintained by an elementary school district or a unified school district, or, (2) seven years of the date of acquisition for any of grades 7 to 12, inclusive, maintained by a high school district or a unified school district, or if a school district has a site at any grade level that has previously been used but has not been used for school purposes within the preceding five years, the school district shall be subject to nonuse payments, unless the State Allocation Board, from time to time, makes a determination that the school district will utilize the property for the purpose for which it was intended within a reasonable period of time, in a specific amount for each additional year in which the site is retained and not used by the district beyond the foregoing specified periods, except the first additional year shall be deemed to end not earlier than April 30, 1973.

(b) Payment shall not be required under this section as to any site having a value of twenty thousand dollars (\$20,000) or less. Commencing on January 1, 1988, and annually thereafter, the State Allocation Board shall increase this exemption figure by the amount of the current fiscal year inflation adjustment specified in Section 42238.1, if any.

(c) The payments required shall be computed by the Executive Officer of the State Allocation Board and certified to the Controller, and payments shall be equal to one one-hundredth (1/100)

the retrofitting of the school buildings to ensure that the project satisfies the recommendations of the preaudit.

17653. School districts taking action under this chapter shall contract with qualified businesses capable of retrofitting school buildings. To the extent that lists of qualified businesses are made available to school districts by investor-owned or municipal utility companies or federal or state regulated financial institutions, school districts may utilize the services of these businesses.

SEC. 4. Part 10.5 (commencing with Section 17900) of the Education Code is repealed.

SEC. 5. Part 23 (commencing with Section 38000) is added to the Education Code, to read:

PART 23. SUPPLEMENTAL SERVICES

CHAPTER 1. SECURITY DEPARTMENTS

38000. (a) The governing board of any school district may establish a security department under the supervision of a chief of security or a police department under the supervision of a chief of police, as designated by, and under the direction of, the superintendent of the school district. In accordance with Chapter 5 (commencing with Section 45100) of Part 25, the governing board may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

(b) The governing board of a school district that establishes a security department or a police department shall set minimum qualifications of employment for the chief of security or chief of police, respectively, including, but not limited to, prior employment as a peace officer or completion of any peace officer training course approved by the Commission on Peace Officer Standards and Training. A chief of security or chief of police shall comply with the prior employment or training requirement set forth in this subdivision as of January 1, 1993, or a date one year subsequent to the initial employment of the chief of security or chief of police by the school district, whichever occurs later. This subdivision shall not be construed to require the employment by a school district of any additional personnel.

38001. Persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are peace officers, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code.

38002. Moneys transferred into the general fund of any school district pursuant to Section 1463.12 of the Penal Code may be made available for the following purposes:

(a) The training of persons employed and compensated as members of a police department of a school district, pursuant to the requirements or approval of the Commission on Peace Officer Standards and Training.

(b) The training of persons employed and compensated as members of a police department of a school district in other public safety skills, including, but not limited to, all of the following:

- (1) First aid.
- (2) Rescue.

instructor certified pursuant to Section 38156 if either of those departments finds that the instructor's certificate would have been suspended, revoked, or canceled for any of the reasons designated in subdivision (e), (f), or (g).

38166. (a) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor with no instructional limitations shall conduct at least 20 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel and 10 hours of classroom training, which need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to either classroom or behind-the-wheel training only shall conduct at least 10 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel or classroom training depending on the limitation. The training need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to in-service training only shall conduct at least 10 hours of in-service training each 12 months. All school pupil activity bus (SPAB), transit bus, schoolbus, and farm labor vehicle driver instructor training conducted by department staff may be accepted in lieu of the requirements of this subdivision.

(b) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor may be limited to classroom instruction, behind-the-wheel training or in-service training only, and prohibited from recording, documenting, or signing for any training required by this article, as determined by the department.

(c) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor shall be limited to behind-the-wheel instruction in vehicles that the instructor is qualified to drive.

(d) All school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor training required by subdivision (a) shall be properly documented on a State Department of Education Training Certificate T-01, and signed by the state-certified instructor at the end of each 12-month training period. The signature certifies that the required instruction was conducted during the 12-month training period. Upon renewal of the instructor driver's license, endorsement, or certificate, the completed instructor training record, recorded on the State Department of Education Training Certificate, shall be submitted to the department in Sacramento.

38167. The department may assess fees to any instructor applicant who will be training drivers of any vehicle as defined in Section 642 of the Vehicle Code. The fee shall not be more than necessary to offset the department's reasonable costs.

38168. Employers shall take all action necessary to make available to every transit busdriver required to be trained pursuant to Section 38158 or 38162 the opportunity to be trained without the loss of wages or benefits.

SEC. 6. Part 23 (commencing with Section 39001) of the Education Code is repealed.

SEC. 7. Section 53080 of the Government Code is repealed.

SEC. 8. Section 53080.1 of the Government Code is repealed.

SEC. 9. Section 53080.15 of the Government Code is repealed.

SEC. 10. Section 53080.2 of the Government Code is repealed.

SEC. 11. Section 53080.3 of the Government Code is repealed.

SEC. 12. Section 53080.4 of the Government Code is repealed.

SEC. 13. Section 53080.6 of the Government Code is repealed.

SEC. 14. Section 53081 of the Government Code is repealed.

SEC. 15. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

SEC. 16. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

SEC. 17. Any section of any act enacted by the Legislature during the 1996 calendar year prior to the enactment of this act, that amends, amends and renumbers, adds, repeals and adds, or repeals a section, article, chapter, or part, that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act until January 1, 1998, at which time Sections 1 to 16 of this act shall become operative.

SEC. 18. The provisions of this act are severable. If any provisions of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 992
FILED WITH SECRETARY OF STATE OCTOBER 10, 1999
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AMENDED IN ASSEMBLY MARCH 15, 1999

INTRODUCED BY Assembly Member Wildman

FEBRUARY 11, 1999

An act to amend Sections 17070.50 and 17268 of, and to add Sections 17072.13, 17213.2, and 17213.3 to, the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 387, Wildman. School facilities: site contamination.

Under Leroy F. Greene School Facilities Act of 1998, an eligible school district may receive funding for new construction of school facilities.

This bill would provide that in addition to this funding for new construction and subject to certain limitations, that funding may be provided for 50% of the cost of the evaluation of hazardous materials, as defined, at a site to be acquired by the school district and for 50% of the response cost of removal of hazardous waste or solid waste, the removal of hazardous substance, or other remedial action in connection with hazardous substances at that site and up to 100% of these costs in the case of financial hardship assistance, as defined. This bill would permit a school district with a site that meets an environmental hardship criteria, as described, to apply to the State Allocation Board for site acquisition funding for that site prior to having construction plans for that site approved by the Division of the State Architect and the State Department of Education. The bill would require the State Allocation Board to develop regulations that allow school districts with financial hardship site acquisition funding prior to ownership of the site or evidence that the site is in escrow.

Existing law prohibits the governing board of a school district from approving a project involving the acquisition of a schoolsite or the construction of a school by the school district unless specified actions are taken with regard to potential contamination of the site, including a determination by the lead agency, as defined, that the property purchased or to be built upon is not the site of a current or former hazardous waste disposal site or solid waste disposal site, or a hazardous substance release site.

The bill would require a school district that owns a proposed schoolsite as a condition of receiving state funds to enter into an

agreement with the Department of Toxic Substances Control to oversee response action if a preliminary endangerment assessment discloses the presence of a hazardous material release, or threatened release, or the presence of naturally occurring hazardous materials, at a proposed schoolsite at concentrations that could pose a significant risk to children or adults, and the school district owns the proposed schoolsite. The bill would also require the school district to take response action pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act as may be required by the Department of Toxic Substances Control.

This bill would make certain prohibitions inapplicable to schoolsites acquired prior to January 1, 2000.

The bill would require the State Department of Education to monitor the performance of the Department of Toxic Substances Control in meeting timeframes under its provisions and would require a report of findings to the Department of General Services and the Department of Finance. The bill would also require the State Department of Education to report to the Department of General Services and the Department of Finance every 6 months for a period of 2 years, the amount of fees or other charges of any state agency review paid by school districts regarding schoolsites, and any concerns about those fees or charges.

This bill would provide that it would not become operative unless and until SB 162 is chaptered and becomes operative.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17070.50 of the Education Code is amended to read:

17070.50. The board shall not apportion funds to any school district, unless the applicant school district has certified to the board that the services of any architect, structural engineer, or other design professional for any work under the project have been obtained pursuant to a competitive process that is consistent with the requirements of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and has obtained the written approval of the State Department of Education that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251.

SEC. 2. Section 17072.13 is added to the Education Code, to read:

17072.13. In addition to the amounts provided pursuant to Sections 17072.10 and 17072.12, the board may provide funding as follows:

(a) For 50 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and for 50 percent of the other response costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other remedial action in connection with hazardous substances at that site.

Except as provided in subdivision (b), the funding provided pursuant to this section may not exceed 50 percent of a number calculated by subtracting the school district's cost of the site from what the appraised value of the site would be after the response action is completed.

(b) The board may provide funding for up to 100 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district eligible for financial hardship

assistance pursuant to Article 8 (commencing with Section 17075.10) and for up to 100 percent of the other response costs for the site. The funding provided pursuant to this subdivision may not exceed 100 percent of a number calculated by subtracting the school district's cost of the site from what the appraised value of the site would be after the response action is completed.

(c) A school district with a site that meets the environmental hardship criteria set forth in paragraph (1) may apply to the State Allocation Board for site acquisition funding for that site prior to having construction plans for that site approved by the Division of the State Architect and State Department of Education.

(1) A project is eligible for environmental hardship site acquisition funding if both the following apply:

(A) The remedial action plan for the site approved by the Department of Toxic Substances Control, pursuant to Section 17213, is estimated by the Department of Toxic Substances Control to take six months or more to complete.

(B) The State Department of Education determines that the site is the best available alternative site.

(2) The initial site-specific reservation pursuant to this subdivision shall be for a period of one year. Extension may be approved in one-year intervals upon demonstration to the State Allocation Board of progress toward acquisition. In the event there is not demonstrable progress, the State Allocation Board shall have the option of rescinding the reservation.

(3) Environmental hardship site acquisition funds approved by the State Allocation Board can be used only for the site identified in the remedial action plan approved by the Department of Toxic Substances Control.

(4) The date that the State Allocation Board approves the environmental hardship site acquisition funding will become the State Allocation Board approval date for the project's construction funding for that site.

(5) A school district may apply to the State Allocation Board for construction funding for the environmental hardship site when the project has received final Division of the State Architect plan approval and final State Department of Education site and plan approval.

(d) The cost incurred by the school districts when complying with any requirement identified in this section are allowable costs for purposes of an applicant under this chapter and may be reimbursed in accordance with Section 17072.12.

(e) The State Allocation Board shall develop regulations that allow school districts with financial hardship site acquisition funding prior to ownership of the site or evidence that the site is an escrow.

SEC. 3. Section 17213.2 is added to the Education Code, to read:

17213.2. As a condition of receiving state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all of the following apply:

(a) If a preliminary endangerment assessment prepared pursuant to Section 17213.1 discloses the presence of a hazardous materials release, or threatened release, or the presence of naturally occurring hazardous materials, at a proposed schoolsite at concentrations that could pose a significant risk to children or adults, and the school district owns the proposed schoolsite, the school district shall enter into an agreement with the Department of Toxic Substances Control to oversee response action at the site and shall take response action pursuant to the requirements of the state and as may be required by the Department of Toxic Substances Control.

(b) Notwithstanding subdivision (a), a school district need not take action in response to a release of hazardous material to groundwater underlying the schoolsite if the release occurred at a site other than the schoolsite and if the following conditions apply:

(1) The school district did not cause or contribute to the release of a hazardous material to the groundwater.

(2) Upon the request of the Department of Toxic Substances Control or its authorized representative the school district provides the Department of Toxic Substances Control or its authorized representative with access to the schoolsite.

(3) The school district does not interfere with the response action activities.

(c) If at anytime during the response action the school district determines that there has been a significant increase in the estimated cost of the response action, the school district shall notify the State Department of Education.

(d) A school district that is required by the Department of Toxic Substances Control to take response action at a proposed schoolsite is subject to both of the following prohibitions:

(1) The school district may not begin construction of a school building until the Department of Toxic Substances Control determines all of the following:

(A) That the construction will not interfere with the response action.

(B) That site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the school building.

(C) That the nature and extent of any release or threatened release of hazardous materials or the presence of any naturally occurring hazardous materials have been fully characterized.

(2) The school district may not occupy a school building following construction until it obtains from the Department of Toxic Substances Control a certification that all response actions, except for operation and maintenance activities, necessary to ensure that hazardous materials at the schoolsite no longer pose a significant risk to children and adults at the schoolsite have been completed and that the response action standards and objectives established in the final removal action work plan or remedial action plan have been met and are being maintained. After a school building is constructed and occupied, a school district may continue with ongoing operation and maintenance activities if the Department of Toxic Substances Control certifies before occupancy that neither site conditions nor the ongoing operation and maintenance activities pose a significant risk to children or adults at the schoolsite.

(e) If, at any time during construction at a schoolsite, a previously unidentified release or threatened release of a hazardous material or the presence of a naturally occurring hazardous material is discovered, the school district shall cease all construction activities at the sites notify the Department of Toxic Substances Control, and take actions required by subdivision (a) that are necessary to address the release or threatened release or the presence of any naturally occurring hazardous materials. Construction may be resumed if the Department of Toxic Substances Control determines that the construction will not interfere with any response action necessary to address the hazardous material release or threatened release or the presence of a naturally occurring hazardous material, determines that the site conditions will not pose a significant threat to the health and safety of workers involved in

the construction of the schoolsite, and certifies that the nature and extent of the release, threatened release, or presence of a naturally occurring hazardous material have been fully characterized.

(f) Construction may proceed at any portions of the site that the Department of Toxic Substances Control determines are not affected by the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials, provided that all of the following apply:

(1) Those portions of the site have been fully characterized.

(2) The Department of Toxic Substances Control determines that the construction will not interfere with any response action necessary to address the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials.

(3) The site conditions will not pose a significant threat to the health and safety of workers involved with construction.

(g) The Department of Toxic Substances Control shall notify the State Department of Education, the Division of the State Architect, and the Office of Public School Construction when the Department of Toxic Substances Control certifies that all necessary response actions have been completed at a schoolsite.

(h) The school district shall reimburse the Department of Toxic Substances Control for all response costs incurred by the department.

(i) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

SEC. 4. Section 17213.3 is added to the Education Code, to read:

17213.3. (a) The State Department of Education shall monitor the performance of the Department of Toxic Substances Control in meeting the timeframes applicable to the Department of Toxic Substances Control specified in subdivision (a) of Section 17213.1 and shall report its findings to the Department of General Services and the Department of Finance on a quarterly basis.

(b) The State Department of Education shall also report to the Department of General Services and the Department of Finance every six months for a period of two years, the amount of fees or other charges of any state agency review paid by school districts pursuant to this chapter, and any concerns about those fees or charges.

SEC. 5. Section 17268 of the Education Code is amended to read:

17268. (a) The governing board of a school district that elects not to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) may not approve a project for the construction of a new school building, as defined in Section 17283, unless the project and its lead agency comply with the same requirements specified in subdivision (a) of Section 17213 for schoolsite acquisition.

(b) As a condition to receiving state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), the governing board of a school district may not approve a project for the construction of a new school building or schoolsite on leased or acquired land unless the project and the school district comply with the requirements specified in Sections 17213.1 and 17213.2.

(c) The project shall not be subject to subdivision (b) for a minor addition to a school if the project is eligible for a categorical or statutory exemption under guidelines issued pursuant to Section 21083 of the Public Resources Code, as set forth in the California Environmental Quality Act.

(d) "School building," as used in this section, means any building designed and constructed to be used for elementary or secondary

school purposes by a school district.

(e) The requirements of Sections 17213, 17213.1 and 17213.2 shall not apply to a schoolsite if the acquisition occurred prior to January 1, 2000, to the extent a school district is subject to the requirements set forth in those sections pursuant to a judicial order or an order issued by, or an agreement with the Department of Toxic Substances Control regarding that site, and the school district is in full compliance with that order or agreement.

(f) For purposes of this section, the acceptance of construction bids shall constitute approval of the project.

SEC. 6. If a task force is created in Assembly Bill 1207 of the 1999-2000 Regular Session by the addition of Section 105515 to the Health and Safety Code, that task force shall evaluate the effectiveness of this act in ensuring that the health and learning abilities of children attending California's schools are adequately protected. Among its recommendations to the Governor, the task force shall include any changes and improvements to the provisions of this act that would be necessary to protect the health and learning abilities of children attending California's schools.

SEC. 7. Sections 1 to 6, inclusive, of this act shall not become operative unless and until Senate Bill 162 of the 1999-2000 Regular Session is chaptered and becomes operative.

BILL NUMBER: SB 162 CHAPTERED 10/10/99

CHAPTER 1002
 FILED WITH SECRETARY OF STATE OCTOBER 10, 1999
 APPROVED BY GOVERNOR OCTOBER 10, 1999
 PASSED THE SENATE SEPTEMBER 10, 1999
 PASSED THE ASSEMBLY SEPTEMBER 9, 1999
 CONFERENCE REPORT NO. 1
 PROPOSED IN CONFERENCE SEPTEMBER 3, 1999
 AMENDED IN ASSEMBLY JULY 12, 1999
 AMENDED IN SENATE JUNE 2, 1999
 AMENDED IN SENATE MAY 19, 1999
 AMENDED IN SENATE MAY 6, 1999
 AMENDED IN SENATE APRIL 14, 1999
 AMENDED IN SENATE MARCH 22, 1999
 AMENDED IN SENATE MARCH 1, 1999

INTRODUCED BY Senator Escutia

JANUARY 11, 1999

An act to add Sections 17210, 17210.1, and 17213.1 to, the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 162, Escutia. School facilities: contamination.

Under the Leroy F. Greene School Facilities Act of 1998, an eligible school district may receive funding for new construction of school facilities.

Existing law prohibits the governing board of a school district from approving a project involving the acquisition of a schoolsite or the construction of a school by the school district unless specified actions are taken with regard to potential contamination of the site, including a determination by the lead agency, as defined, that the property purchased or to be built upon is not the site of a current or former hazardous waste disposal site or solid waste disposal site, or a hazardous substance release site.

This bill would provide that, as a condition of receiving funding under the Leroy F. Greene School Facilities Act of 1998, the governing board of a school district is prohibited from approving the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, from proceeding with the construction of a project, unless the governing board causes certain environmental assessments to be conducted that are reviewed and approved by the Department of Toxic Substances Control.

This bill would require the school district to reimburse the Department of Toxic Substances Control for all of its response costs and would provide that these costs may be reimbursed under the Leroy F. Greene School Facilities Act of 1998.

This bill would provide that a school district is not liable in any action filed against the district for making a preliminary endangerment assessment available for public review.

This bill would provide that the Carpenter-Presley-Tanner Hazardous Substance Account Act applies to schoolsites of school districts electing to receive state funds where naturally occurring hazardous materials are present, regardless of whether there has been a release of a hazardous material.

This bill would provide that it would not become operative unless and until AB 387 is chaptered and becomes operative.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17210 is added to Chapter 1 (commencing with Section 17210) of Part 10.5 of the Education Code, to read:

17210. As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, a contractor who conducts Phase I environmental assessments shall have a least two years experience in the preparation of those assessments and a contractor who conducts a preliminary endangerment assessment shall have at least three years experience in conducting those assessments.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located.

As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action" and "site" have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A Phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators,

and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the Phase I environmental assessment.

(h) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site, may pose to children's health, public health, or the environment, and shall be conducted in a manner that complies with the guidelines published by the Department of Toxic Substances Control entitled "Preliminary Endangerment Assessment: Guidance Manual," including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) "Proposed schoolsite" means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) "Regulated substance" means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) "Release" has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(l) "Remedial action plan" means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) "State act" means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

SEC. 2. Section 17210.1 is added to the Education Code, to read:

17210.1. (a) Notwithstanding any other provision of law:

(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), the state act applies to schoolsites where naturally occurring hazardous materials are present, regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) at sites addressed by this article shall include a focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, the Department of Toxic Substances Control shall comply with Sections 25358.7 and 25358.7.1

of the Health and Safety Code.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) The Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed.

SEC. 3. Section 17213.1 is added to the Education Code, to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10) the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite the governing board shall contract with an environmental assessor to conduct a Phase I environmental assessment of the proposed schoolsite.

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment together with all documentation related to the proposed acquisition or use of the proposed schoolsite shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days of receipt of the Phase I environmental assessment, the State Department of Education shall transmit the Phase I environmental assessment to the Department of Toxic Substances Control for its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of the assessment. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify the State Department of Education and the governing board of the school district of the approval.

(3) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to prepare a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The preliminary

endangerment assessment shall contain one of the following conclusions:

(A) A further investigation of the site is not required.

(B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(4) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval. The school district shall also make the preliminary endangerment assessment available to the public for review for not less than 30 calendar days.

(5) The Department of Toxic Substances Control shall complete its review within 60 calendar days of receipt of the preliminary endangerment assessment and shall either approve or disapprove the preliminary endangerment assessment.

(6) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the preliminary endangerment assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(7) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(8) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(9) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a preliminary endangerment assessment, or information concerning a preliminary endangerment assessment, required by this section, may not be held liable in any action filed against the school district for making the preliminary endangerment assessment available for public review.

SEC. 4. Sections 1 to 3, inclusive, of this act shall not become operative unless and until Assembly Bill 387 of the 1999-2000 Regular Session is chaptered and becomes operative.

BILL NUMBER: AB 2644 CHAPTERED 09/14/00

CHAPTER 443

FILED WITH SECRETARY OF STATE SEPTEMBER 14, 2000
 APPROVED BY GOVERNOR SEPTEMBER 13, 2000
 PASSED THE ASSEMBLY AUGUST 29, 2000
 PASSED THE SENATE AUGUST 22, 2000
 AMENDED IN SENATE AUGUST 18, 2000
 AMENDED IN SENATE AUGUST 8, 2000
 AMENDED IN SENATE JUNE 28, 2000
 AMENDED IN SENATE JUNE 26, 2000
 AMENDED IN ASSEMBLY MAY 3, 2000
 AMENDED IN ASSEMBLY APRIL 11, 2000

INTRODUCED BY Assembly Member Calderon

FEBRUARY 25, 2000

An act to amend Sections 17210, 17210.1, 17213.1, and 17213.2 of, and to add Section 17072.18 to, the Education Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2644, Calderon. School facilities: contamination.

(1) Existing law defines "environmental assessor" for purposes of assessing proposed schoolsites for environmental hazards as a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment or a licensed hazardous substance contractor.

This bill would include in that definition a registered professional engineer, a registered geologist, and a registered certified engineer geologist.

(2) Existing law defines a "Phase I environmental assessment."

This bill would provide that a Phase I environmental assessment conducted pursuant to the requirements adopted by the American Society for Testing and Materials for due diligence for commercial real estate transactions satisfies the requirements for conducting a Phase I environmental assessment unless and until the Department of Toxic Substances Control adopts final regulations that establish guidelines for a Phase I environmental assessment for purposes of schoolsites that impose different requirements from those imposed by the American Society for Testing and Materials.

(3) Existing law requires the Department of Toxic Substances Control to comply with provisions of law regarding public participation in response actions undertaken for certain listed sites and community advisory groups established to review and comment on the response actions conducted in affected communities.

The bill would require a school district to provide a notice to residents in the immediate area, approved in form by the Department of Toxic Substances Control, prior to the commencement of work on a preliminary endangerment assessment, thereby imposing a state-mandated local program.

(4) Existing law requires the Department of Toxic Substances Control to comply with certain provisions of law when recovering its costs incurred in carrying out its duties with regard to schoolsites.

which is otherwise eligible to receive funds under this chapter.

SEC. 2. Section 17210 of the Education Code is amended to read:

17210. As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code, a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, any person who conducts Phase I environmental assessments shall have at least two years experience in the preparation of those assessments and any person who conducts a preliminary endangerment assessment shall have at least three years experience in conducting those assessments.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located.

As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action" and "site" have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A Phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the Phase I environmental assessment. A Phase I environmental assessment conducted pursuant to the requirements adopted by the American Society for Testing and Materials for due diligence for commercial

real estate transactions and that includes a review of all reasonably available records and data bases regarding current and prior gas or oil wells and naturally occurring hazardous materials located on the site or located where they could potentially effect the site, satisfies the requirements of this article for conducting a Phase I environmental assessment unless and until the Department of Toxic Substances Control adopts final regulations that establish guidelines for a Phase I environmental assessment for purposes of schoolsites that impose different requirements from those imposed by the American Society for Testing and Materials.

(h) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site may pose to children's health, public health, or the environment, and shall be conducted in a manner that complies with the guidelines published by the Department of Toxic Substances Control entitled "Preliminary Endangerment Assessment: Guidance Manual," including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) "Proposed schoolsite" means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) "Regulated substance" means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) "Release" has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(l) "Remedial action plan" means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) "State act" means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

SEC. 3. Section 17210.1 of the Education Code is amended to read:

17210.1. (a) Notwithstanding any other provision of law:

(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), the state act applies to schoolsites where naturally occurring hazardous materials are present, regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) at sites addressed by this article shall include a

focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, a school district shall provide a notice to residents in the immediate area, approved in form by the Department of Toxic Substances Control, prior to the commencement of work on a preliminary endangerment assessment.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) Unless the Legislature otherwise funds its costs for overseeing actions taken pursuant to this article, the Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed.

SEC. 4. Section 17213.1 of the Education Code is amended to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10) the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite the governing board shall contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment together with all documentation related to the proposed acquisition or use of the proposed schoolsite shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days of receipt of the Phase I environmental assessment and of the fee to be forwarded to the Department of Toxic Substances Control for its review of the Phase I environmental assessment, the State Department of Education shall transmit the Phase I environmental assessment to the Department of Toxic Substances Control for its review and approval, which shall be

conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of the assessment and of sufficient information to allow the Department of Toxic Substances Control to confirm that the environmental assessor signing the assessment meets the qualifications set forth in subdivision (b) of Section 17210. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(A) A further investigation of the site is not required.

(B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit a preliminary draft of the

preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a "preliminary environmental assessment" and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

(6) The Department of Toxic Substances Control shall complete its review within 60 calendar days of receipt of the preliminary endangerment assessment and shall either return the preliminary draft to the school district with comments and requested modifications or requested further assessment or approve the preliminary endangerment assessment as a final draft preliminary endangerment assessment. If the final draft preliminary endangerment assessment is approved and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the final draft preliminary endangerment assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the final draft preliminary endangerment assessment is approved, in which case the school district shall, within 60 days of the approval of the final draft of the preliminary endangerment assessment, separately publish a notice of the availability of the final draft for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the final draft preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All comments pertaining to the final draft preliminary endangerment assessment and the draft environmental impact report or negative declaration shall be forwarded to the Department of Toxic Substances Control immediately. If the district has complied with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) prior to initiating the preliminary endangerment assessment, the district shall reconsider the adequacy of its approved environmental impact report or negative declaration in light of the approved final draft of the preliminary endangerment assessment and determine whether a further environmental document is necessary. The district shall hold a public hearing on the final draft preliminary endangerment assessment and its determination on the adequacy of the existing environmental documents at the same time and in the same manner as it would for a draft environmental impact report or draft negative declaration as previously set forth in this section. The Department of Toxic Substances Control shall approve or disapprove the final preliminary endangerment assessment within 30 days of the district's approval action on the environmental document prepared under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall issue notice of its determination accompanied by a statement of the basis of the determination. The school district shall consider whether any changes between the final draft and final preliminary endangerment

assessment require any change in its determination pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). The school district shall not file its notice of determination under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) until after the Department of Toxic Substances Control has approved the final preliminary endangerment assessment. The public participation process set forth in this section shall be used by the school district and the Department of Toxic Substances Control instead of procedures set forth in Sections 25358.7 and 25358.7.1 of the Health and Safety Code with respect to preliminary endangerment assessments. If further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project, the district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions.

(7) If the Department of Toxic Substances Control disapproves the final draft preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the preliminary endangerment assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(8) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(10) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with

this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

SEC. 5. Section 17213.2 of the Education Code is amended to read:

17213.2. As a condition of receiving state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all of the following apply:

(a) If a preliminary endangerment assessment prepared pursuant to Section 17213.1 discloses the presence of a hazardous materials release, or threatened release, or the presence of naturally occurring hazardous materials, at a proposed schoolsite at concentrations that could pose a significant risk to children or adults, and the school district owns the proposed schoolsite, the school district shall enter into an agreement with the Department of Toxic Substances Control to oversee response action at the site and shall take response action pursuant to the requirements of the state act as may be required by the Department of Toxic Substances Control.

(b) Notwithstanding subdivision (a), a school district need not take action in response to a release of hazardous material to groundwater underlying the schoolsite if the release occurred at a site other than the schoolsite and if the following conditions apply:

(1) The school district did not cause or contribute to the release of a hazardous material to the groundwater.

(2) Upon the request of the Department of Toxic Substances Control or its authorized representative the school district provides the Department of Toxic Substances Control or its authorized representative with access to the schoolsite.

(3) The school district does not interfere with the response action activities.

(c) If at anytime during the response action the school district determines that there has been a significant increase in the estimated cost of the response action, the school district shall notify the State Department of Education.

(d) A school district that is required by the Department of Toxic Substances Control to take response action at a proposed schoolsite is subject to both of the following prohibitions:

(1) The school district may not begin construction of a school building until the Department of Toxic Substances Control determines all of the following:

(A) That the construction will not interfere with the response action.

(B) That site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the school building.

(C) That the nature and extent of any release or threatened release of hazardous materials or the presence of any naturally occurring hazardous materials have been fully characterized.

(2) The school district may not occupy a school building following construction until it obtains from the Department of Toxic Substances Control a certification that all response actions, except for operation and maintenance activities, necessary to ensure that

hazardous materials at the schoolsite no longer pose a significant risk to children and adults at the schoolsite have been completed and that the response action standards and objectives established in the final removal action work plan or remedial action plan have been met and are being maintained. After a school building

is constructed and occupied, a school district may continue with ongoing operation and maintenance activities if the Department of Toxic Substances Control certifies before occupancy that neither site conditions nor the ongoing operation and maintenance activities pose a significant risk to children or adults at the schoolsite.

(e) If, at anytime during construction at a schoolsite, a previously unidentified release or threatened release of a hazardous material or the presence of a naturally occurring hazardous material is discovered, the school district shall cease all construction activities at the sites notify the Department of Toxic Substances Control, and take actions required by subdivision (a) that are necessary to address the release or threatened release or the presence of any naturally occurring hazardous materials. Construction may be resumed if the Department of Toxic Substances Control determines that the construction will not interfere with any response action necessary to address the hazardous material release or threatened release or the presence of a naturally occurring hazardous material, determines that the site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the schoolsite, and certifies that the nature and extent of the release, threatened release, or presence of a naturally occurring hazardous material have been fully characterized.

(f) Construction may proceed at any portions of the site that the Department of Toxic Substances Control determines are not affected by the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials, provided that all of the following apply:

- (1) Those portions of the site have been fully characterized.
- (2) The Department of Toxic Substances Control determines that the construction will not interfere with any response action necessary to address the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials.
- (3) The site conditions will not pose a significant threat to the health and safety of workers involved with construction.

(g) The Department of Toxic Substances Control shall notify the State Department of Education, the Division of the State Architect, and the Office of Public School Construction when the Department of Toxic Substances Control certifies that all necessary response actions have been completed at a schoolsite. The Department of Toxic Substances Control shall also notify the Division of the State Architect whenever a response action has an impact on the design of a school facility and shall specify the conditions that must be met in the design of the school facility in order to protect the integrity of the response action.

(h) The school district shall reimburse the Department of Toxic Substances Control for all response costs incurred by the department.

(i) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains

costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that school districts receive state funding by complying with the Phase I environmental assessment requirement, it is necessary that this act take effect immediately.

BILL NUMBER: SB 662 CHAPTERED 08/09/01

CHAPTER 159
FILED WITH SECRETARY OF STATE AUGUST 9, 2001
APPROVED BY GOVERNOR AUGUST 8, 2001
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PASSED THE ASSEMBLY JUNE 29, 2001
AMENDED IN ASSEMBLY JUNE 25, 2001

INTRODUCED BY Committee on Judiciary (Senators Escutia (Chair),
Kuehl, O'Connell, Peace, and Sher)

FEBRUARY 23, 2001

An act to amend Sections 27, 113, 130, 144, 350, 1647.11, 2570.6, 2570.8, 2570.19, 2995, 3059, 3364, 3403, 4059, 4312, 4980.80, 4980.90, 4996.6, 5111, 5536, 6403, 6716, 6730.2, 6756, 7092, 7583.11, 8027, 8773.4, 10167.2, and 21702 of the Business and Professions Code, to amend Sections 1748.10, 1748.11, 1810.21, 2954.4, 2954.5, and 3097 of, and to amend and renumber Section 1834.8 of, the Civil Code, to amend Sections 403.020, 645.1, 674, and 699.510 of the Code of Civil Procedure, to amend Sections 9323, 9331, and 9408 of the Commercial Code, to amend Sections 2200, 6810, 17540.3, 25102, 25103, and 25120 of the Corporations Code, to amend Sections 313, 406, 426, 427, 11700, 17071.46, 17210, 17317, 17610.5, 22660, 22950, 25933, 33126.1, 37252, 37252.2, 37619, 41329.1, 42239, 44114, 45023.1, 48664, 52054, 52270, 52485, 54749, 56045, 56845, 69432.7, 69434.5, 69437.6, 69439, 69613.1, 87164, and 92901 of, and to amend and renumber Sections 45005.25 and 45005.30 of, the Education Code, to amend Sections 1405, 8040, 9118, and 15375 of the Elections Code, to amend Section 17504 of the Family Code, to amend Sections 761.5, 4827, 16024, 16501, and 18586 of the Financial Code, to amend Sections 1506, 2921, and 8276.3 of the Fish and Game Code, to amend Sections 492, 6046, and 75131 of the Food and Agricultural Code, to amend Sections 3543.4, 3562.2, 3583.5, 6254, 6516.6, 6599.2, 7074, 18935, 20028, 20300, 20392, 21006, 21547.7, 30064.1, 31461.3, 31681.55, 31835.02, 38773.6, 55720, 65584, 65585.1, and 75059.1 of the Government Code, to amend Sections 444.21, 1358.11, 11836, 11877.2, 17922, 25358.6.1, 39619.6, 104170, 105112, 111656.5, 111656.13, 114145, 123111, and 124900 of, to amend and renumber Section 104320 of, and to amend and renumber the heading of Article 10.5 (commencing with Section 1399.801) of Chapter 2.2 of Division 2 of, the Health and Safety Code, to amend Sections 789.8, 1215.1, 1871, 1872.83, 10123.135, 10178.3, 10192.11, 10231.2, 10236, 10506.5, 11621.2, 11784, 11786, 11787, and 12698 of the Insurance Code, to amend Sections 90.5, 129, 230.1, 4455, and 4609 of the Labor Code, to amend Section 1048 of the Military and Veterans Code, to amend Sections 272, 417.2, 646:94, and 3058.65 of the Penal Code, to amend Sections 1813 and 16062 of the Probate Code, to amend Sections 10129 and 20209.7 of the Public Contract Code, to amend Sections 5090.51, 14581, 36710, and 42923 of the Public Resources Code, to amend Sections 383.5, 2881.2, 7943, 9608, 9610, and 12702.5 of, and to amend and renumber Section 399.15 of, the Public Utilities Code, to amend Sections 75.11, 75.21, 97.3, 214, 23622.8, 23646, 44006, and 45153 of the Revenue and Taxation Code, to amend Section 1110 of the Unemployment Insurance Code, to amend Section 4000.37 of the Vehicle Code, to amend Sections 1789.5, 4098.1, 5614, 8102, 10082, 14005.28, 14005.35, 14008.6, 14087.32, and 14105.26 of the Welfare and Institutions Code, and to amend Section 511 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992),

(d) The Center for International Education Synergy shall be established only upon approval by the California Postsecondary Education Commission based on a needs study and subsequent approval from the Department of Finance.

SEC. 55. Section 17071.46 of the Education Code is amended to read:

17071.46. (a) When an applicant school district proposes to demolish a single story building and replace it with a multistory building on the same site, the State Allocation Board shall provide a supplemental grant for 50 percent of the replacement cost of the single story building to be demolished, if all of the following conditions are met:

(1) The school at which the building demolition and replacement is to occur is operating on a multitrack year-round education schedule.

(2) The cost of the demolition and replacement is less than the total cost of providing a new school facility, including land, on a new site for the additional number of pupils housed as a result of the replacement building, as determined by the State Allocation Board.

(3) The school district will maximize the increase in pupil capacity on the site when it builds the replacement building, subject to the limits imposed on it pursuant to paragraph (4).

(4) The State Department of Education has determined that the demolition of an existing single story building and replacement with a multistory building at the site is the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site, as determined by the State Department of Education.

(b) The State Allocation Board shall establish additional requirements it deems necessary to ensure that the economic interests of the state and the educational interests of the children of the state are protected.

SEC. 56. Section 17210 of the Education Code is amended to read:

17210. As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code, a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, any person who conducts phase I environmental assessments shall have at least two years' experience in the preparation of those assessments and any person who conducts a preliminary endangerment assessment shall have at least three years'

experience in conducting those assessments.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located.

As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action," and "site" have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the phase I environmental assessment. A phase I environmental assessment conducted pursuant to the requirements adopted by the American Society for Testing and Materials for due diligence for commercial real estate transactions and that includes a review of all reasonably available records and data bases regarding current and prior gas or oil wells and naturally occurring hazardous materials located on the site or located where they could potentially effect the site, satisfies the requirements of this article for conducting a phase I environmental assessment unless and until the Department of Toxic Substances Control adopts final regulations that establish guidelines for a phase I environmental assessment for purposes of schoolsites that impose different requirements from those imposed by the American Society for Testing and Materials.

(h) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site may pose to children's health, public health, or the environment, and shall be conducted in a manner

that complies with the guidelines published by the Department of Toxic Substances Control entitled "Preliminary Endangerment Assessment: Guidance Manual," including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) "Proposed schoolsite" means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) "Regulated substance" means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) "Release" has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(l) "Remedial action plan" means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) "State act" means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

SEC. 57. Section 17317 of the Education Code is amended to read:

17317. (a) The Department of General Services shall, in consultation with the Seismic Safety Commission, conduct an inventory of public school buildings that are concrete tilt-up school buildings and school buildings with nonwood frame walls that do not meet the minimum requirements of the 1976 Uniform Building Code. Priority shall be given to the school buildings identified in the act that added this section that are in the highest seismic risk zones in accordance with the seismic hazard maps of the Division of Mines and Geology of the Department of Conservation.

(b) The Department of General Services shall submit a report by December 31, 2001, to the Legislature and the Governor that summarizes the findings of the seismic safety inventory and makes recommendations about future actions that should be taken to address the problems found by the seismic safety inventory. The report shall not identify individual schoolsites on which inventoried school buildings are located.

SEC. 58. Section 17610.5 of the Education Code is amended to read:

17610.5. Sections 17611 and 17612 shall not apply to a pesticide product deployed in the form of a self-contained bait or trap, to gel or paste deployed as a crack and crevice treatment, to any pesticide exempted from regulation by the United States Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.), or to antimicrobial pesticides, including sanitizers and disinfectants.

SEC. 59. Section 22660 of the Education Code is amended to read:

22660. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to designate, pursuant to Sections 23300 to 23304, inclusive, a beneficiary or beneficiaries to receive the accumulated retirement contributions under the Defined Benefit Program and to designate a payee to receive the accumulated Defined Benefit Supplement account balance under the Defined Benefit Supplement Program remaining in the separate account of the nonmember spouse on his or her date of death, and any accrued allowance or accrued benefit under the Defined Benefit Supplement Program that is

(3) Within six months after the completion of the revision of all housing elements in the region, the council of governments, with input from the cities and county within its jurisdiction, the housing element advisory committee, and qualified consultant shall report to the Legislature on the use and results of the self-certification process by local governments within its jurisdic

BILL NUMBER: AB 1478 CHAPTERED 10/02/01

CHAPTER 422

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APPROVED BY GOVERNOR OCTOBER 1, 2001

PASSED THE ASSEMBLY SEPTEMBER 13, 2001

PASSED THE SENATE SEPTEMBER 10, 2001

AMENDED IN SENATE JUNE 27, 2001

INTRODUCED BY Assembly Member Salinas

FEBRUARY 23, 2001

An act to amend Sections 17212.5 and 17295 of the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1478, Salinas. School construction approval.

Existing law establishes various requirements regarding the siting and construction of school facilities, including, but not limited to, the requirement that prescribed geological and soil engineering studies be conducted for the construction of any school building, as defined, within the boundaries of special studies zones or if the costs of construction exceeds \$20,000.

This bill would increase that amount to \$25,000, would require an annual inflation adjustment for this amount, and would make technical, nonsubstantive, changes in related provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17212.5 of the Education Code is amended to read:

17212.5. Geological and soil engineering studies as described in Section 17212 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 17283, or if the estimated cost exceeds twenty-five thousand dollars (\$25,000), for the reconstruction or alteration of or addition to any school building for work which alters structural elements. The Department of General Services may require similar geological and soil engineering studies for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 3 (commencing with Section 17280) of this chapter and to the State Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure. The dollar amount set forth in this section shall be increased on an

annual basis, according to a construction costs inflation index recognized and selected by the department.

SEC. 2. Section 17295 of the Education Code is amended to read:

17295. (a) (1) The Department of General Services shall pass upon and approve or reject all plans for the construction or, if the estimated cost exceeds twenty-five thousand dollars (\$25,000), the alteration of any school building.

(2) To enable the Department of General Services to pass upon and approve plans pursuant to this subdivision, the governing board of each school district and any other school authority before adopting any plans for the school building shall submit the plans to the Department of General Services for approval, and shall pay the fees prescribed in this article.

(b) Notwithstanding subdivision (a) of Section 17295, where the estimated cost of the reconstruction or alteration of, or an addition to, any school building exceeds twenty-five thousand dollars (\$25,000) but does not exceed one hundred thousand dollars (\$100,000), a licensed structural engineer shall examine the proposed project to determine if it is a nonstructural alteration or a structural alteration. If he or she determines that the project is a nonstructural alteration, he or she shall prepare a statement so indicating. If he or she determines that the project is structural, he or she shall prepare plans and specifications for the project which shall be submitted to the Department of General Services for review and approval. A copy of the engineer's report stating that the work does not affect structural elements shall be filed with the Department of General Services.

(c) If a licensed structural engineer submits a report to the Department of General Services stating that the plans or activities authorized pursuant to subdivision (b) do not involve structural elements, then all of the following shall apply to that project:

(1) The design professional in responsible charge of the project undertaken pursuant to this subdivision shall certify that the plans and specifications for the project meet any applicable fire and life safety standards, and do not affect the disabled access requirements of Section 4450 of the Government Code, and shall submit this certification to the department. The letter of certification shall bear the identifying licensing stamp or seal of the design professional. This provision does not preclude a design professional from submitting plans and specifications to the department along with the appropriate fee for review.

(2) Within 10 days of the completion of any project authorized pursuant to subdivision (b), the school construction inspector of record on the project, who is certified by the department to inspect school buildings, shall certify in writing to the department that the reconstruction, alteration, or addition has been completed in compliance with the plans and specifications.

(3) The dollar amounts cited in this section shall be increased on an annual basis, commencing January 1, 1999, by the department according to an inflationary index governing construction costs that is selected and recognized by the department.

(4) No school district shall subdivide a project for the purpose of evading the limitation on amounts cited in this section.

(d) For purposes of this section, "design professional in responsible charge" or "design professional" means the licensed architect, licensed structural engineer, or licensed civil engineer who is responsible for the completion of the design work involved with the project.

BILL NUMBER: AB 972 CHAPTERED 10/14/01

CHAPTER 865
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AMENDED IN ASSEMBLY MAY 25, 2001
AMENDED IN ASSEMBLY MAY 2, 2001
AMENDED IN ASSEMBLY MARCH 27, 2001

INTRODUCED BY Assembly Member Calderon

FEBRUARY 23, 2001

An act to amend Sections 17210.1 and 17213.1 of the Education Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 972, Calderon. School facilities: preliminary endangerment assessment: Phase I environmental assessment.

(1) Existing law requires a school district, in implementing provisions of law concerning the selection of schoolsites, to provide a notice to residents in the immediate area, approved in form by the Department of Toxic Substances Control, prior to the commencement of work on a preliminary endangerment assessment.

This bill would instead require a school district to provide this notice utilizing a format developed by the Department of Toxic Substances Control.

(2) Existing law requires the governing board of a school district, as a condition of receiving state funding under the Leroy F. Greene School Facilities Act (Greene Act) of 1998, to conduct a Phase I environmental assessment of a proposed schoolsite before acquiring the site. A school district is required to submit a Phase I environmental assessment to the State Department of Education, if that assessment concludes that further investigation of the site is not required.

This bill would require the school district to additionally submit proof of the environmental assessor's qualifications to the state department, thereby imposing a state-mandated local program by imposing new duties upon school districts with regard to the submission of a Phase I environmental assessment.

The bill would exempt a schoolsite acquisition project or a school construction program from the changes made by this bill if the final preliminary endangerment assessment for the schoolsite acquisition or construction project is approved by the Department of Toxic Substances Control, or a public hearing for the project is completed, pursuant to the law in effect on that date of the approval or hearing, and if the hearing or approval took place on or before the effective date of the bill.

(3) Existing law requires the Department of Toxic Substances Control to complete its review within 60 calendar days of receipt of a preliminary endangerment assessment from a school district and to return the preliminary draft to the school district with comments and

request modifications, request further assessment, or approve the preliminary endangerment assessment as a final draft preliminary endangerment assessment. Existing law specifies procedures for the public review and approval of the final draft preliminary endangerment assessment and requires the school district to reconsider the adequacy of its approved environmental impact report or negative declaration in light of the approved final draft of the preliminary endangerment assessment, if the district has complied with the California Environmental Quality Act prior to initiating the preliminary endangerment assessment.

This bill would repeal those provisions regarding the review of the final draft preliminary endangerment assessment by the department and the reconsideration of the adequacy of the environmental impact report or negative declaration. The bill would instead require a school district, at the same time the school district submits a preliminary endangerment assessment to the Department of Toxic Substances Control, to publish a notice of submission in a local newspaper of general circulation, to post the notice at the proposed schoolsite, and to choose one of 2 specified procedures for making the preliminary endangerment assessment available to the Department of Toxic Substances Control and the public for review and comment.

The bill would impose a state-mandated local program by imposing new duties upon school districts with regard to the review of a preliminary endangerment assessment.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(5) The bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17210.1 of the Education Code is amended to read:

17210.1. (a) Notwithstanding any other provision of law:

(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, the state act applies to schoolsites where naturally occurring hazardous materials are present, regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 at sites addressed by this article shall

include a focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, a school district shall provide a notice to residents in the immediate area prior to the commencement of work on a preliminary endangerment assessment utilizing a format developed by the Department of Toxic Substances Control.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) Unless the Legislature otherwise funds its costs for overseeing actions taken pursuant to this article, the Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed.

SEC. 2. Section 17213.1 of the Education Code is amended to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10), the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite, the governing board shall contract with an environmental assessor to supervise the preparation of, and sign, a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment, together with all documentation related to the proposed acquisition or use of the proposed schoolsite, shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education and proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210 prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days after the State Department of Education receives the Phase I environmental assessment, the proof of the environmental assessor's qualifications, and the fee to be forwarded to the Department of Toxic Substances Control for its review of the

Phase I environmental assessment, the State Department of Education shall transmit that assessment and that proof of the environmental assessor's qualifications to the Department of Toxic Substances Control for its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of that assessment and that proof of qualifications. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of, and sign, a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(A) A further investigation of the site is not required.

(B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit the preliminary endangerment

assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a "preliminary environmental assessment" and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

(6) At the same time a school district submits a preliminary endangerment assessment to the Department of Toxic Substances Control pursuant to paragraph (5), the school district shall publish a notice that the assessment has been submitted to the department in a local newspaper of general circulation, and shall post the notice in a prominent manner at the proposed schoolsite that is the subject of that notice. The notice shall state the school district's determination to make the preliminary endangerment assessment available for public review and comment pursuant to subparagraph (A) or (B):

(A) If the school district chooses to make the assessment available for public review and comment pursuant to this subparagraph, it shall offer to receive written comments for a period of at least 30 calendar days after the assessment is submitted to the Department of Toxic Substances Control, commencing on the date the notice is originally published, and shall hold a public hearing to receive further comments. The school district shall make all of the following documents available to the public upon request through the time of the public hearing:

- (i) The preliminary endangerment assessment.
- (ii) The changes requested by the Department of Toxic Substances Control for the preliminary endangerment assessment, if any.
- (iii) Any correspondence between the school district and the Department of Toxic Substances Control that relates to the preliminary endangerment assessment.

For the purposes of this subparagraph, the notice of the public hearing shall include the date and location of the public hearing, and the location where the public may review the documents described in clauses (i) to (iii), inclusive. If the preliminary endangerment assessment is revised or altered following the public hearing, the school district shall make those revisions or alterations available to the public. The school district shall transmit a copy of all public comments received by the school district on the preliminary endangerment assessment to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall complete its review of the preliminary endangerment assessment and public comments received thereon and shall either approve or disapprove the assessment within 30 calendar days of the close of the public review period. If the Department of Toxic Substances Control determines that it is likely to disapprove the assessment prior to its receipt of the public comments, it shall inform the school district of that determination and of any action that the school district is required to take for the Department of Toxic Substances Control to approve the assessment.

(B) If the school district chooses to make the preliminary endangerment assessment available for public review and comment pursuant to this subparagraph, the Department of Toxic Substances Control shall complete its review of the assessment within 60 calendar days of receipt of the assessment and shall either return the assessment to the school district with comments and requested modifications or requested further assessment or concur with the

adequacy of the assessment pending review of public comment. If the Department of Toxic Substances Control concurs with the adequacy of the assessment, and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the assessment is approved, in which case the school district shall, within 60 days of the approval of the assessment, separately publish a notice of the availability of the assessment for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All public comments pertaining to the preliminary endangerment assessment shall be forwarded to the Department of Toxic Substances Control immediately. The Department of Toxic Substances Control shall review the public comments forwarded by the school district and shall approve or disapprove the preliminary endangerment assessment within 30 days of the district's approval action of the environmental impact report or the negative declaration.

(7) The school district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project.

(8) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(10) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(11) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

(d) The changes made to this section by the act amending this section during the 2001 portion of the 2001-02 Regular Session do not apply to a schoolsite acquisition project or a school construction project, if either of the following occurred on or before the effective date of the act amending this section during the 2001 portion of the 2001-02 Regular Session:

(1) The final preliminary endangerment assessment for the project was approved by the Department of Toxic Substances Control pursuant to this section as this section read on the date of the approval.

(2) The school district seeking state funding for the project completed a public hearing for the project pursuant to this section, as this section read on the date of the hearing.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to expeditiously construct new classrooms and school facilities for pupils, while ensuring that these new facilities are subject to an environmental assessment to determine if these facilities could be affected by any potential hazardous materials releases, thereby protecting the health and safety of those pupils and the environment, it is necessary that this act take effect immediately.

BILL NUMBER: AB 14 CHAPTERED 09/27/02

CHAPTER 935

FILED WITH SECRETARY OF STATE SEPTEMBER 27, 2002

APPROVED BY GOVERNOR SEPTEMBER 26, 2002

PASSED THE SENATE AUGUST 30, 2002

PASSED THE ASSEMBLY AUGUST 30, 2002

CONFERENCE REPORT NO. 1

PROPOSED IN CONFERENCE AUGUST 27, 2002

AMENDED IN SENATE AUGUST 23, 2001

AMENDED IN ASSEMBLY MAY 31, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

INTRODUCED BY Assembly Members Goldberg and Strom-Martin and
Senators Alpert and Chesbro

DECEMBER 4, 2000

An act to amend Sections 17071.75, 17072.13, 17072.18, 17072.20, 17072.35, 17074.15, 17074.16, 17077.45, 17078.20, 17078.30, and 17213.1 of, to add Sections 17070.46, 17070.73, 17073.25, and 17180.5 to, and to add Article 12 (commencing with Section 17078.50) to Chapter 12.5 of Part 10 of, the Education Code, to add Section 53097.3 to the Government Code, and to amend Sections 51451.5, 51453, and 51455 of, and to add Section 51453.5 to, the Health and Safety Code, relating to school facilities, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 14, Goldberg. School facilities.

(1) Existing law, the Leroy F. Greene School Facilities Act of 1998 (Greene Act of 1998), makes funding available to eligible school districts for various purposes related to school facilities, including construction and modernization.

This bill would specify that prescribed agencies are not "lead agencies" in this process for the purposes of the California Environmental Quality Act, would declare that the state special schools for the deaf and for the blind are eligible for modernization funding, and would make certain transitional changes regarding the funding of projects pursuant to subsequently approved state bonds.

(2) Existing law establishes, as a condition of receipt of state funding under the Greene Act of 1998, that the governing board of a school district comply with prescribed provisions relating to the environmental assessment of a proposed schoolsite prior to acquisition of the site, including, but not limited to, submission of the assessment, and related documents, through the State Department of Education to the Department of Toxic Substances Control for its review and approval.

This bill would, instead, require the submission directly to the Department of Toxic Substances Control, would require that notification be given to the State Department of Education and to the governing board of the school district if the Department of Toxic Substances Control determines that a preliminary endangerment assessment is needed, and would make related conforming and technical changes.

Existing law, the Greene Act of 1998, authorizes the board to

for charter school pupils as set forth in Article 12 (commencing with Section 17078.50) of Chapter 12.5.

(b) Notwithstanding any provision of law to the contrary, including, but not limited to, Section 17197, with regard to the authority's implementation of funding for charter school facilities, Article 12 (commencing with Section 17078.50) shall control over conflicting provisions, if any, in this chapter.

SEC. 16. Section 17213.1 of the Education Code is amended to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10), the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite, the governing board shall contract with an environmental assessor to supervise the preparation of, and sign, a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the signed assessment, proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210, and the renewal fee shall be submitted to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall conduct its review and approval, within 30 calendar days of its receipt of that assessment, proof of qualifications, and the renewal fee. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 calendar days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify, in writing, the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the

information required by this paragraph may be provided by telephonic or electronic means.

(4) (A) If the Department of Toxic Substances Control concludes after its review of a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the Department of Toxic Substances Control shall notify, in writing, the State Department of Education and the governing board of the school district of that decision and the basis for that decision. The school district shall submit to the State Department of Education the Phase I environmental assessment and requested additional information, if any, that was reviewed by the Department of Toxic Substances Control pursuant to that subparagraph. Submittal of the Phase I assessment and additional information, if any, to the State Department of Education shall be prior to the State Department of Education issuance of final site or plan approvals affect by that Phase I assessment.

(B) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of, and sign, a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(i) A further investigation of the site is not required.

(ii) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a "preliminary environmental assessment" and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

(6) At the same time a school district submits a preliminary endangerment assessment to the Department of Toxic Substances Control pursuant to paragraph (5), the school district shall publish a notice that the assessment has been submitted to the department in a

local newspaper of general circulation, and shall post the notice in a prominent manner at the proposed schoolsite that is the subject of that notice. The notice shall state the school district's determination to make the preliminary endangerment assessment available for public review and comment pursuant to subparagraph (A) or (B):

(A) If the school district chooses to make the assessment available for public review and comment pursuant to this subparagraph, it shall offer to receive written comments for a period of at least 30 calendar days after the assessment is submitted to the Department of Toxic Substances Control, commencing on the date the notice is originally published, and shall hold a public hearing to receive further comments. The school district shall make all of the following documents available to the public upon request through the time of the public hearing:

(i) The preliminary endangerment assessment.

(ii) The changes requested by the Department of Toxic Substances Control for the preliminary endangerment assessment, if any.

(iii) Any correspondence between the school district and the Department of Toxic Substances Control that relates to the preliminary endangerment assessment.

For the purposes of this subparagraph, the notice of the public hearing shall include the date and location of the public hearing, and the location where the public may review the documents described in clauses (i) to (iii), inclusive. If the preliminary endangerment assessment is revised or altered following the public hearing, the school district shall make those revisions or alterations available to the public. The school district shall transmit a copy of all public comments received by the school district on the preliminary endangerment assessment to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall complete its review of the preliminary endangerment assessment and public comments received thereon and shall either approve or disapprove the assessment within 30 calendar days of the close of the public review period. If the Department of Toxic Substances Control determines that it is likely to disapprove the assessment prior to its receipt of the public comments, it shall inform the school district of that determination and of any action that the school district is required to take for the Department of Toxic Substances Control to approve the assessment.

(B) If the school district chooses to make the preliminary endangerment assessment available for public review and comment pursuant to this subparagraph, the Department of Toxic Substances Control shall complete its review of the assessment within 60 calendar days of receipt of the assessment and shall either return the assessment to the school district with comments and requested modifications or requested further assessment or concur with the adequacy of the assessment pending review of public comment. If the Department of Toxic Substances Control concurs with the adequacy of the assessment, and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the assessment is approved, in which case the school district

shall, within 60 days of the approval of the assessment, separately publish a notice of the availability of the assessment for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All public comments pertaining to the preliminary endangerment assessment shall be forwarded to the Department of Toxic Substances Control immediately. The Department of Toxic Substances Control shall review the public comments forwarded by the school district and shall approve or disapprove the preliminary endangerment assessment within 30 days of the district's approval action of the environmental impact report or the negative declaration.

(7) The school district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project.

(8) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(10) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(11) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

(d) The changes made to this section by the act amending this section during the 2001 portion of the 2001-02 Regular Session do not apply to a schoolsite acquisition project or a school construction project, if either of the following occurred on or before the effective date of the act amending this section during the 2001 portion of the 2001-02 Regular Session:

(1) The final preliminary endangerment assessment for the project was approved by the Department of Toxic Substances Control pursuant to this section as this section read on the date of the approval.

(2) The school district seeking state funding for the project completed a public hearing for the project pursuant to this section, as this section read on the date of the hearing.

SEC. 17. Section 53097.3 is added to the Government Code to read:

53097.3. Notwithstanding any other provision of this article, no school district may render a city or county ordinance inapplicable to a charter school facility pursuant to this article, unless the facility is physically located within the geographical jurisdiction of that school district.

SEC. 18. Section 51451.5 of the Health and Safety Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

51451.5. The Homebuyer Down Payment Assistance Program of 2002 is hereby established, to provide assistance in the amount of the applicable school facility fee on affordable housing. The Homebuyer Down Payment Assistance Program of 2002 shall, with funds provided by the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 (Part 68.1 (commencing with Section 100600) of the Education Code; and Part 68.2 (commencing with Section 100800) of the Education Code), provide the following assistance:

(a) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in an economically distressed area in the amount of school facility fees paid pursuant to Section 65995.5 or 65995.7 of the Government Code, less the amount that would be required pursuant to subdivision (b) of Section 65995 of the Government Code, notwithstanding Sections 65995.5 and 65995.7 of the Government Code, if all of the following conditions are met:

(1) The development project is located in a county with an unemployment rate that equals or exceeds 125 percent of the state unemployment rate.

(2) Five hundred or more residential structures have been constructed in the county during 2001.

(3) A building permit for an eligible residential structure in the project is issued by the local agency on or after January 1, 2002.

(4) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance,

million dollars (\$25,000,000) which is made available pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 100820 of the Education Code, shall be transferred to the School Facilities Fee Assistance Fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the department for allocation for the agency for administrative costs and to make payments to purchasers of newly constructed residential structures pursuant to Section 51451.5 from that fund, as follows:

(a) Twelve million five hundred thousand dollars (\$12,500,000) shall be available for the program set forth in subdivision (a) of Section 51451.5, except that if less than 50 percent of these funds are expended within 24 months, all or part of those funds shall be available for the program set forth in subdivision (b) of Section 51451.5 at the discretion of the executive director of the agency.

(b) Twelve million five hundred thousand dollars (\$12,500,000) shall be available for the program set forth in subdivision (b) of Section 51451.5, except that if less than 50 percent of these funds are expended within 24 months, all or part of those funds shall be available for the program set forth in subdivision (a) of Section 51451.5 at the discretion of the executive director of the agency.

(c) If after 48 months, more than 20 percent of the funds identified in subdivisions (a) and (b) are not expended, the executive director of the agency may make all or part of those funds available to the California Homebuyer's Downpayment Assistance Program, as authorized under Chapter 11 (commencing with Section 51500).

(d) All repayments of disbursed funds pursuant to this chapter or any interest earned from the investment in the Surplus Money Investment Fund or any other moneys accruing to the fund from whatever source shall be returned to the fund and is available for allocation by the agency to the program established pursuant to Section 51451.5.

SEC. 21. Section 51455 of the Health and Safety Code, as amended by Chapter 33 of the Statutes of 2002, is amended to read:

51455. (a) Except as provided in subdivision (b), Sections 51450, 51451, 51452, and 51454 shall not be operative on and after January 1, 2002.

(b) Except as provided in Section 51453 and 51453.5, the School Facilities Fee Assistance Fund established by Section 51452 and the programmatic authority necessary to operate the programs authorized by Section 51451 shall continue on and after January 1, 2002, only with respect to any repayment obligation pertaining to that assistance or to any regulatory agreement imposed as a condition of that assistance.

SEC. 22. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 23. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Exhibit 3
Copies of Code Sections Cited

§ 17072.13. Site acquisition and hazardous materials evaluation and response action funding

In addition to the amounts provided pursuant to Sections 17072.10 and 17072.12, the board may provide site acquisition and hazardous materials evaluation and response action funding for proposed new schoolsites as follows:

(a)(1) For 50 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and for 50 percent of the other response action costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action in connection with hazardous substances at that site. Except as provided in subdivision (b), the funding provided pursuant to this section may not exceed 50 percent * * * of the total evaluation and response action costs, including, but not limited to, the costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action, as determined by the Department of Toxic Substances Control, in connection with hazardous substances at that site, pursuant to standards adopted by the board.

(2) For projects eligible for funding under this subdivision, the total state share of the site acquisition costs, including evaluation and response action, shall not exceed 50 percent of 1½ times the appraised value of the uncontaminated site. However, the board may exceed this maximum for projects that demonstrate circumstances of extreme need.

(b)(1) The board may provide funding for up to 100 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district eligible for financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10) and for up to 100 percent of the other response action costs for the site. The funding provided pursuant to this subdivision may not exceed 100 percent of * * * the total evaluation and response action costs, including, but not limited to, the costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action, as determined by the Department of Toxic Substances Control, in connection with hazardous substances at that site, pursuant to standards adopted by the board.

(2) The board may provide funding pursuant to this subdivision only if the State Department of Education certifies that the site is the best available site considering all of the following factors in relation to other available sites:

(A) The total costs of the project, including, but not limited to, costs of evaluation and response action.

(B) The desirability of the site, considering its proximity to pupils and suitability for meeting the educational and safety needs of the school district.

(C) The time required to fully complete the project in relation to the current and projected need for school facilities.

(3) For projects eligible for funding under this subdivision, the total state share of the site acquisition costs, including evaluation and response action, shall not exceed 100 percent of 1½ times the appraised value of the uncontaminated site. However, the board may exceed this maximum for projects that demonstrate circumstances of extreme need.

(c) A school district with a proposed site that meets the environmental hardship criteria set forth in paragraph (1) may apply to the board for site acquisition, including, but not limited to, evaluation and response action, funding for that site prior to having construction plans for that site approved by the Division of the State Architect and State Department of Education * * *.

(1) A project is eligible for environmental hardship site acquisition funding if both of the following apply:

(A) The * * * preparation and implementation of a response action * * * for the site, to be approved by the Department of Toxic Substances Control * * * pursuant to Section 17213, is estimated by the Department of Toxic Substances Control to take six months or more to complete.

(B) The State Department of Education determines that the site is the best available alternative site.

(2) The initial site-specific reservation pursuant to this subdivision shall be for a period of one year. Extension may be approved in one-year intervals upon demonstration to the State Allocation Board of progress toward acquisition, including, but not limited to, evaluation or response, as the case may be. In the event there is not demonstrable progress, the State Allocation Board shall have the option of rescinding the reservation.

(3) Environmental hardship site acquisition funds approved by the State Allocation Board can be used only for the site identified in the response action approved by the Department of Toxic Substances Control.

(4) The date that the State Allocation Board approves the environmental hardship site acquisition funding will become the State Allocation Board approval date for the project's construction funding for that site.

(5) A school district may apply to the State Allocation Board for construction funding for the environmental hardship site when the project has received final Division of the State Architect plan approval and final State Department of Education site and plan approval.

(d) The cost incurred by the school districts when complying with any requirement identified in this section are allowable costs for purposes of an applicant under this chapter and may be reimbursed in accordance with * * * this section.

(e) The State Allocation Board shall develop regulations that allow school districts with financial hardship site acquisition, including, but not limited to, evaluation and response action, funding prior to ownership of the site or evidence that the site is in escrow.

(Amended by Stats.2002, c. 935 (A.B.14), § 4.)

§ 17210. Definitions

As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code, a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, any person who conducts phase I environmental assessments shall have at least two years' experience in the preparation of those assessments and any person who conducts a preliminary endangerment assessment shall have at least three years' experience in conducting those assessments.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

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(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action," and "site" have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the phase I environmental assessment. A phase I environmental assessment conducted pursuant to the requirements adopted by the American Society for Testing and Materials for due diligence for commercial real estate transactions and that includes a review of all reasonably available records and data bases regarding current and prior gas or oil wells and naturally occurring hazardous materials located on the site or located where they could potentially effect the site, satisfies the requirements of this article for conducting a phase I environmental assessment unless and until the Department of Toxic Substances Control adopts final regulations that establish guidelines for a phase I environmental assessment for purposes of schoolsites that impose different requirements from those imposed by the American Society for Testing and Materials.

(h) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site may pose to children's health, public health, or the environment, and shall be conducted in a manner that complies with the guidelines published by the Department of Toxic Substances Control entitled "Preliminary Endangerment Assessment: Guidance Manual," including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) "Proposed schoolsite" means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) "Regulated substance" means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) "Release" has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(l) "Remedial action plan" means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) "State act" means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

(Added by Stats.1999, c. 1002 (S.B.162), § 1. Amended by Stats.2000, c. 135 (A.B. 2539), § 31; Stats.2000, c. 443 (A.B.2644), § 2, eff. Sept. 14, 2000; Stats.2001, c. 159 (S.B.662), § 56.)

§ 17210.1. Application of state act; hazardous materials; risk assessments; compliance with other laws

(a) Notwithstanding any other provision of law:

(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, the state act applies to schoolsites where naturally occurring hazardous materials are present, regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 at sites addressed by this article shall include a focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, a school district shall provide a notice to residents in the immediate area prior to the commencement of work on a preliminary endangerment assessment utilizing a format developed by the Department of Toxic Substances Control.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) Unless the Legislature otherwise funds its costs for overseeing actions taken pursuant to this article, the Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed.

(Added by Stats.1999, c. 1002 (S.B.162), § 2. Amended by Stats.2000, c. 443 (A.B. 2644), § 3, eff. Sept. 14, 2000; Stats.2001, c. 865 (A.B.972), § 1, eff. Oct. 14, 2001.)

§ 17211. Public hearing for evaluation prior to acquisition in accordance with site selection standards

Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the property pursuant to those site selection standards and to report its findings to the governing board at the public hearing.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17212. Investigation of prospective schoolsite; inclusion of geological and engineering studies

The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 17283 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective schoolsite is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is an area which is identified as a special studies zone on any map, or maps, compiled by the State Geologist pursuant to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17212.5. Geological and soils engineering studies

Geological and soil engineering studies as described in Section 17212 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 17283, or if the estimated cost exceeds twenty-five thousand dollars (\$25,000), for the reconstruction or alteration of or addition to any school building for work which alters structural elements. The Department of General Services may require similar geological and soil engineering studies for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 3 (commencing with Section 17280) of this chapter and to the State Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure. The dollar amount set forth in this section shall be increased on an annual basis, according to a construction costs inflation index recognized and selected by the department.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998. Amended by Stats.2001, c. 422 (A.B.1478), § 1.)

§ 17213. Approval of site acquisition; hazardous or solid waste disposal sites or hazardous substance release sites; hazardous air emissions; findings

The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency, as defined in Section 21067 of the Public Resources Code, preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located and with any air pollution control district or air quality management

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district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17213.1. **Environmental assessment of proposed schoolsite; preliminary endangerment assessment; costs; liability**

As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10), the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite, the governing board shall contract with an environmental assessor to supervise the preparation of, and sign, a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the signed assessment, * * * proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210 * * *, and the renewal fee shall be submitted to the Department of Toxic Substances Control * * *. The Department of Toxic Substances Control * * * shall conduct its review and approval, * * * within 30 calendar days of its receipt of that assessment * * *, proof of qualifications, and the renewal fee. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 calendar days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify, in writing, the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary

Additions or changes indicated by underline; deletions by asterisks * * *

endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4)(A) If the Department of Toxic Substances Control concludes after its review of a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the Department of Toxic Substances Control shall notify, in writing, the State Department of Education and the governing board of the school district of that decision and the basis for that decision. The school district shall submit to the State Department of Education the Phase I environmental assessment and requested additional information, if any, that was reviewed by the Department of Toxic Substances Control pursuant to that subparagraph. Submittal of the Phase I assessment and additional information, if any, to the State Department of Education shall be prior to the State Department of Education issuance of final site or plan approvals affect by that Phase I assessment.

(B) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of, and sign, a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(i) A further investigation of the site is not required.

(ii) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a "preliminary environmental assessment" and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

(6) At the same time a school district submits a preliminary endangerment assessment to the Department of Toxic Substances Control pursuant to paragraph (5), the school district shall publish a notice that the assessment has been submitted to the department in a local newspaper of general circulation, and shall post the notice in a prominent manner at the proposed schoolsite that is the subject of that notice. The notice shall state the school district's determination to make the preliminary endangerment assessment available for public review and comment pursuant to subparagraph (A) or (B):

(A) If the school district chooses to make the assessment available for public review and comment pursuant to this subparagraph, it shall offer to receive written comments for a period of at least 30 calendar days after the assessment is submitted to the Department of Toxic Substances Control, commencing on the date the notice is originally published, and shall hold a public hearing to receive further comments. The school district shall make all of the following documents available to the public upon request through the time of the public hearing:

(i) The preliminary endangerment assessment.

(ii) The changes requested by the Department of Toxic Substances Control for the preliminary endangerment assessment, if any.

(iii) Any correspondence between the school district and the Department of Toxic Substances Control that relates to the preliminary endangerment assessment.

For the purposes of this subparagraph, the notice of the public hearing shall include the date and location of the public hearing, and the location where the public may review the documents described in clauses (i) to (iii), inclusive. If the preliminary endangerment assessment is revised or altered following

Additions or changes indicated by underline; deletions by asterisks * * *

the public hearing, the school district shall make those revisions or alterations available to the public. The school district shall transmit a copy of all public comments received by the school district on the preliminary endangerment assessment to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall complete its review of the preliminary endangerment assessment and public comments received thereon and shall either approve or disapprove the assessment within 30 calendar days of the close of the public review period. If the Department of Toxic Substances Control determines that it is likely to disapprove the assessment prior to its receipt of the public comments, it shall inform the school district of that determination and of any action that the school district is required to take for the Department of Toxic Substances Control to approve the assessment.

(B) If the school district chooses to make the preliminary endangerment assessment available for public review and comment pursuant to this subparagraph, the Department of Toxic Substances Control shall complete its review of the assessment within 60 calendar days of receipt of the assessment and shall either return the assessment to the school district with comments and requested modifications or requested further assessment or concur with the adequacy of the assessment pending review of public comment. If the Department of Toxic Substances Control concurs with the adequacy of the assessment, and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the assessment is approved, in which case the school district shall, within 60 days of the approval of the assessment, separately publish a notice of the availability of the assessment for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All public comments pertaining to the preliminary endangerment assessment shall be forwarded to the Department of Toxic Substances Control immediately. The Department of Toxic Substances Control shall review the public comments forwarded by the school district and shall approve or disapprove the preliminary endangerment assessment within 30 days of the district's approval action of the environmental impact report or the negative declaration.

(7) The school district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project.

(8) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(10) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State

Additions or changes indicated by underline; deletions by asterisks * * *

EDUCATION CODE

Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(11) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

(d) The changes made to this section by the act amending this section during the 2001 portion of the 2001-02 Regular Session do not apply to a schoolsite acquisition project or a school construction project, if either of the following occurred on or before the effective date of the act amending this section during the 2001 portion of the 2001-02 Regular Session:

(1) The final preliminary endangerment assessment for the project was approved by the Department of Toxic Substances Control pursuant to this section as this section read on the date of the approval.

(2) The school district seeking state funding for the project completed a public hearing for the project pursuant to this section, as this section read on the date of the hearing.

(Amended by Stats.2002, c. 935 (A.B.14), § 16.)

§ 17213.2. Hazardous materials present at schoolsite; response action

As a condition of receiving state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all of the following apply:

(a) If a preliminary endangerment assessment prepared pursuant to Section 17213.1 discloses the presence of a hazardous materials release, or threatened release, or the presence of naturally occurring hazardous materials, at a proposed schoolsite at concentrations that could pose a significant risk to children or adults, and the school district owns the proposed schoolsite, the school district shall enter into an agreement with the Department of Toxic Substances Control to oversee response action at the site and shall take response action pursuant to the requirements of the state act as may be required by the Department of Toxic Substances Control.

(b) Notwithstanding subdivision (a), a school district need not take action in response to a release of hazardous material to groundwater underlying the

§ 17213.2

schoolsite if the release occurred at a site other than the schoolsite and if the following conditions apply:

(1) The school district did not cause or contribute to the release of a hazardous material to the groundwater.

(2) Upon the request of the Department of Toxic Substances Control or its authorized representative the school district provides the Department of Toxic Substances Control or its authorized representative with access to the schoolsite.

(3) The school district does not interfere with the response action activities.

(c) If at anytime during the response action the school district determines that there has been a significant increase in the estimated cost of the response action, the school district shall notify the State Department of Education.

(d) A school district that is required by the Department of Toxic Substances Control to take response action at a proposed schoolsite is subject to both of the following prohibitions:

(1) The school district may not begin construction of a school building until the Department of Toxic Substances Control determines all of the following:

(A) That the construction will not interfere with the response action.

(B) That site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the school building.

(C) That the nature and extent of any release or threatened release of hazardous materials or the presence of any naturally occurring hazardous materials have been fully characterized.

(2) The school district may not occupy a school building following construction until it obtains from the Department of Toxic Substances Control a certification that all response actions, except for operation and maintenance activities, necessary to ensure that hazardous materials at the schoolsite no longer pose a significant risk to children and adults at the schoolsite have been completed and that the response action standards and objectives established in the final removal action work plan or remedial action plan have been met and are being maintained. After a school building is constructed and occupied, a school district may continue with ongoing operation and maintenance activities if the Department of Toxic Substances Control certifies before occupancy that neither site conditions nor the ongoing operation and maintenance activities pose a significant risk to children or adults at the schoolsite.

(e) If, at anytime during construction at a schoolsite, a previously unidentified release or threatened release of a hazardous material or the presence of a naturally occurring hazardous material is discovered, the school district shall cease all construction activities at the sites notify the Department of Toxic Substances Control, and take actions required by subdivision (a) that are necessary to address the release or threatened release or the presence of any naturally occurring hazardous materials. Construction may be resumed if the Department of Toxic Substances Control determines that the construction will not interfere with any response action necessary to address the hazardous

§ 17213.2

material release or threatened release or the presence of a naturally occurring hazardous material, determines that the site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the schoolsite, and certifies that the nature and extent of the release, threatened release, or presence of a naturally occurring hazardous material have been fully characterized.

(f) Construction may proceed at any portions of the site that the Department of Toxic Substances Control determines are not affected by the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials, provided that all of the following apply:

(1) Those portions of the site have been fully characterized.

(2) The Department of Toxic Substances Control determines that the construction will not interfere with any response action necessary to address the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials.

(3) The site conditions will not pose a significant threat to the health and safety of workers involved with construction.

(g) The Department of Toxic Substances Control shall notify the State Department of Education, the Division of the State Architect, and the Office of Public School Construction when the Department of Toxic Substances Control certifies that all necessary response actions have been completed at a schoolsite. The Department of Toxic Substances Control shall also notify the Division of the State Architect whenever a response action has an impact on the design of a school facility and shall specify the conditions that must be met in the design of the school facility in order to protect the integrity of the response action.

(h) The school district shall reimburse the Department of Toxic Substances Control for all response costs incurred by the department.

(i) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(Added by Stats.1999, c. 992 (A.B.387), § 3. Amended by Stats.2000, c. 443 (A.B.2644), § 5, eff. Sept. 14, 2000.)

§ 17251. Powers and duties concerning buildings and sites

The State Department of Education shall:

(a) Upon the request of the governing board of any school district, advise the governing board on the acquisition of new schoolsites and, after a review of available plots, give the governing board in writing a list of the recommended locations in the order of their merit, considering especially the matters of educational merit, safety, reduction of traffic hazards, and conformity to the land use element in the general plan of the city, county, or city and county having jurisdiction. The governing board may purchase a site deemed unsuitable for school purposes by the State Department of Education only after reviewing the department's report on proposed sites at a public hearing. The department shall charge the school district a reasonable fee for each schoolsite reviewed not to exceed the actual administrative costs incurred for that purpose.

(b) Develop standards for use by a school district in the selection of schoolsites, in accordance with the objectives set forth in subdivision (a). The department shall investigate complaints of noncompliance with site selection standards and shall notify the governing board of the results of the investigation. If that notification is received prior to the acquisition of the site, the governing board shall discuss the findings of the investigation in a public hearing.

(c) Establish standards for use by school districts to ensure that the design and construction of school facilities are educationally appropriate and promote school safety.

(d) Upon the request of the governing board of any school district, review plans and specifications for school buildings in the district.

The department shall charge governing boards of school districts, for the review of plans and specifications, a reasonable fee not to exceed the actual administrative costs incurred for that purpose.

(e) Upon the request of the governing board of any school district, make a survey of the building needs of the district, advise the governing board concerning the building needs, suggest plans for financing a building program to meet the needs. The department shall charge the district, for the cost of the survey, a reasonable fee not to exceed the actual administrative costs incurred for that purpose.

(f) Provide information relating to the impact or potential impact upon any schoolsite of hazardous substances, solid waste, safety, hazardous air emissions, and other information as the department may deem appropriate.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17315. Certificate of compliance; verified reports

(a) When a school building constructed in accordance with plans and specifications approved by the Department of General Services is completed, the notice of completion is filed, and all final verified reports and all testing and inspection documents, as required by this article or as required by the rules and regulations adopted pursuant to this article, are submitted to and on file with the Department of General Services, and all required fees paid by the school district, the department shall issue a certification that the school building complies with the requirements of this article. Nothing in this article shall prevent beneficial occupancy by a school district prior to the issuance of this certification.

(b) When a school building, constructed in accordance with approved plans and specifications, is completed but final verified reports, as are required under Section 39151, have not been submitted to the Department of General Services due to the incapacitating illness, death, or the default of any persons required to file such reports; the Department of General Services shall, upon written request of the school district, review all of the project records and make such examinations as it deems necessary to enable it to certify that the school building otherwise complies with the requirements of this article. The Department of General Services may request the school district to have made, reported, and verified any other tests and inspections which the department deems necessary to complete its examinations of the construction.

(c) The costs incurred by the Department of General Services in connection with this section shall be paid by the school district. The actual costs to perform the examinations, tests, and inspections shall be an appropriate cost of the project to be paid from the building funds of the district. Certification of the project by the Department of General Services shall be withheld until all the costs have been paid by the school district.

(d) This section shall not relieve any individual of his or her responsibility to file verified reports, as required in Section 17309, or any other documents required by the rules and regulations adopted pursuant to this article. This section shall not abrogate the provisions of Section 17312.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

HEALTH AND SAFETY CODE

§ 25358.7. Public participation in response actions

(a) The department or the regional board, as appropriate, shall take the actions specified in this section to provide an opportunity for meaningful public participation in response actions undertaken for sites listed pursuant to Section 25356.

(b) The department, or the regional board, as appropriate, shall * * * inform the public, and in particular, persons living in close proximity to * * * a hazardous substance release site listed pursuant to Section 25356, of the existence of the site and the department's or regional board's intention to conduct * * * a response action at the site, and shall conduct a baseline community survey to determine the level of public interest and desire for involvement * * * in the department's or regional board's activities, and to solicit * * * concerns and information regarding the site from the affected community. Based on the results of the baseline survey, the department or regional board shall develop a public participation * * * plan that shall establish appropriate communication and outreach measures commensurate with the level of interest expressed by survey respondents. The public participation * * * plan shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

(c) The department or regional board shall provide any person affected by a response action undertaken for sites listed pursuant to Section 25356 with the opportunity to participate in the department's or regional board's decisionmaking process regarding that action by taking all of the following actions:

(1) Provide * * * access to information which the department or regional board is required to release pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), relating to the action, except for the following:

(A) Trade secrets, as defined in subdivision (a) of Section 25358.2.

(B) Business financial data and information, as specified in subdivision (c) of Section 25358.6.

(C) Information which the department or regional board is prohibited from releasing pursuant to any state or federal law.

(2) * * * Provide factsheets, based on the expressed level of public interest, regarding plans to conduct the major elements of the site investigation and response actions. The factsheets shall present the relevant information in nontechnical language and shall be detailed enough to provide interested persons with a good understanding of the planned activities. The factsheets shall be made available in languages other than English if appropriate.

(3) Provide * * * notification, upon request, of any public meetings held by the department or regional board concerning the action.

(4) Provide the * * * opportunity to attend and to participate at those public meetings.

(5) Based on the results of the baseline community survey, * * * provide opportunities for public involvement at key stages of the response action process, including the health risk assessment, the preliminary assessment, the site inspection, the remedial investigation, and the feasibility study stages of the process. If the department or regional board determines that public meetings or other opportunities for public comment are not appropriate at any of the stages listed in this section, the department or regional board shall provide notice of that decision to the affected community.

(d) The department or regional board shall develop and make available to the public a schedule of activities for each site for which remedial action is expected to be taken by the department or regional board pursuant to this chapter and shall make available to the public any plan provided to the department or regional board by any responsible party, unless the department is prohibited from releasing the information pursuant to any state or federal law.

(e) In making decisions regarding the methods to be used for removal or remedial actions taken pursuant to this chapter, the department or regional board shall incorporate or respond in writing to the advice of persons affected by the actions.

(f) This section does not apply to emergency actions taken pursuant to Section 25354.

(Added by Stats.1999, c. 23 (S.B.47), § 2, eff. May 26, 1999. Amended by Stats.2000, c. 912 (S.B.667), § 19, eff. Sept. 29, 2000.)

HEALTH AND SAFETY CODE

§ 25358.7.1. Community advisory groups

(a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory committee. The department or regional board shall also advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment. If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site or a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the petitioners or the legislative body to establish a community advisory group to review the response action at the site.

(b) To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(1) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(2) Individuals from the local business community.

(3) Local political or government agency representatives.

(4) Local citizen, civic, environmental, or public interest group members residing in the community.

(c) The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

(1) The department or regional boards.

(2) Representatives of local environmental regulatory agencies.

(3) The potentially responsible parties or other persons who are conducting the response action.

(d) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 25358.7. Nothing in this section shall affect the status of any citizen advisory group formed before the enactment of this section, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board.

(Added by Stats.1999, c. 23 (S.B.47), § 2, eff. May 26, 1999.)



Department of Toxic Substances Control

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Gray Davis
Governor

Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

October 27, 2003

RECEIVED

OCT 27 2003

**COMMISSION ON
STATE MANDATES**

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: Department of Toxic Substances Control's Opposition to
Clovis Unified School District's Test Claim No. 02-TC-43

Dear Ms. Higashi:

The Department of Toxic Substances Control (DTSC) submits this letter as our opposition to and comments on the Clovis Unified School District's Test Claim (Clovis' Claim) under Government Code section 17553, subdivision (a). DTSC reserves the right to submit additional comments on Clovis' Claim as may appear necessary and proper.

DTSC opposes the claim that the geological, soil and environmental assessment and cleanup ("Hazardous Material Assessment") conditions constitute a reimbursable state mandate on school districts (districts) on four grounds. First, district participation in the underlying program is elective or optional, and neither a compulsory nor a de facto mandate under *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731-735 (hereafter *DOF-2003*). Second, school districts have authority to levy fees to fund their share of costs under Education Code section 17620, among others, thus disqualifying them for reimbursement under Government Code section 17556, subdivision (d), and *Connell v. Superior Court (Santa Margarita Water District)* (1997) 59 Cal.App.4th 382 (*Santa Margarita Water District*). Third, jointly funded programs such as school funding are outside the coverage of Section 6, article XIII B of the California Constitution (Section 6) under *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App.4th 1264 (*County of Sonoma*). Fourth, compliance with these funding conditions fails to provide a new program or increased level of service to the public to qualify as a reimbursable state mandate under *County of Sonoma*. Consequently, DTSC maintains that these geological, soil and environmental assessment and cleanup (hazard assessment requirements) are not reimbursable state mandated costs under Constitution, article XIII B, section 6.

REVEREND

DEAR SIR,

NO MORE OF THIS
KIND OF LETTERS

INTRODUCTION

Clovis' Claim asserts that these hazard assessment procedures impose reimbursable, state-mandated costs on grant applicants for state school construction funds under Education Code sections 17072.13, 17212, 17213.1, and the various associated sections added and amended by various legislation between 1976 and 2002. These procedural safeguards effect safety standards in that they provide informed, interim decision points for districts to withdraw or proceed with school site acquisition and construction projects after checking for hazards associated with the site. These hazard assessment requirements apply only to applicants for state money, and are conditions on state funds under the School Facilities Program (Educ. Code § 17070.10 et seq.) to assure that resulting school sites are safe for their intended population -public school children - as noted in the sections quoted by Clovis' Claim, itself. Districts that do apply for state funding may fund their share of the project costs with local bonds, developer fees, Mello-Roos fees, improvement district levies, and certificates of dedication. (Educ. Code § 17620; Gov. Code § 53311 et seq.; Educ. Code § 15350 et seq.)

The Schools Facilities Program funds local construction in equal shares with the district under Education Code section 17072.13. When a school district applies for state funds from the School Facilities Program for school construction projects, including site acquisition, the district must check for possible hazardous conditions at the site using the process specified at Education Code sections 17072.13 and 17210 et seq. Education Code section 17212 continues the pre-1975 condition that districts must investigate prospective school sites using competent personnel. The district may choose at any time to stop pursuing a prospective school site. To assure that state construction money funds a reasonably safe environment, the Education Code sections 17072.13, 17212 and 17213.1 require inquiry into the possible geological, soil and environmental hazards of the site. The applying district must conduct a Phase I assessment for environmental hazards (including contamination from hazardous substances) using existing documents, materials and studies, and must submit the review with \$1,500 for DTSC oversight. DTSC refunds to the district any unused portion of this \$1,500.

If the Phase I indicates that contamination may be present and the applying district chooses to continue pursuing the site, Education Code section 17213.1 requires the district to conduct a Preliminary Endangerment Assessment (PEA) under an environmental oversight agreement with DTSC that includes reimbursement. This PEA may include limited or extensive sampling, depending on the results of the Phase I. If the district decides to acquire or construct on a contaminated site, it must also conduct an appropriate response to render the site usable by children under Education Code section 17213.2. As part of the response activities, the district must fund DTSC oversight as well as the necessary public comment and participation activities required by Health and Safety Code sections 25358.7 and 25358.7.1.

BASES FOR OPPOSITION

1. As conditions of an optional state funding program, hazard assessments are neither actual nor de facto reimbursable state mandates under DOF-2003.

A. Hazard assessment requirements are not compulsory

The Clovis Unified School District (District) properly quotes Education Code sections 17210.1 and 17213.1, at pages 33-34, including language noting that the section applies to state funded entities. (Test Claim, pages 18, 19, 23.) Education Code section 17210.1 expressly addresses only sites for which “school districts elect to receive state funds.” Education Code section 17213.1 also states, “[a]s a condition of receiving state funding” and clearly applies these requirements to districts seeking state funding of their projects. However, the District overlooks this state funding condition precedent in its analysis and omits any reference to the *County of Sonoma* and *DOF-2003* case decisions rejecting claims that such elective activities’ costs are state mandates. The District also fails to mention the existing state funding for part or all of the hazard assessment work under Education Code sections 17072.12 and 17072.13 that reduces the unfunded costs or invalidates their grounds for reimbursement as an unfunded mandate. The School Facilities Program provides optional, joint state and local funding for school facilities construction as demonstrated by the language limiting application of the sections to applicants for funds. (E.g., Educ. Code § 17072.13, 17072.18, et al.)

The state-funded School Facilities Program conditions in Clovis’ test claim are analogous to the state-funded educational programs at issue in *DOF-2003*. In that case, the California Supreme Court examined and rejected various school districts’ claims that the statutes compelled participation in the various programs, making the program’s meeting and agenda posting requirements reimbursable unfunded state mandates. (*DOF-2003, supra*, 30 Cal.4th 727, 732.) In the *DOF-2003* case, the California Supreme Court found that participation in the underlying programs was neither mandated nor legally compelled by requirement or by a penalty for non-participation (de facto). In addition, to the extent that participation in the last of the nine programs was not optional, the district could claim reimbursement under that program, and thus the state had funded any new costs. (*Id. at* p. 730-731.) As a consequence, the meeting and agenda posting requirements in that case were not reimbursable mandates because the participation in the underlying program was optional, and the state would fund any additional costs. (*DOF-2003, supra*, 30 Cal.4th at p. 731.)

The hazard assessment requirements are not rendered mandates because the state funds only part of the total costs under Education Code sections 17072.1, 17213.13 and 17213.18. The *DOF-2003* court noted, “[w]e reject the suggestion, implicit in claimants’ argument that the state cannot legally provide school districts with funds for voluntary programs, and then effectively reduce that funding grant by requiring school districts to incur expenses in order to meet conditions of program participation.” (*DOF-2003, supra*, 30 Cal.4th at p. 754.)

Here the geological, soil and hazardous material assessment requirements are analogous to this aspect of the *DOF-2003* case. Since the districts elect to apply for state funds, participation in the Schools Facilities Program is not compulsory, and therefore does not qualify for reimbursement as a state mandate under Section 6.

B. Participation is not compelled de facto.

The Supreme Court in *DOF-2003* also rejected the districts' claim that participation in the educational programs at issue was de facto compulsory, in that the districts had no true choice but to continue participation, having already begun to participate. (*DOF-2003, supra*, 30 Cal.4th at p. 748, 751-754.) The court reasoned that, since there was no showing that withdrawal would result in severe penalties, double taxation, or other draconian consequences to the districts, no de facto compulsion existed. (*DOF-2003, supra*, 30 Cal.4th at p. 754.) Regarding Clovis' Claim, the School Facilities Program statute contains no penalties for failing to apply for funds, nor any tax or fee imposed for failure of a district to participate. Furthermore, the Phase I and PEA provide advance notice of possible contamination on the site, allowing the district to cease pursuing a school site at any time without penalty. The hazard assessment requirements inform district decision-making without dictating school siting choices.

The District might claim a de facto reimbursable state mandate because there is no feasible alternative to participation in the state funding program for school construction projects where hazard assessment costs are sizable. The *DOF-2003* court acknowledged that some programs could have compliance costs so great that funded program benefits would not cover the compliance costs or might violate a spending limitation in the applicable regulations or statutes. In that case, "a compulsory program participant likely would be able to establish the existence of a reimbursable state mandate under . . . section 6." (*DOF-2003, supra*, 30 Cal.4th at p. 751-754.) Again, however, DTSC would point out that districts may elect to stop pursuing such a high cost site at any time without compulsion or penalty.

As further discussed below, any costs borne by the district are also partially funded, if not fully funded, by the state, thus also disqualifying the hazard assessment requirements as reimbursable state mandates.

I. Districts' existing authority to fund these hazard assessments through fees, levies, taxes and assessments disqualifies them for reimbursement under Government Code section 17516, subdivision (d).

A. Districts have Authority to Levy Fees, Assessments and Taxes under Education Code 17620 to fund the local share of costs.

Government Code section 17556, subdivision (d), prohibits the commission from determining costs are mandated by the state if it finds that the district "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." *Connell v. Superior Court (Santa Margarita Water District)* (1997) 59 Cal.App.4th 382 (*Santa Margarita Water District*) addressed

the meaning of these phrases under Revenue and Taxation Code section 2253.3, subdivision (b)(4), with respect to water quality requirements for certain irrigation uses of recycled water. The court expressly notes that the same provision is now contained in Government Code section 17556, subdivision (d). (*Id.* at 398.) The Third District Court of Appeal in *Santa Margarita Water District* found that "sufficient" referred to the authority being sufficient to levy the fees and charges to fund the local costs at issue. (*Id.* at 400, 403.) The court ruled that the test was not whether actual revenues levied are sufficient to cover the costs of the program. (*Id.* at 400.)

For Clovis' Claim, we refer the Commission to Education Code section 17620 which states in pertinent part:

(a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code.

In addition, the Mello-Roos Community Facilities Act of 1982 (Gov. Code § 53311, et seq.) allows a district to form a community facilities district to assess fees to generate school facility funding. Furthermore, the Legislature also authorizes districts to generate funds through bond issues for school facilities improvement districts under Education Code section 15350 et seq.

Based on these references alone, the districts have the means to generate revenues to cover the local share of costs required as conditions on state funding under the School Facilities Program. To the extent a district is unable to cover the local share, it may also apply for additional economic hardship grants from the state as noted below.

B. The state also funds local costs in economic hardship cases under Education Code section 17072.13.

The state School Facilities Program routinely funds half of the hazard assessment requirements, and funds them wholly in cases of economic hardship under Education Code sections 17072.12, 17072.13 and 17072.18. State funds also cover response costs to address actual contamination in the same proportion. (Educ. Code § 17072.18.) Districts unable to fund the local share of construction project costs, may also apply for economic hardship funding to defray part of or the entire remaining local share. (Educ. Code § 17072.13, subdivision (e).) Therefore, the state actually funds these hazard assessment costs under the existing School Facilities Program, sometimes funding 100 percent of project costs. Even if the hazard assessment requirements force a reallocation of funds between entities already jointly responsible for providing a service, the requirements do not create a reimbursable state mandate under *Los Angeles v. Commission of State Mandates*. (*Los Angeles 2003, supra*, 110 Cal.App.4th at pp. 1193-1194.) For these reasons, the hazard assessment

requirements remain voluntary, are fully or partially state-funded, and thus, are not reimbursable state mandates.

II. The *County of Sonoma* court opined that the California Constitution's Section 6 of article XIII B does not cover jointly-funded programs such as the School Facilities Program.

School construction was locally funded, with the state acting as a bank in the 1950s. (*Whittier Elementary School Dist. of Los Angeles County v. Kirkwood* (1956) 147 Cal.App.2d 330, 333-334 (*Whittier*.) School construction became a jointly-funded effort after 1975 with the Leroy F. Green School Lease-Purchase Law of 1976. (Educ. Code § 17000 et seq.) In 1979, the State Allocation Board restructured the Lease Purchase Program into a grant-based program under which school districts submitted cost proposals for which they would be given grants. However, the state funds had numerous spending limitations and controls. (California Research Bureau (CRB), *School Facility Financing: A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds*, page 13 citing formerly Educ. Code § 17730.2, 17732; presently Educ. Code § 17030, 17032). The districts continued to be responsible for up to 10 percent of the projects' costs. (*Ibid.*) School funding has long been a jointly-funded effort with the local share funded by local bonds, fees, assessments, and taxes. (*County of Sonoma, supra*, 84 Cal. App.4th 1264, 1286; Educ. Code § 17620.)

Therefore, since Section 6 became effective in 1980, districts have borne or shared school facility costs with the state whether through local bonds, fees or taxes, analogous to educational program funding examined in the *County of Sonoma* case. (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1289.) "These joint budget allocations are not subject to Section 6." (*Ibid.*) The *County of Sonoma* case found that public school education was a jointly-funded venture between state and local government and was, therefore, outside the scope of Section 6. (*Ibid.*) Furthermore, as noted above, when the state reduces or reallocates funding, the loss suffered by the local entity is not a reimbursable mandate. (*Ibid.*) For these additional reasons, the Clovis test claim does not qualify as a reimbursable state mandate.

III. Hazard Assessments are part of the District's continuing duty to provide safe school sites, not a new program shifted from the state to the district.

Here, the program at issue concerns school facility safety, an area that the state has long regulated to assure safety of school children in facilities for compulsory education. (Former Educ. Code § 39002; *Hall v. City of Taft* (1956) 47 Cal.2d 177, 185-186.) A mandate is a new program if the local entity had not previously been required to implement it. (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App.4th 1176 at p. 1189 (*Los Angeles 2003*.) However, to qualify for reimbursement, the program must be one that the state previously funded in whole and would newly be funded solely by local tax revenues and not by other levies. (*Los Angeles 2003, supra*, 110 Cal. App.4th at p. 1193, citing *County of Sonoma v.*

Commission on State Mandates (2000) 84 Cal. App.4th 1264 at p. 1289). The state did not fund these site acquisition and investigation costs, including the hazard assessments, before 1975 so the state did not shift state program costs to the districts.

If anything, these hazard assessment requirements merely clarify and specify how districts may assure proper use of public funds in providing reasonably safe venues for public education. Upon entering the field, the state has directed its money to provide reasonably safe facilities for their intended purpose: here, the compulsory education of children. (See former Educ. Code § 15002.1 protecting against earthquake danger.) The state has exclusive authority to set safety standards for compulsory education. (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 185-186 [partially superseded by subsequent legislation requiring compliance with local ordinances].) The various subsequent enactments and revisions to the Education Code create no new program or increased level of service to the public. If anything, the new requirements merely give criteria and procedures to clarify how districts ascertain a site's fitness for use as a school. Consequently, under *Connell v. Superior Court (Santa Margarita Water District)* (1997) 59 Cal.App.4th 382, the hazard assessment requirements merely clarify safety standards, and do not comprise a new program or increased level of service to the public to qualify as a reimbursable state mandate under Constitution, article XIII B, section 6.

DTSC would also note to the Commission that a mandate for safe school sites was in effect on January 1, 1975 (former Education Code section 15002.1) and remains in Education Code section 17212. (Clovis' Claim, page 2.) Education Code section 15002.1 was originally enacted in 1967, and was renumbered as 39002 and now is 17212. Education Code section 15002.1 required the governing board of a school district to have a building site investigated by competent personnel, prior to acquisition, to ensure that the final site selection was determined by an evaluation of all factors affecting the public interest and not limited to selection on the basis of raw land cost only. Now, more specific measures to achieve those ends accompany such acquisitions. The District correctly asserts that the environmental hazard assessment requirements for school site evaluation at issue here were enacted after January 1, 1975. The claim omits, however, to reference the general school safety duties from statutory or case law.

As section 39002, the section referred to section 39101, requiring the California Department of Education to develop standards for school district use in the selection of school sites considering safety, along with educational merit and conformity with local general plans. (Educ. Code § 39101(a), derived from former section 15302, and ultimately from former section 18102 in, the School Code.) The state has specified facility standards for occupancy of school sites since 1933 when the School Code was in force as noted also in *Hall v. City of Taft* (1956) 47 Cal.2d 177, 185-186. (Educ. Code § 17365, formerly Educ. Code § 39210.) In 1956, the California Supreme Court considered school safety issues in *Hall v. City of Taft* and found that the state fully occupied the field in specifying construction requirements for schools to be sure they were reasonably safe for their intended use as schools. (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 185-186.) Subsequently, building standards for school facilities were

enacted under the Field Act (Educ. Code § 17281 et seq.) "to expedite the provision of safe educational facilities for California school children." (Educ. Code § 17366, formerly Educ. Code § 39211.) Districts had to consider and evaluate all costs of site acquisition under Education Code section 15002.1 (subsequently Education Code section 39002, presently section 17212) before 1975, and therefore have no claim to a new reimbursable state mandate on those grounds.

The hazard assessments do not provide a new service to public. Instead, they require research and periodic evaluation at key decisions points, such as the Phase I and PEA, to help inform public spending decisions to assure reasonable use of state school facility funds. This increased level of information also protects against commitment to sites with unknown contamination levels. In addition, these processes assure that the site is reasonably safe for its intended use: occupancy by children for compulsory education. The situation here is similar to *County of Los Angeles v. Department of Industrial Relations* where the court found costs of complying with new elevator fire and earthquake safety standards were not reimbursable as state mandates because they provided no new or increased level of service to the public. (*County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1546.)

Similarly, Education Code sections 17072.13, 17212 and the School Facilities Program statutes (Educ. Code § 17070.10 et seq.) merely clarify and further specify the means to be employed in providing safe schools, as intended by the Legislature as far back as 1933. (See annotations to Educ. Code § 39101, *Hall v. City of Taft* (1956) 47 Cal.2d 177, 185-186.) Here the hazard assessment requirements specify procedures and oversight mechanisms to assure consideration of various hazards without providing a new service to the public. To the extent that the public comment process in hazard assessment requirements are a service to public, the state shares the incremental costs as project costs under the schools facilities program (Educ. Code § 17213.18), thus preventing these costs from becoming either an unfunded mandate or a de facto state mandate under *DOF-2003*.

CONCLUSION

The Commission on State Mandates has numerous grounds to reject the District's Claim that hazard assessment conditions on state funding are reimbursable state mandates.

First, because the districts have the option to apply for state school site funding from the School Facilities Program, their participation in the underlying program is voluntary, optional and not compulsory. Given that districts may choose to stop pursuing a contaminated site at any time, they can avoid the exorbitant hazard assessment costs and are not compelled to participate in the School Facilities Program, which would create a reimbursable mandate. Furthermore, to the extent that local funding sources prove insufficient, the state provides additional economic hardship funding for these hazard assessment requirements under Education Code section 17072.13, subdivisions (d) and (e). For these reasons, therefore the School Facilities Program hazard

assessment requirements are optional and do not qualify as reimbursable state mandates in fact or de facto under *DOF-2003*.

Second, Education Code section 17620, among others, authorizes districts to levy fees, charges, and dedications to fund the local share of school site costs. The multiple levying authorities appear sufficient to cover local costs and the district could withdraw from site acquisition if the costs became exorbitant. Whether the district chooses to levy fees in sufficient quantity is not the proper test. Therefore, the levying authority disqualifies the hazard assessment requirements from being reimbursable under Government Code section 17556, subdivision (d) and the *Santa Margarita Water District* case.

Third, *County of Sonoma* held that shared funding programs such as the school facilities program were not within the ambit of Section 6 of article XIII B of the California Constitution. Therefore the School Facilities Program, a shared state local funding program, is outside the realm of reimbursable mandates. Even if it were not, costs associated with participation in the program do not arise from shifting costs from state to local entities to provide the same services to the public.

Fourth, providing safe school sites was and remains the fiscal and legal duty of the district before 1975 under the various enactments. The hazard assessment conditions on state funding work to provide necessary information to prevent the resulting facility from being unhealthful to children obtaining their compulsory public education. As public safety and health standards, the hazard assessment conditions do not provide a new program or increased level of service to the public as contemplated under the California Constitution's Section 6 of article XIII B, Government Code section 17514, *County of Los Angeles v. Department of Industrial Relations* or *Santa Margarita Water District*.

For all the reasons noted above, as well as any other grounds the Commission may deem proper, the DTSC respectfully urges denial of Clovis Unified School District's Test Claim No. 02-TC-43.

Respectfully submitted,

Antonette Benita Cordero
Chief Counsel and Deputy Director

Dated: October 27, 2003

By: Steve Koyasales, for
VIVIAN S. MURAI
Staff Counsel

Exhibits

LIST OF EXHIBITS

Exhibit A: *Whittier Elementary School Dist. of Los Angeles County v. Kirkwood* (1956)
147 Cal.App.2d 330 (*Whittier*).

Exhibit B: *Hall v. City of Taft* (1956) 47 Cal.2d 177.

Exhibit C: California Research Bureau (CRB), *School Facility Financing: A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds* (1999).

Exhibit D: *Connell v. Superior Court, (Santa Margarita Water District)* (1997) 59 Cal.
4th 382.

EXHIBIT A

2770

District Court of Appeal, Second District, Division 1,
California.

WHITTIER ELEMENTARY SCHOOL DISTRICT
OF LOS ANGELES COUNTY, Plaintiff and
Respondent,

v.

Robert C. KIRKWOOD, as Controller of the State of
California, Defendant and
Appellant.


Civ. 21915.

Dec. 31, 1956.


Declaratory judgment action by school district against State Controller to determine authority of State Allocation Board to amend order apportioning funds from Public School Building Loan Fund so as to permit district to retain proceeds from sale of replaced school site instead of applying such proceeds toward repayment of the state allocation as required by the resolution which initially approved the allocation. The Superior Court, Los Angeles County, Philip H. Richards, J., entered judgment adverse to Controller and Controller appealed. The District Court of Appeal, Fourt, J., held that Board was authorized to amend the original order so that school district would be entitled to retain the proceeds from sale of the replaced school site.

Judgment affirmed.

West Headnotes

[1] Schools  74
345k74 Most Cited Cases

State Allocation Board has discretion to determine whether proceeds from subsequent sale of replaced school facilities shall be applied toward cost of school construction project financed by funds obtained from the board. West's Ann.Education Code, § § 5041 et seq., 5044.5, 5045, 5048, 5050, 5053-5063, 5058, 5059, 5071-5073.

[2] Schools  74
345k74 Most Cited Cases

Where State Allocation Board had, in original order apportioning funds from Public School Building

Loan Fund for construction of school, required that proceeds from sale of replaced school site be applied toward the repayment of the state allocation, board was thereafter authorized to amend the original order so that school district would be entitled to retain the proceeds from sale of the replaced school site. West's Ann.Education Code, § § 5041 et seq., 5044.5, 5045, 5048, 5050, 5053-5063, 5058, 5059, 5071-5073.

****111 *331** Edmund G. Brown, Atty. Gen., Richard L. Mayers, Deputy Atty. Gen., for appellant.

Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Asst. County Counsel, Los Angeles, for respondent.

FOURT, Justice.

This is an appeal by the defendant from a judgment in an action in declaratory relief brought to determine the authority of the State Allocation Board to amend an order apportioning funds from the Public School Building Loan Fund so as to permit the respondent School District to retain the proceeds from the sale of a replaced school site, instead of applying such proceeds toward the repayment of the state allocation, as set forth in the resolution initially approving such allocation.

On about June 5, 1950, respondent, pursuant to the provisions of chapter 1.6 of Division 3 of the Education Code, filed a written application with the State Allocation Board for an allocation of \$2,689,632.70, for the acquisition and construction of certain school facilities set forth therein. The electors of the respondent District, at an election, had authorized the Board of Trustees of the District to accept and expend an apportionment from the State in an amount not to exceed \$3,250,000, pursuant to the law.

On or about January 9, 1951, the State Allocation Board, by Resolution numbered 1389-106, approved an allocation of \$2,452,472, for the purposes set forth in the application. By this Resolution the respondent District was required to contribute to the costs of the contemplated school project 'the net proceeds or credits allowed from the disposition of any sites, improvements, or facilities sold, transferred, or exchanged as a result of the acquisition or construction of any sites, improvements, or facilities pursuant to Chapter 1.6. * * *' The Resolution further provided: 'That the District shall proceed to dispose of any school building area in excess *332 of the

maximum prescribed by Paragraph 2 of this resolution, and any site or sites scheduled to be abandoned as a result of the acquisition or construction of any sites, improvements or facilities pursuant to Chapter 1.6 above, not later than the date the new construction authorized by this resolution is available for occupancy, provided that the terms, conditions and manner of disposition thereof shall be subject to the approval of the Director of Finance, and provided further that if such excess area or sites have not been disposed of by said date, the District shall dispose of the same in accordance with the instructions of the Director of Finance.'

****112** On or about January 20, 1953, the respondent District requested permission to sell the real property owned by the District, known as the Jonathan Bailey School and site, and to retain the proceeds therefrom 'to be used for the construction of additional classroom facilities in accordance with the needs of the District.'

On or about December 16, 1953, the State Allocation Board adopted Resolution No. 1389-106V, which amended Resolution No. 1389-106, in that it deleted from the original Resolution the requirement that the respondent School District contribute to the cost of the specific project as approved the net proceeds obtained from the disposition by the District of any sites, improvements, or facilities sold, transferred, or exchanged. Said Resolution further purported to authorize respondent District to sell the Jonathan Bailey School and site for not less than \$253,600, and to apply the net proceeds obtained from said sale toward providing or constructing additional but unspecified school facilities.

On or about April 26, 1954, the Attorney General advised the appellant that the State Allocation Board had no authority to amend the original Resolution and that such purported amendment was invalid. About September 8, 1954, the respondent District entered into an agreement with the city of Whittier for the sale of the school site for the sum of \$250,600.

The Attorney General, in his brief, sets forth that on October 27, 1954, the State Allocation Board adopted Resolution numbered 1389-106X, which said Resolution apparently took notice of the fact that the Attorney General had been requested by the Chief of the Local Allocation Division to reconsider his opinion of April 26, 1954. Further, it is said that by this Resolution the approval of the State Allocation Board, in allowing the respondent District to retain

the proceeds *333 from the sale of the Jonathan Bailey School and site was specifically made subject to the approval of the Attorney General. The respondent District points out that this particular Resolution (1389-106X) was never received in evidence.

On or about November 12, 1954, the Attorney General reaffirmed his previous opinion. On January 12, 1955, by Resolution numbered 1389-106Y, the State Allocation Board, after taking notice of the opinions of the Attorney General, reaffirmed its previous position. In this latter Resolution there is contained the following:

'2. That Paragraph 2 to-wit: 'That the approval of the Board, allowing the District to retain the proceeds from the disposition of the Jonathan Bailey School and site, is subject to approval of the Attorney General of the State of California', of Resolution No. 1389/106X, adopted October 27, 1954, is hereby rescinded.'

Thereafter, the appellant demanded that the entire sum received, or to be received, by the respondent District from the sale of the Jonathan Bailey School and site be paid to the State of California, and in his demand stated that if said sums were not paid, that the State Controller would deduct the same from the yearly allotments of state funds to the respondent School District.

Some of the pertinent, relevant provisions of the law involved are as follows: Section 5048 of the Education Code as it read in 1950, and as it now reads, authorizes school districts to file applications for state apportionments with the State Allocation Board, and requires that Board to approve or reject the application.

Section 5050 of the Education Code requires that before an allocation becomes final 95% of the bonded capacity of a school district be outstanding, or if not, that the outstanding bonds be within \$25,000 of the total bond limit. The section then provides as follows:

'At the time the board makes a conditional apportionment pursuant to Section 5048, it shall determine what portion of the total amount of bonds which a district is permitted to issue and sell by law shall be issued and sold by such district, the ****113** proceeds of which shall be applied toward the cost of the project for which the apportionment is sought. The portion so determined by the board shall be not less than the minimum amount required for such

apportionment to become final under this section.'

The section also requires the electors of the school district, *334 by a two-thirds vote, to authorize the government board of the district 'to accept, expend, and repay, as provided in this chapter, an apportionment under the provisions of this chapter.' As heretofore indicated, such an election was held in the respondent District and authorized the governing board to accept, expend and repay an amount not to exceed \$3,250,000.

A complete scheme of repayment to the State of apportionments made, with interest, over a period of years is provided by sections 5053 to 5063 of the Education Code, section 5059 providing that interest shall cease after twenty-five years and at the end of thirty years any unpaid balance of an apportionment shall be cancelled. Section 5058 provides for the disposition of the repayments as follows:

'5058. The State Controller shall, during the next fiscal year following that in which he determines the annual repayment as herein provided, deduct the total amount of the annual repayment of each district in equal amounts from each installment of the apportionments made to such district from the State School Fund under Chapter 15 of this division; and, on order of the State Controller, the amount so deducted shall be transferred to the Public School Building Loan Fund. All money transferred to the Public School Building Loan Fund under the provisions of this section shall be available only for transfer to the General Fund under the provisions of Section 5103.'

Other than as provided in the above referred to sections, there is no provision, so far as we are able to locate, requiring school districts to apply any other funds, either available at the time of the application or to become available from the sale of assets, towards the construction project or as a reduction or repayment of the apportionment, nor is there any provision in any of the sections requiring the State Allocation Board to include such provisions in the granting of the apportionment, this matter resting wholly within its discretion.

Pursuant to its rule-making power, the State Allocation Board adopted, among others, two rules as follows: Rule 1778 provides that at the time of making an apportionment the State Allocation Board shall prescribe the amount of funds to be contributed by the district toward the construction project, and in determining the amount of available funds may specify that proceeds from the sale of any facilities to

be replaced through an apportionment shall be applied toward the cost of the construction project as such proceeds become available. Thus, by its own rule, the Board has discretion to *335 require the proceeds from the sale of facilities to be used toward the project.

Rule 1781 provides, so far as material, as follows: 'Notwithstanding anything to the contrary in these rules and regulations, the Board shall have power:

* * *

'(c) To modify any apportionment or resolution of apportionment, either conditional or final, where the Board determines that good cause exists therefor.

'This section shall apply to any apportionment or resolution of apportionment heretofore or hereafter made or adopted by the Board.'

The respondent has pointed out that under section 5058 of the Education Code it is required that the State Controller deduct the amount of annual repayments of each district from the apportionments made to such district from the State School Fund and to transfer the amount so deducted to the Public School Building Loan Fund and from there to the General Fund under the provisions of section 5103. The latter section provides for the accumulation of money to retire the State school bonds. Thus, **114 should the appellant deduct the amount here involved from the regular yearly State apportionment to respondent District, it would eventually come to rest in the General Fund and would not be available for an allotment to any other school district.

The only provisions we have been able to locate providing for reimbursing the Public School Building Loan Fund after an allocation has been made to a school district are when the money allocated has been expended for unauthorized purposes, or is in excess of the final cost of the project, under section 5071 of the Education Code; when any unexpended portion of an allocation remains after three years has expired, section 5072 of the Education Code; and when a school site acquired with money allocated is sold within three years, section 5073 of the Education Code. The money in question in the instant case does not fall within any of the categories named.

The respondent also points out that the legislature, in the 1955 session amended section 5048 by adding thereto, among other things, the following:

'The board may for such good cause as it shall

determine, reduce the amount of, or modify any provisions relating to, any contribution required of a school district under the terms of an apportionment, other than any contribution required *336 of such district under Section 5050 from the sale of bonds; provided, that the board may not, without the consent of the district, increase the amount of any district contribution under the terms of an apportionment, in the absence of mistake arising from any source, or misrepresentation, concealment, or omission, on the part of the district, intentional or otherwise. *The provisions of this paragraph shall be applicable to apportionments heretofore or hereafter made.* (Emphasis added.) (Stats.1955, ch. 1734, § 3.)

It would appear therefore, that the legislature validated the actions of the State Allocation Board.

The trial judge in this matter prepared an opinion in writing wherein he set forth his reasoning and the law of the case. We believe the cause was correctly and properly disposed of in the trial court and we adopt as part of this opinion the memorandum opinion of the trial court which is as follows:

'The sole question for determination in this case is the authority of the State Allocation Board to amend an order apportioning funds from the Public School Building Loan Fund, so as to permit the plaintiff School District to use the proceeds from the sale of a replaced school site for the construction of additional school buildings, instead of applying such proceeds toward the repayment of the allocation as originally provided in the resolution approving such allocation.

'It is clear that the school building aid program embraced in Article 1, Chapter 1.6, Division 3 of the Education Code is to provide necessary and adequate school sites and buildings for financially distressed school districts.

'While the Act (Section 5048) requires the Director of Finances to determine the district's financial ability to meet all or a portion of the cost out of available funds, there is no provision in the Act which requires the Board to compel the district to contribute any of its available funds or funds which thereafter become available, except in the case of a sale within three years of a site or improvements purchased or improved in whole or in part from an apportionment (Section 5073).

'Rule 1778 adopted by the Board, pursuant to authority of Section 5045, provides that the Board *shall* prescribe the amount of funds to be contributed by the District and *may* specify that the proceeds

from the sale of any facilities to be replaced through an apportionment shall be applied toward the cost of the approved project.

[1]*337 'In the first instance then, it is within the Board's discretion to determine **115 if proceeds from the subsequent sale of replaced facilities shall be applied toward the cost of the project.

'Rule 1781 provides that the Board may modify any apportionment, conditional or final, where the Board determines that good cause exists therefor. With no statutory provision relating to the use of funds subsequently becoming available from the sale of replaced facilities, and with authority to modify an apportionment for good cause, it would appear that the Board has authority to modify the provision of an apportionment requiring the District to contribute the net proceeds from the disposition of any replaced facilities by excepting therefrom the net proceeds acquired by the District from the sale of a particular school and site.

'The Attorney General contends that both the statute and the Board rules require the District to make use of all its available funds before obtaining State aid. This contention is not supported by any provision of the statute or by the Board rules.

'The Attorney General further contends that by modifying the apportionment provision relating to the contribution of proceeds from the sale or replaced facilities, by exempting the proceeds from the sale of one site and improvements, the Board has in effect approved the use of such proceeds for a project without first requiring the District to apply for an apportionment of such sum in the manner prescribed by law. The fallacy of this contention is that the Board is not required by law, nor by its own rules to require such contribution in originally approved apportionment. An expenditure of the District's funds subsequently becoming available is not an allocation from the Public School Building Loan Fund.

'It is a further contention of the Attorney General that to permit the plaintiff to retain and use the proceeds received from the sale of replaced facilities subverts the entire statutory scheme envisaged in the State Building Aid program in that it would render completely ineffectual the priority system contained in the Act. Sec. 5044.5 provides that the Board shall by rule give priority in allocating funds to districts where the children will benefit most from additional facilities. After setting forth the several bases for priority, the section provides that the Board may make exceptions when it determines that it will be for

the benefit of the children affected. Thus it appears that even a waiver of *338 priority is within the discretion of the Board and not in conflict with the enabling statute.

[2] 'We conclude that the Board was authorized to amend the original resolution by the adoption of the resolution of December 16, 1953, authorizing the District to sell the Jonathan Bailey School and site and to apply the proceeds to the construction of the facilities specified in the amendatory resolution.'

Judgment affirmed.

WHITE, P. J., and DORAN, J., concur.

305 P.2d 110, 147 Cal.App.2d 330

END OF DOCUMENT

KEYCITE

CITATION: Whittier Elementary School Dist. of Los Angeles County v. Kirkwood, 147 Cal.App.2d 330, 305 P.2d 110 (Cal.App. 2 Dist., Dec 31, 1956) (NO. CIV. 21915)

History

- => 1 **Whittier Elementary School Dist. of Los Angeles County v. Kirkwood, 147 Cal.App.2d 330, 305 P.2d 110 (Cal.App. 2 Dist. Dec 31, 1956) (NO. CIV. 21915)**

EXHIBIT B

2778

▷

Supreme Court of California, In Bank.

Guy HALL, Plaintiff and Respondent,
v.

The CITY OF TAFT, a Municipal Corporation, Glen Black, Jack Kirsher, Ted Pheal, William O. Erickson, Dale Huey, as members of the City Council thereof, and Walter McKee, as Chief of Police thereof, Defendants and Appellants.

L. A. 24244.


Oct. 19, 1956.

Building contractor's action to enjoin city and others from enforcing its building ordinance against him in connection with construction of public school building. The Superior Court, Kern County, William L. Bradshaw, J., entered judgment for contractor and defendants appealed. The Supreme Court, Carter, J., held that the state had pre-empted the field of regulating public school building construction so that construction of such building by school districts is not subject to building regulations of municipal corporation within which building is erected.


Affirmed.

Opinion 297 P.2d 686, vacated.

West Headnotes

[1] Schools  20
345k20 Most Cited Cases

The public schools are a matter of state-wide rather than local concern and their establishment, regulation and operation are governed by the Constitution. West's Ann.Const. art. 4, § 25; subd. 27; art. 9, § § 1, 3, 3.1, 4, 5, 7; art. 13, § 15.


[2] Schools  20
345k20 Most Cited Cases

The power of the state Legislature over the public schools is plenary subject only to any constitutional restrictions. West's Ann.Const. art. 9, § § 6, 6 1/2, 8, 14.


[3] Municipal Corporations  592(1)
268k592(1) Most Cited Cases

Public school system is of state-wide supervision and concern and legislative enactments thereon control over attempted regulation by local government units. West's


Ann.Const. art. 9, § § 6, 6 1/2, 8, 14.

[4] Schools  65
345k65 Most Cited Cases

Public school property is held in trust for school purposes by the persons and corporations authorized for the time being to control such property, and it is within the power of the Legislature to provide for a change in the trusteeship of such property in certain contingencies.

[5] Schools  71
345k71 Most Cited Cases

Constitutional provision giving and county, city, town or township power to enforce within its limits all local, police, sanitary and other regulations not in conflict with general laws, does not confer upon local unit power to regulate construction of public school buildings. West's Ann.Const. art. 11, § 11; West's Ann.Gov.Code, § § 38601, 38660.

[6] Municipal Corporations  592(1)
268k592(1) Most Cited Cases


The state has completely occupied the field of regulating public school building construction, and construction of such school buildings by school districts is not subject to the building regulations of a municipal corporation in which the building is constructed. West's Ann.Education Code, § § 5021, 5041, 18001, 18002, 18009, 18055, 18057, 18101, 18102, 18151, 18191, 18193, 18194-18196, 18199-18201.

[7] Municipal Corporations  592(1)
268k592(1) Most Cited Cases

A city may not enact ordinances which conflict with the general laws on statewide matters.


[8] Schools  71
345k71 Most Cited Cases

The provisions of the Health and Safety Code requiring buildings with certain exceptions to meet certain standards as well as requiring building permits to be obtained from proper city or county officers charged with enforcement of laws for regulating construction, do not limit or modify provisions of Education Code delineating standards for public school buildings. West's Ann.Health & Safety Code, § § 19100-19170, 19130, 19132, 19150, 19151; West's Ann.Education Code, § § 18191 et seq., 18202-18204, 18221, 18222.

[9] Schools  71
345k71 Most Cited Cases

2781

Purpose of rules adopted for construction of school buildings under the Education and Health and Safety Codes is to protect lives and property of people by regulating the design and construction of public school buildings so that, in addition to the normal loads to which such buildings are subjected, they shall resist future earthquakes. West's Ann.Health & Safety Code, § 19100-19170, 19130, 19132, 19150, 19151; West's Ann.Education Code, § 18191 et seq., 18202-18204, 18221, 18222.

[10] Administrative Law and Procedure  **330**
15Ak330 Most Cited Cases

The final construction of a statute is the function of the courts.

****575 *178** Henry G. Baron, City Atty., Taft, and Allen Grimes, Modesto, for appellants.

Mack, Bianco, King & Eyherabide and Dominic Bianco, Bakersfield, for respondent.

Edmund G. Brown, Atty. Gen., Richard H. Perry, Deputy Atty. Gen., Johnson & Stanton, Gardiner Johnson and Thomas E. Stanton, Jr., San Francisco, as amici curiae on behalf of respondent.

***179** CARTER, Justice.

Defendants, Taft, a non-chartered city of the sixth class, its council and chief of police appeal from a judgment enjoining it from enforcing against plaintiff, a building contractor, its building ordinance.

****576** There is no dispute as to the facts. On April 22, 1955, plaintiff as contractor entered into a contract with Taft Union High School and Junior College District, hereafter called district, a school district duly organized under the state laws, to construct in Taft for the district, a school building for \$614,113. The plans and specifications for the building were approved by the State Department of Education and State Division of Architecture. Plaintiff commenced construction which was to be completed in 320 days, but work was 'stopped' by Taft, the city, demanding that plaintiff obtain a building permit from it involving a \$300 fee and submission to the building ordinance[FN1] of Taft. The district has employed an inspector to assure that the building is constructed according to the plans and specifications. Defendants assert that plaintiff has refused to obtain a permit from the city for the construction of the building and they intend to enforce the penal and civil provisions of the building ordinance of the city.

FN1. Taft by ordinance had adopted the 'Uniform Building Code 1952 edition adopted and published by the Pacific Coast Officials Conference in 1950.'

The issue is whether a municipal corporation's building regulations are applicable to the construction of a public school building by a school district in the municipality. Taft argues that it had power to adopt police regulations building construction regulations under the Constitution.[FN2]

FN2. 'Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws.' Cal.Const. art. XI, s 11.

[1] The public schools of this state are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution and the state Legislature is given comprehensive powers in relation thereto. The Legislature shall not pass local or special laws 'Providing for the management of common schools.' Cal.Const. art. IV, s 25, subd. 27. 'A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement.' Emphasis added; id., art. IX, s 1. There ***180** is a State Board of Education, an elected superintendent of public instruction and there are county superintendents whose salary and qualifications are prescribed by the Legislature, id., art. IX, ss 3, 3.1, 7. The proceeds of all public lands that have been or may be granted by the United States to the state and other property is 'inviolably' appropriated to the support of the common schools, id., art. IX, s 4, and 'Out of the revenue from state taxes for which provision is made in this article, together with all other state revenues, there shall first be set apart the moneys to be applied by the State to the support of the Public School System and the State University.' Id., art. XIII, s 15. 'The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.' Emphasis added; id., art. IX, s 5. 'The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be, directly or indirectly,

transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System. * * *

[2][3][4] 'The Legislature shall provide for the levying annually by the governing body of each county, and city and county, **577 of such school district taxes, at rates not in excess of the maximum rates of school district tax fixed or authorized by the Legislature, as will produce in each fiscal year such revenue for each school district as the governing board thereof shall determine is required in such fiscal year for the support of all schools and functions of said district authorized or required by law.' Emphasis added; id., art. IX, s 6. A school district may lie in more than one county and may issue bonds. Id., art IX, s 6 1/2. No money shall ever be appropriated for 'any school not under the exclusive control of the officers of the public schools * * *'. Id., art. IX, s 8. 'The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and junior college districts, of every kind and class, and may classify such districts.' Emphasis added; id., art. IX, s 14. In harmony with those provisions it has been held that the power of the state Legislature over *181 the public schools is plenary, subject only to any constitutional restrictions. Pass School Dist. of Los Angeles County v. Hollywood Dist., 156 Cal. 416, 418, 105 P. 122, 26 L.R.A.,N.S., 485; Kennedy v. Miller, 97 Cal. 429, 32 P. 558; Worthington School Dist. v. Eureka Dist., 173 Cal. 154, 159 P. 437; Merrill Elementary School Dist. of Tehama County v. Rapose, 125 Cal.App.2d 819, 271 P.2d 522; see Woodcock v. Dick, 36 Cal.2d 146, 222 P.2d 667; Seidel v. Waring, 36 Cal.2d 149, 222 P.2d 669. The public school system is of statewide supervision and concern and legislative enactments thereon control over attempted regulation by local government units. Esberg v. Badaracco, 202 Cal. 110, 259 P. 730; Cloverdale Union High School Dist. of Sonoma County v. Peters, 88 Cal.App. 731, 264 P. 273; Piper v. Big Pine School Dist., 193 Cal. 664, 226 P. 926; Kelso v. Board of Education, 42 Cal.App.2d 415, 109 P.2d 29; Kennedy v. Miller, supra, 97 Cal. 429, 32 P. 558; Worthington School Dist. v. Eureka Dist., supra, 173 Cal. 154, 159 P. 437; Board of Education of City of San Rafael v. Davidson, 190 Cal. 162, 210 P. 961; Phelps v. Prussia, 60 Cal.App.2d 732, 141 P.2d 440; Lansing v. Board of Education, 7 Cal.App.2d 211, 45 P.2d 1021; People ex rel. Davidson v. Mertz, 2 Cal.2d 136, 39 P.2d 422; Gerth v. Dominguez, 1 Cal.2d 239, 34 P.2d 135. It is said in Piper v. Big Pine School Dist., supra, 193 Cal. 664, 669, 226 P. 926, 928: 'It (the education of the children of the state) is in a sense exclusively the function of the state which cannot be delegated to any other agency. The education of the children of the state is an obligation which the state took over to itself by the adoption of the Constitution. To accomplish the purposes therein expressed the people must keep under their exclusive

control, through their representatives, the education of those whom it permits to take part in directing the affairs of state.' School districts are agencies of the state for the local operation of the state school system. Cloverdale Union High School Dist. of Sonoma County v. Peters, supra, 88 Cal.App. 731, 264 P. 273; Board of Education of City of San Rafael v. Davidson, supra, 190 Cal. 162, 210 P. 961; Butler v. Compton Junior College Dist., 77 Cal.App.2d 719, 176 P.2d 417; Lansing v. Board of Education, supra, 7 Cal.App.2d 211, 45 P.2d 1021; Merrill Elementary School Dist. of Tehama County v. Rapose, supra, 125 Cal.App.2d 819, 271 P.2d 522. The beneficial ownership of property of the public schools is in the state. It is said in Pass School Dist. of Los Angeles County v. Hollywood Dist., supra, 156 Cal. 416, 419, 105 P. 122, 26 L.R.A.,N.S., 485: 'To the contention that a transfer of ownership thus accomplished works the taking of property without due process of law, it should be sufficient *182 to point out that in all such cases the beneficial owner of the fee (of public school property) is the state itself, and that its agencies and mandatories the various public and municipal corporations in whom the title rests are essentially nothing but trustees of the state, holding the property and devoting it to the uses which the state itself directs. The transfer of title without due process **578 of law, of which appellant so bitterly complains, is nothing more, in effect, than the naming by the state of other trustees to manage property which it owns and to manage the property for the same identical uses and purposes to which it was formerly devoted. In point of law, then, the beneficial title to the estate is not affected at all. All that is done is to transfer the legal title under the same trust from one trustee to another. In this sense the trustees of the Hollywood City School District became, by operation of law, successors to the trustees of the Pass School District, as is directly held in (School Township of) Allen v. School Town of Macey, 109 Ind. 559, 10 N.E. 578, where it is said: 'It is now a well-recognized legal inference deducible as well from general principles as from the decided cases that under the Constitution and laws of this state, public school property is held in trust for school purposes by the persons or corporations authorized for the time being to control such property, and that it is in the power of the Legislature to provide for a change in the trusteeship of such property in certain contingencies presumably requiring such a change, or, indeed, to change the trustees of that class of property whenever it may choose to do so.'

[5] Even if such well-established principles could be set aside under the plea that they work injustice in the individual case, this plea here presented is without merit. The state is profoundly interested in the education of its young, but has no deep concern over the personality of the trustees who shall administer this trust, so long as the administration is in the orderly form of law.' See,

Fawcett v. Ball, 80 Cal.App. 131, 136, 251 P. 679; Butler v. Compton Junior College Dist., 77 Cal.App.2d 719, 176 P.2d 417; Kennedy v. Miller, 97 Cal. 429, 32 P. 558; Gridley School District v. Stout, 134 Cal. 592, 66 P. 785. While a large degree of autonomy is granted to school districts by the Legislature, we are referred to no statute or constitutional provision which, as far as the question here involved is concerned, expressly makes school buildings or their construction any more amenable to regulation by a municipal corporation than structures which are *183 built and maintained by the state generally for its use. When it engages in such sovereign activities as the construction and maintenance of its buildings, as differentiated from enacting laws for the conduct of the public at large, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation. Section 11 of article XI of the state Constitution, supra, should not be considered as conferring such powers on local government agencies. Nor should the Government Code sections which confer on a city the power to regulate the construction of buildings within its limits, see Government Code, ss 38601, 38660, be so considered. It is said in In re Means, 14 Cal.2d 254, 258, 93 P.2d 105, 107, 123 A.L.R. 1378, holding that a state employee working on a state structure in a city need not meet the requirements of a city charter provision: 'If one who has been employed by the state may not work on state property within a municipality without the consent of the municipality obtained after examination, the city has, in effect, added to the requirements for employment by the state, and restricted the rights of sovereignty. * * *

'Turning to the contentions of the respondent that the regulation of plumbing is a municipal affair, the rule to be applied is not entirely a geographical one. Under certain circumstances, an act relating to property within a city may be of such general concern that local regulation concerning municipal affairs is inapplicable. * * * For example, where one of the city's streets has been declared by an act of the legislature to be a secondary highway, the improvement of that street is not a municipal affair within the meaning of the Constitution. * * * Also, regulations prescribed by charter or ordinance of a city requiring that the work of altering and improving buildings be subject to **579 local supervision have been held inapplicable to state buildings. City of Milwaukee v. McGregor, 140 Wis. 35, 121 N.W. 642, 17 Ann.Cas. 1002.

'In the case of Kentucky Institution for Education of Blind v. City of Louisville, 123 Ky. 767, 97 S.W. 402, 404, 8 L.R.A., N.S., 553, the city attempted to enforce an ordinance relating to fire escapes with respect to a state institution for the blind. The court held the ordinance inapplicable, stating: "The principle is that the state, when creating municipal governments, does not cede to them any control of the state's property situated within them,

nor over any property which the state has authorized another body or power to control. *184 The municipal government is but an agent of the state not an independent body. It governs in the limited manner and territory that is expressly or by necessary implication granted to it by the state. It is competent for the state to retain to itself some part of the government even within the municipality, which it will exercise directly, or through the medium of other selected and more suitable instrumentalities. How can the city have ever a superior authority to the state over the latter's own property or in its control and management? From the nature of things it cannot have." See, also, Board of Education of City of St. Louis v. City of St. Louis, 267 Mo. 356, 184 S.W. 975; Salt Lake City v. Board of Education, 52 Utah 540, 175 P. 654; 31 A.L.R. 450.

Pasadena School Dist. v. City of Pasadena, 166 Cal. 7, 134 P. 985, 47 L.R.A., N.S., 892, fails to consider the factors above mentioned and insofar as it is inconsistent with this opinion it is overruled. The question here considered was not involved in Roman Catholic Welfare Corporation of San Francisco v. City of Piedmont, 45 Cal.2d 325, 332-333, 289 P.2d 438.

[6][7] Moreover, in connection with the foregoing and as an additional ground why the construction of school buildings by school districts are not subject to the building regulations of a municipal corporation in which the building is constructed, is that the state has completely occupied the field by general laws, and such local regulations conflict with such general laws, when we consider the activity involved. A city may not enact ordinances which conflict with general laws on statewide matters. Simpson v. City of Los Angeles, 40 Cal.2d 271, 253 P.2d 464; Pulcifer v. County of Alameda, 29 Cal.2d 258, 175 P.2d 1; Ex parte Daniels, 183 Cal. 636, 192 P. 442, 21 A.L.R. 1172; Atlas Mixed Mortar Co. v. City of Burbank, 202 Cal. 660, 262 P. 334; Ganley v. Claeys, 2 Cal.2d 266, 40 P.2d 817; In re Murphy, 190 Cal. 286, 212 P. 30; In re Mingo, 190 Cal. 769, 214 P. 850; Natural Milk Producers Ass'n of California v. City & County of San Francisco, 20 Cal.2d 101, 124 P.2d 25; Pipoly v. Benson, 20 Cal.2d 366, 125 P.2d 482, 147 A.L.R. 515; Tolman v. Underhill, 39 Cal.2d 708, 249 P.2d 280. The particular situation presented and discussed in those cases is not helpful. In re Means, supra, 14 Cal.2d 254, 93 P.2d 105, 123 A.L.R. 1378, herein discussed is most pertinent as it involves the attempted regulation of a state activity by a city, as distinguished from regulations of the members of the public.

The Education Code sets out a complete system for the construction of school buildings. The Legislature there declares *185 that it is in the interest of the state to aid school districts in the construction of school buildings for the maintenance of the public school system

inasmuch as the system is of general concern and the education of the children is an obligation and function of the state. Ed.Code, ss 5021, 5041. The governing board of any school district shall manage and control the school property within its district, id., s 18001. It (the board) shall furnish and repair the school property. Id., s 18002. It shall provide as a part of school buildings patent flush water closets for the use of the pupils, id., s 18009. It may repair old buildings by day's labor or by force account, id., ss 18055, 18057. The State Department of Education shall: 'Establish standards for school buildings', review and approve all plans and specifications for buildings and disapprove those not meeting the standards, furnish plans, specifications and 'building codes,' and make rules and regulations to carry out those activities, id., ****580**ss 18102, 18101. 'The governing board of any school district may, and when directed by a vote of the district shall, build and maintain a schoolhouse', id., s 18151. Except in cities having a board of education the county superintendent shall pass upon all plans for school buildings and plans shall be submitted to him. 'The Division of Architecture of the Department of Public Works under the police power of the State shall supervise the construction of any school building or, if the estimated cost exceed four thousand dollars (\$4,000), the reconstruction or alteration of or addition to any school building, for the protection of life and property.' Id., s 18191. 'Construction or alteration' as used in this article includes any construction, reconstruction, or alteration of, or addition to, any school building.' Id., s 18193. 'The Division of Architecture shall pass upon and approve or reject all plans for the construction or alteration of any school building. To enable it to do so, the governing board of each school district and any other school authority before adopting any plans for a school building shall submit the plans to the Division of Architecture for approval, and shall pay the fees prescribed in this article.' Id., s 18194. 'Before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Division of Architecture, shall be first had and obtained.' Id., s 18195. 'In each case the application for approval of the plans shall be ***186** accompanied by the plans and full, complete, and accurate specifications, and structural design computations, and estimates of cost, which shall comply in every respect with any and all requirements prescribed by the Division of Architecture.' Id., s 18196. All plans and specifications shall be prepared by a duly state licensed architect or engineer and the supervision of the work shall be by a duly licensed person. Id., s 18199. No contract for construction is valid and no public money shall be paid for any work or materials furnished thereunder 'unless the plans, specifications, and estimates comply in every particular with the provisions of this article and the requirements prescribed by the Division of Architecture and unless the approval thereof in writing has first been had and obtained from the division.' Id., s

18200. Progress reports must be made to the division, id., s 18201. 'The State Division of Architecture shall make such inspection of the school buildings and of the work of construction or alteration as in its judgment is necessary or proper for the enforcement of this article and the protection of the safety of the pupils, the teachers, and the public. The school district, city, city and county, or the political subdivision within the jurisdiction of which any school building is constructed or altered shall provide for and require competent, adequate, and continuous inspection during construction or alteration by an inspector satisfactory to the architect or structural engineer and the Division of Architecture. The inspector shall act under the direction of and be responsible to the architect or structural engineer.' Emphasis added; id., s 18203. The division may adopt rules and regulations to carry out its duties and a violation of the provisions is a felony, id., ss 18202, 18204. If the supervisor of health of any school district notes any defect in 'plumbing, lighting, or heating,' he shall report to the district and if it does not act, to the county superintendent. Id., s 18221. Each building, if two or more stories, shall have fire escapes, id., s 18222.

[8] It is urged, however, that the foregoing provisions must be read in the background in which they were adopted, that is, that some of them were placed in the ****581** Education Code from the Field Act adopted in 1933, Stats.1933, ch. 59, and must be construed with the Riley Act of 1933, Stats.1933, ch. 601, now in the Health & Safety Code, sections 19100-19170. The Riley Act provides that all buildings (with certain exceptions Health & Safety Code, s 19100) must meet certain standards which are set forth, id., ss 19150, 19151. ***187** Building permits must be obtained from the proper city or county officers charged with the enforcement of laws regulating construction, id., s 19130. Any city or county may establish construction standards higher than those established by sections 19150 and 19151 of the Health & Safety Code. Plans and specifications for buildings shall be filed with the application for a building permit, id., s 19132. Both the Field and Riley Acts were enacted as urgency measures, the urgency being stated to be the series of earthquakes occurring shortly prior thereto, Stats.1933, ch. 59, s 9; 1933, ch. 601, s 8. We do not believe, however, that the Health & Safety Code provisions (Riley Act) limit or modify the provisions of the Education Code (Field Act) above discussed. The former deal with structural design aimed at procuring buildings less dangerous from the standpoint of earthquakes, Health & Safety Code, ss 19150, 19151, while the latter, as above pointed out, are broad and comprehensive including the whole field of construction regulations. The urgency that impelled the Legislature to enact both as urgency measures may have been the same but the scope is clearly different. Hence the provisions in the former providing for more stringent local regulations are not applicable to the latter.

[9] Reference is made to rules and regulations, past and present, adopted for the construction of school buildings under the Education and Health & Safety Codes. Calif. Administrative Code, Title 21, Public Works, Division of Architecture, Chap. 1, subchap. 1. The purpose of the rules (we refer to the rules now in existence) is to protect lives and property of the people by regulating the design and construction of public school buildings so that, in addition to the normal loads to which such buildings are subjected, they shall resist future earthquakes. Title 21, subchap. 1, Group 1, Art. I, s 1. The rules are intended to establish 'reasonable standards and minimum requirements' for the construction of such buildings in order to attain the requisite stability to withstand loads and forces 'and to insure safety of construction' id., s 2. The detailed regulations set forth in sections 101 to 1206 have been adopted as a basis for the approval of plans and specifications. 'It is not the intention to limit the ingenuity of the designer nor to interfere with existing building rules and regulations where such rules and regulations are more stringent. Where the designer desires to depart from the methods of analysis set up by these rules and regulations, it will be necessary that he submit his method in detail *188 together with complete information including computations and test data covering the design in question. Permission to deviate from these rules and regulations is optional with the Division of Architecture and is dependent upon the division being satisfied that the structural members or portions of the building involved would provide at least such safety as would have been obtained had these rules and regulations been adhered to strictly.' Id., s 70. 'Regulations and design values established in these rules and regulations are minimum requirements. Nothing herein contained shall be interpreted to interfere with or to waive the requirements of applicable local or state building laws or ordinances where the requirements of those laws are more stringent than the requirements of these rules and regulations.' Id., s 115. However, it is also provided that: 'No rule or regulation shall be construed to deprive the Division of Architecture of its right to exercise the powers conferred upon it by law, or to limit the division in such enforcement of the act as is necessary to secure safety of construction and the proper administration of the law.' Id., s 5.

**582 [10] It is very doubtful that those rules indicate an intention to interpret the Education Code sections to mean that a city's building regulations must be met in the construction of a school building. They tend more to indicate that the school districts could follow such regulations as well as those of the state but are not bound to do so. In any event, since the final construction of a statute is the function of the courts (2 Cal.Jur.2d, Administrative Law, s 17), we hold the statutes here involved should not be construed as requiring a school district to comply with the building regulations of a city.

There is no necessity for comparing in detail Taft's building code and the numerous comprehensive building regulations contained in the Education Code and the rules and regulations of the Division of Architecture, for as we have seen the state has occupied the field. As said in In re Means, supra, 14 Cal.2d 254, 258, 260, 93 P.2d 105, 107, 123 A.L.R. 1378, in speaking of the effect of a city ordinance, establishing standards for plumbers, on a state employee in a city, the state civil service system provides a comprehensive plan for the selection of state employees and although the city ordinance does not purport to prescribe the conditions for state employment, 'If one who has been employed by the state may not work on state property within a *189 municipality without the consent of the municipality obtained after examination, the city has, in effect, added to the requirements for employment by the state, and restricted the rights of sovereignty. * * *

'Although the legislature has enacted no statute regulating plumbing, if the city's ordinance is a valid exercise of power, then one whom the state has examined and found eligible for employment as a plumber and who has later entered the state civil service, may be unable to work on state property because he cannot pass the examination of a city health officer or licensing board. The result is a direct conflict of authority. Either the local regulation is ineffective or the state must bow to the requirement of its governmental subsidiary. Upon fundamental principles, that conflict must be resolved in favor of the state.' (Emphasis added.) The same comments apply to the references in the instant construction contract and specifications that the building is to be constructed in compliance with local regulations.

The judgment is affirmed.

GIBSON, C. J., and SHENK, TRAYNOR, SCHAUER, SPENCE and McCOMB, JJ., concur.

302 P.2d 574, 47 Cal.2d 177

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School Facility Financing

A History of the Role of the State
Allocation Board and Options
for the Distribution of
Proposition 1A Funds

By Joel Cohen

*Prepared at the Request of
Senator Quentin Kopp*

FEBRUARY 1999

CRB 99-01

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EXECUTIVE SUMMARY

As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand. Recognizing the substantial need for infrastructure, in November 1998, California voters passed Proposition 1A, a bond measure that provides \$6.7 billion for public K-12 school construction and repair.

This measure establishes two new programs for the disbursement of bond funds and simplifies the application process by which schools apply for school construction resources. This change in programs, and in the methods by which funds are allocated, is important to the people of the State, as school districts, many of which have facilities in serious disrepair or require new construction, vie for their portion of the \$6.7 billion pie.

Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.

In order to understand the significance and relevance of this new process and its concomitant programs, however, it is useful to review the history of school construction financing in California and to understand the various pitfalls that existed under previous programs so as to avoid similar pitfalls in the future. This paper discusses that history and highlights the problems with preexisting programs.

It begins with an examination of the State Allocation Board and its staff (the Office of Public School Construction). Specifically, it reviews the role of the Board which is responsible for establishing policies for the distribution of school facility financing funds. It discusses how the Board, which was established in 1947, has evolved during the past five decades from one that set policy for various *loan* programs to one that today sets policy for *grant* programs.

The paper also discusses how various externalities—legislative or voter imposed initiatives, such as Proposition 13—have affected the Board's policies and procedures. The paper notes that the Board changed its policies often, and its policy shifts created an untenable dynamic for school districts as they attempted to secure funding. In particular, the paper highlights how districts were forced to weave their way through a complex, bureaucratic maze of applications, forms, and plans; and how this dynamic forced school districts to employ sophisticated personnel, or to contract with savvy consultants, in order to secure state financing for their construction projects.

This paper also presents a history of bond initiatives during the past five decades. It is clear that throughout this history there was never enough State money available to school districts for facility construction or repair. In fact, in spite of the \$6.7 billion approved by Proposition 1A, experts estimate that an additional \$10 billion will be required during the next decade. This paper discusses how the constant shortage of funds caused districts to use "whatever" means available to them to secure funding.

Voters have consistently been generous in approving the vast majority of statewide bond initiatives. Only three bond proposals out of 24 have failed in the past 50 years, and those that failed did so during times of recession. However, it is not clear how much additional debt voters will be willing to incur. This has especially been true since the passage of Proposition 13 in 1978, when the State began taking on a larger role in supporting school construction than it had before. To that end, this paper discusses how Proposition 1A creates a mechanism for school districts to tap state resources, and how school districts may need to tap other sources of facility funding.

Proposition 1A forges a partnership between the State and school districts for financing the construction and repair of their schools. Under its new programs, the State will provide 50 percent of the cost associated with building new schools, and provide 80 percent of the cost associated with modernizing existing facilities. It requires school districts to match state resources. However, school districts that are unable to offer this match can receive hardship funds based on prescriptive criteria. This paper provides details regarding these new programs and compares them to programs previously administered by the State Allocation Board. It also discusses how the Board is required to respond to district requests.

Proposition 1A is not the only impetus behind simplifying the school facility financing process. Concurrently, the Office of Public School Construction has rewritten the application process for funds to make it more user-friendly to school districts and has even offered applications and program information via the Internet. This paper discusses these changes.

The paper concludes with options that the Governor and the Legislature may wish to consider, including: offering protection to small and rural school districts when bond funds are exhausted; requiring annual financial reporting by the State Allocation Board; providing an on-line technical support for program applicants; and redeveloping the State funding source for school facility construction and rehabilitation.

REQUEST FOR RESEARCH

Programs and administrative procedures in Proposition 1A may produce significant changes to the previous programs and the manner by which the State Allocation Board distributes resources for school facility construction. In light of these changes, Senator Quentin Kopp requested that the California Research Bureau provide research on the following topics:

- A history of the State Allocation Board. How was the board's funding program intended to work and how has it evolved?
- An explanation of the State Allocation Board process. How does the State Allocation Board work? What are the procedures and criteria for receiving allocations? How are priorities set?

INTRODUCTION—THE PASSAGE OF PROPOSITION 1A

On November 3, 1998, California voters passed Proposition 1A - a \$9.2 billion school bond initiative, and the largest of its kind passed in our nation's history. Over the next four years, revenues from Proposition 1A's general obligation bonds will provide \$6.7 billion to public K-12 schools and \$2.5 billion to public colleges and universities for the purposes of constructing new facilities and repairing existing ones.

The State Allocation Board will have the responsibility for determining a fair means of distributing the \$6.7 billion available to K-12 schools. Many experts feel that developing such a system will be a daunting task, in spite of the fact that Proposition 1A/Senate Bill 50 is very prescriptive regarding the allocation of its bond funds.

This paper begins with a history and a discussion of the role of the State Allocation Board. Next, it examines the 24 state bond initiatives since 1947 and discusses how the Board has evolved its policies for distributing resources generated by these bond efforts. It then presents an overview of Proposition 1A and how this initiative creates a new allocation program that differs from previous ones. The paper also discusses the various problems that existed within the State Allocation Board's previous resource allocation systems and how Proposition 1A addresses these problems. It concludes with a section that offers options that the Legislature may wish to consider regarding the policies that the State Allocation Board should use for the equitable distribution of bond funds.

HISTORY OF THE STATE ALLOCATION BOARD AND ITS ROLE IN SCHOOL FACILITY FINANCING

There is a long and complex history regarding public school construction in California. This paper begins a review of the history in 1947¹ when the state legislature created the State Allocation Board.² Chapter 243, Statutes of 1947, established the State Allocation Board³ as a successor to the Post War Public Works Review Board. That statute specifically authorized the board to allocate funds for building and repairing schools. In addition, it designated the State Allocation Board to make allocations for public works projects when no other state officer or agency had authority to appropriate state or federal funds.⁴ Although it had many other fund allocation requirements during its five-decade history, the State Allocation Board today allocates funds only for school construction and renovation.

Composition of the Board

The State Allocation Board is comprised of seven members: two Senate members appointed by the Senate Rules Committee; two Assembly members appointed by the Speaker of the Assembly; the Director of the Department of General Services or his/her designee; the Director of the Department of Finance or his/her designee; and the Superintendent of Public Instruction or his/her designee. This appointment structure has existed since the Board's inception in 1947.⁵

Although its basic appointment structure is set in statute, its actual membership changes over time. One member, Senator Leroy Greene, served on the Board for over 20 years. Some Board members have served for only one meeting, while others have served an entire legislative session.

The four legislatively appointed State Allocation Board members provide a strong policy influence to the State Allocation Board. Through them, other members of the Legislature have input into the Board's policy and decision-making processes.

Policy Requirements

Members of the State Allocation Board are charged to formulate fair systems for determining priorities among project proposals. Prior to the passage of Proposition 1A/SB 50 in 1998, the Board was responsible for developing a fair and equitable appeals process that addressed the "special needs" of school districts. Such "special needs" included disaster relief, inability to secure matching funds, or inability to locate affordable property.

Board members also had extraordinary power to set school facility financing policy. Although the Board falls under the auspices of the State Administrative Procedures Act, it has often ignored the Act's provisions. It was common that board policies were changed from meeting to meeting, and that these new policies were not readily made public.⁶ Therefore, school districts that were uninformed of existing policy operated at a distinct disadvantage. They may not have known the appropriate procedures for receiving

financing approval. Conversely, school districts that utilized hired consultants or had staff that regularly monitored the Board's actions knew exactly what mechanisms and procedures would be necessary for them to secure funding.

State Allocation Board Staff

The Office of Public School Construction (formerly the Office of Local Assistance), within the Department of General Services, was and continues to be responsible for providing staff work that is necessary to carry out the policies and implement the various programs of the State Allocation Board. The State Allocation Board is responsible for policies regarding the allocation of funds for building new schools and for repairing, upgrading, and rehabilitating old ones.

The Office of Public School Construction staff is also responsible for disseminating to school districts information regarding board policy and programs. Under its previous programs, the staff was responsible for making recommendations to the State Allocation Board regarding various appeals made by school districts that may have been denied funding, or that may have required special funding consideration. To that end, the Office of Public School Construction staff influenced where school districts fell on the long queue of project proposals considered and passed by the State Allocation Board. Staff also could have influenced Board decisions by advocating for specific school district projects.

Outside Influence

The State Allocation Board and the Office of Public School Construction staff have also been influenced by a variety of external interest groups. These include, but are not limited to, private school facility financing consultants, school board members, school administrators, teachers, parents, developers, California Building Industry Association, financial institutions, and other members of the Legislature. In addition, various state agencies with influence included the Division of State Architect, Department of Finance, and the Department of Education. These interests groups played and are likely to play a significant role in determining funding for projects that may have been denied or required special consideration. Consultants in particular, whether employed by or on contract with school districts, played an active role in the process. Many of these consultants, whose offices are in the same building as that of the Office of Public School Construction, influenced decisions of both the Office of Public School Construction staff and the State Allocation Board. Consultants were current on Board policies and procedures, and were highly sophisticated about the complicated processes that school districts must follow in order to obtain funding. They have been instrumental in shepherding proposals through the complex maze of funding phases - application to construction. School districts that did not contract with such advocates were often at a competitive disadvantage.

Evolution of State Allocation Board Programs—From Loans to Grants

The State Allocation Board has evolved markedly during the past five decades. Initially, its school programs provided resources to school districts via *loan programs* in which

districts were required to repay their assistance with property tax revenues. In addition, school districts used local school bonds to finance their various construction projects. In both cases, a two-thirds popular vote was required.

Proposition 13

With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority, and the Legislature and Governor were forced to rethink how school districts could repay their existing loans to the State Allocation Board.

Recognizing that many school districts faced bankruptcy by being unable to service their loans, the Legislature in 1979 directed the State Allocation Board to allow school districts four options: (1) withhold payments on their loans; (2) temporarily delay their payments; (3) pay only a portion of their loan obligations; (4) or not pay back their loans at all. Further, with the implementation of these options, the Legislature required that the State Allocation Board shift its policy focus from a *loan-based* program to a *grant-based* program. This shift to grant-based programs remains today.

HISTORY OF SCHOOL BOND INITIATIVES—A CYCLE OF UNDER-FUNDING

The electorate of the state has been ultimately responsible for determining the availability of resources for school construction. The electorate must have confidence in the state's economy, and perceive a need for new and upgraded schools. Without such assurances, the electorate can and has rejected various bond efforts. Since 1949, voters have been asked to approve 24 bond measures related to school construction and renovation, and have passed 21 of these proposals. However, an interesting history follows regarding the content of these initiatives.

State as a Bank—The Loan Program 1949-1978

Legislation enacted in 1949⁷ and 1952⁸ established a loan-grant program "to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the public school system."⁹ During this time period, the first baby boomers entered school, and for the next two decades, California public school enrollment increased by roughly 300 percent.¹⁰ The Legislature recognized that many school districts faced substantial enrollment growth, while lacking the bond debt capacity that was necessary to finance large building programs. In fact, many school districts had reached their financial capacity to service the bonds that they previously incurred.

As a result, the Legislature developed a program to provide loans to school districts that were approaching or were likely to exceed their legal level of bonded indebtedness.¹¹ This new program was financed through State general obligation bonds. This program also required building construction standards and placed fiscal controls on the districts, including maximum cost standards and square feet per pupil limitations.¹² School districts, however, retained control over the design and construction of their facilities. Districts that wanted to participate in the state loan program were required to receive approval from two-thirds of their district's electorate in order to incur the debt. A surcharge on the local property tax provided revenues to service the loan debt.

The State formula provided that the total amount due on some loans would be less than the total amount of the actual loan. Some experts believe that the state's willingness to forgive part of school district loans through this formula was a precursor to the state grant program discussed below.

The First Loan Program Bond Initiatives

In 1949, the state issued its first bond proposal for education facilities financing¹³ in the amount of \$250 million.¹⁴ This first initiative also began a cycle of inadequate funding. In that year, the Legislature thought that \$400 million was necessary (over what school districts could afford above their debt limits) to meet the need of school districts that were facing enrollment growth from the new generation of baby boomers. However, after substantial debate, the bond proposal was reduced to \$250 million, because the sponsors thought, "the people would not vote for such a large sum at one time."¹⁵ In arguments

against the bond, opponents argued that \$250 million was insufficient. Therefore, absent full funding, voters should reject the initiative. The measure passed.

In 1952, another school construction bond of \$185 million was put before the voters. Proponents of this initiative stated that the amount was “extremely” conservative. A comprehensive study by the State Department of Education at that time revealed that \$198 million was needed, while the Department of Finance estimated the need at \$250 million. Again, the amount of needed resources surpassed the amount proposed, and the cycle of chronically under-funded facility financing for schools continued.

To further exacerbate the shortfall, the 1952 proposition, along with subsequent propositions offered in 1956, 1958, and 1960, included “poison pill” language that limited the Legislature’s ability to appropriate any additional funds for school construction beyond that in the various propositions.¹⁶ If the Legislature approved any additional resources for school construction, the amount of bonds that were sold would be reduced by an amount equal to the additional appropriation. After 1960, however, bond proposals excluded the language that precluded the Legislature from raising additional capital outlay funds.

During a two-decade period, the State Allocation Board administered this program as a bank. Resources from the state were limited, and many school districts were uncomfortable with the concept of borrowing money from the state, rather than from their local constituents. Further, since school districts were obligated to reach full bond indebtedness before applying for state loans, many did not participate. For these reasons, many school districts chose not to build facilities until their bonding capacity grew. Hence, many school districts found themselves chasing dollars after their schools were overcrowded—a situation not unlike today.

The Early 1970s

As a result of a major earthquake in the San Fernando Valley (Sylmar) in 1971, the state authorized \$30 million¹⁷ for a new program to finance the rehabilitation and construction of earthquake safe schools,¹⁸ and for the renovation of buildings that the earthquake damaged.¹⁹ This program was known as the School Buildings Safety Fund. Like its predecessor programs, the 1971 Act created a state loan program for eligible school districts. The Act also included provisions to forgive loans for school districts that had reached their bonding capacity. The 1971 program was augmented by a 1972 state bond initiative of \$350 million of which \$250 million was set aside for structural repairs due to earthquakes.²⁰ This latter bond initiative also provided a method for financing buildings in districts that did not meet the criteria of the program that was initiated in 1971,²¹ and it required the State Allocation Board to first approve those applications from school districts for earthquake repairs. The State Allocation Board gave second consideration to funding projects for other types of repairs or upgrades. Hence, the Board began a new system for not only new construction but also repairs, as well as a system that set priorities.

A Changing Paradigm

From 1970 to 1980, public school enrollment statewide decreased by roughly one percent per year.²² Reductions in both immigration and domestic in-migration to the state, as well as a decrease in the state's birth rate caused this decline. During this decade, there were sufficient resources available from local property tax revenues and from the state's loan program to meet the various rehabilitation needs especially of those school districts that were experiencing enrollment declines. The State Allocation Board thus shifted its loan program emphasis from new construction to rehabilitation, and to upgrading unsafe facilities that were damaged due to the 1971 earthquake.²³

Nevertheless, some school districts continued to experience enrollment growth in response to suburban housing development.²⁴ In spite of such growth patterns, the State Allocation Board set its priorities to favor rehabilitation projects over new construction. The Board's orientation accentuated the differences between growing school districts and those that required rehabilitation, and caused an unequal state spending system that favored property rich urban districts over fiscally poor and growing suburban districts.²⁵

To counter the State Allocation Board's orientation toward urban rehabilitation, growing suburban school districts recognized that in order to fund new school construction, they would have to depend almost entirely on their local property tax base. As more people demanded affordable housing in suburban neighborhoods, developers accommodated them by building numerous suburban housing units. The sheer increase in the number of suburban homes added significant resources to the property tax base, thereby benefiting the school districts that served those communities. Furthermore, the ongoing demand for suburban housing caused the prices of homes in these areas to increase precipitously, adding even more resources to the property tax base. Although school districts could have requested to reduce those tax rates that supported them to a minimum amount, they did not. Most districts kept their rates steady, and some even increased them. Homeowners, unhappy about menacing property taxes, sought relief. In 1972, the Legislature enacted a multi-year package, funded by the state's general fund, of \$1.2 billion for school operation to be allocated over a three-year period and to serve as property tax relief.²⁶ In spite of this legislation, property taxes remained relatively high to cover local bond debt, and continued to be the primary source for school construction for growing school districts. Concurrently, the state continued to loan money to enrollment-static school districts for the purpose of rehabilitation.

Leroy Greene State School Building Lease Purchase Law

In 1976, the Leroy Greene State School Building Lease Purchase Law was signed into legislation.²⁷ This law established a state fund to provide loans to school districts for reconstruction, modernization, and replacement of school facilities that were more than 30 years old. The Act significantly altered the state's role in how school facilities construction was financed. Specifically, the state would no longer loan money; but it would finance school construction based on a leasing model.²⁸ Although the legislation was passed, the voters of the State remained unconvinced that more money was needed to

improve schools. Consequently, they did not pass the bond initiative that was necessary to fund the Lease Purchase Program.

The 1976 Act had specific language that created “priority points” for school districts that would apply for state funding. This was the first time that the State Allocation Board used a point system for creating a queue of approved projects. Priority points were given based on the number of unhoused students in the district, the rate of student enrollment growth, and how much rehabilitation a facility needed. Further, the Board instituted a first-come, first-served policy in which each accepted school district’s application was stamped with a time and date.

Under the previous program, the state loaned money to school districts to build their facilities, and the school districts owned their property. Under the Greene legislation, however, the State maintained a lien on the property for the duration of the loan via a lease purchase agreement.²⁹ The State wanted to preclude school districts from purchasing land on a speculative basis using State money, only to sell the State funded property at a profit at a later date. This meant that the state would control the disposition of any school facility that it financed until the school district repaid its obligation on the lease.

The Proposition 13 Epoch 1978-1986

Proposition 13—Local Governments and School Districts Fiscally Stymied

With its passage, Proposition 13 eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness. Proposition 13 capped the ad valorem tax rate on real property at one percent of its value, thereby reducing the income from property taxes to such an extent that it virtually eliminated this source as a means for lease payments. Proposition 13 also prohibited the electorate of a school district from authorizing a tax over-ride to pay debt service on bonds for the purpose of constructing needed school facilities.

To exacerbate this problem, the voters soundly defeated school construction bonds in both 1976 and 1978. They were two of only three³⁰ state general obligation bonds rejected by voters since 1947. The non-passage of these two successive bond initiatives, coupled with suburban enrollment growth, caused a statewide shortfall of \$550 million³¹ that was needed for school construction projects throughout the state in 1978.

Post Proposition 13

The limitations set by Proposition 13 caused school districts, counties and cities to turn to the state, which had a \$3.8 billion surplus, to fill the gap.³² In 1979, lawmakers approved a \$2.7 billion (in 1978 dollars) “bailout” plan to assist schools and local governments.³³ Within a year, the state surplus was reduced to roughly \$1 billion. Furthermore, the state had taken on a larger role as a funding source for school operations and capital improvement. To that end, it expected school districts to conform to its programs and projects.³⁴

Effects of Proposition 13 on the Lease Purchase Program

In 1979, legislation implementing Proposition 13 included provisions for restructuring the State's Lease Purchase Program.³⁵ School districts that received funds from the state were required to pay rent to the State as low as \$1 per year, creating an "unofficial" grant program.³⁶ In addition, school districts were to contribute up to 10% of the project's cost from local funds.³⁷ However, many school districts could not raise these matching funds through local bonds. They requested that the State fund their entire projects. The State Allocation Board created a waiting list of projects.

A Recession Further Complicates School Facility Financing

Beginning in 1982, California was in a recession that lasted until 1984. During this time period, the State's budget surplus was expended. School districts' recession experiences were complicated by the fact that student enrollments again began to increase again.³⁸ Approximately 60 percent of California's 1,034 districts at the time projected annual growth rates of over two percent between 1980-81 and 1983-84, with some districts projecting a doubling in their enrollment.³⁹ At the same time, estimates indicated that over one-third of the State's school buildings were over 30 years old and many needed substantial rehabilitation.⁴⁰ The Coalition for Adequate School Housing (CASH) estimated that the one-time cost of rehabilitating these older facilities would be \$1.9 billion.⁴¹ Further, CASH estimated that school districts would need an additional \$400 million annually for the next five years for building and repairing school buildings. Since the State was in recession, such funds were not available. Thus the State had to rethink how it would prioritize its school facilities projects.

A New System for Funding School Construction

In light of the backlog of applications for state funds, the Office of Local Assistance (now known as the Office of Public School Construction) designed a numerical ranking system that used "priority points" to determine a school district's eligibility for funds. This system gave priority to school districts who had students who were "unhoused," and special consideration was given to how districts used certain facilities.⁴² The more points a project application received, the higher on the list it was placed. Recognizing that school districts were facing enrollment growth and required further rehabilitation, the Legislature in 1982 authorized a general fund appropriation of \$200 million for school construction projects. This amount was later reduced to \$100 million.⁴³

Further, in order to ease the burden that many school districts felt because of the recession, the State loosened the repayment schedule for its lease-purchase program. School districts were allowed, for 10 years, to pay one percent of the cost of state funded lease-purchase projects, rather than the 10 percent they initially were required to pay.⁴⁴ Again, the State Legislature and the State Allocation Board moved away from a loan program and more toward a grant program.

Multi-Track Year-Round Education

Recognizing that the State had very limited bond resources, the Legislature wanted a more cost-effective facilities financing incentive system for school districts. That system would force districts to use their space more efficiently. In response to the shift in policy, the Legislature passed Chapter 498, Statute of 1983. This statute encouraged school districts that were experiencing growth pressure to adopt multi-track year-round education (MTYRE) programs. MTYRE programs enroll students in several tracks throughout the entire calendar year. At any given time, one track is on vacation, but vacation periods are short in duration.⁴⁵ The MTYRE program allows a more intensive use of existing facilities, thereby reducing the need for new facilities in growing districts.

School districts received an immediate financial return if they participated in the MTYRE program. A school district that redirected its students into a MTYRE program received a grant of up to 10 percent⁴⁶ of the cost that would be necessary to build a new facility not to exceed \$125 per student.⁴⁷ School districts that participated in MTYRE were eligible for air conditioning and insulation in their buildings.

In 1988, as pressure for state financing continued, the Legislature required that top priority for financing new construction projects be given to districts that used multi-track year-round education programs. School districts that offered MTYRE and were willing to match 50 percent of their construction costs received a funding priority from the State Allocation Board.⁴⁸ This put other school districts that could not meet these MTYRE and funding criteria at a distinct disadvantage. These latter school districts sought relief from the voters in 1986. Small school districts were one exception to the MTYRE requirement.

1986 Lease Purchase Program

In 1986, the voters approved Proposition 46. Proposition 46 amended Proposition 13⁴⁹ by restoring to local governments, including school districts, the ability to issue general obligation bonds and to levy a property tax increase to pay the debt service subject to a two-thirds vote of the local electorate.⁵⁰ This amendment allowed school districts to augment the one-percent cap on property taxes and to secure additional bond indebtedness to build and improve their schools.⁵¹

Passage of Proposition 46 helped, but did not solve school districts' financing problems. Many school districts were unable to secure the necessary two-thirds vote to authorize local funding, and still relied on state funding to assist them. Further, the federal government in 1986 passed legislation that required each state to remove friable asbestos from their educational facilities – another charge that the school districts could ill afford.

California adopted similar asbestos standards to those established by the federal government in 1986; however, few school districts reported their estimated costs for removing the substance. In light of the need to remove the asbestos, and in order to address the growing backlog of proposed school construction projects, voters passed Proposition 79 in 1988 - an \$800 million bond initiative. It specifically set aside \$100 million to cover asbestos removal.⁵²

A Growing Shortfall and Greater Scrutiny

There is no doubt that from 1982 to 1988 state support for public school construction was limited and difficult to secure. The demand for new school facilities, for modernization, and for asbestos removal was great.⁵³ As of June 1, 1986, applications that were submitted by school districts to the State Allocation Board for state funding of *new school construction* projects alone totaled roughly \$1.3 billion. In addition, applications for state funding for *reconstruction or rehabilitation* of school facilities totaled over \$991 million.⁵⁴ Total demand for school facility improvement in 1986 was nearly \$2.3 billion - an amount that significantly outweighed the \$800 million voters approved in that year's bond initiative.⁵⁵ Even with a boost of funding of \$150 million per year from Tidelands revenues in fiscal years 1984 and 1985, the Lease Purchase Program fell short.⁵⁶ By 1988, the shortfall had grown to \$4 billion, in spite of the fact that voters had approved \$2.5 billion in bond money from 1982-1988.

The State Allocation Board was forced to scrutinize every request for school construction funding, recognizing that absent a major infusion of State bond money, most districts would not receive funding for their projects. This scrutiny created an extremely competitive environment for the limited resources that were available to the schools. Many participants believe that school districts that contracted with knowledgeable consultants, or had district staff who were familiar with the State Allocation Board's policies and criteria, were the most successful in securing a high ranking place in the queue for resources, once those funds become available.

There is no definitive research or data that support this belief. Consultants are not required to report their involvement in the application process. However, there is substantial anecdotal evidence to support the assertion.

School Financing as a Collective Effort—The Three Legged Stool

In 1986, the Legislature recognized that resources were scarce and that no one governmental or private entity could finance school construction. It attempted to equalize the burden of school facilities financing between state government, local government and the private sector.⁵⁷ This concept was known as the "three legged stool." The idea was that the state would provide funds through bonds. Local government would provide its share through special taxes, general obligation, Mello-Roos and other bond proceeds. The private sector would provide funds through developer fees. Appendix A describes funding alternatives for these latter two legs of the stool.

The "three legged stool," however, never quite worked. For example, to assure that developers would not fund a disproportionate share of the cost to build schools, the Legislature, in 1986, capped the amount new homebuyers would pay for developer fees at \$1.50 per square foot, and empowered the State Allocation Board to raise the cap by a certain amount each year. However, school districts found a loophole around the cap by requesting that cities impose a fee on their behalf, and cities imposed rates on some

developers that exceeded those allowed.⁵⁸ California courts upheld these fees in the Mira, Hart, Murrieta court cases.

Until the recent passage of Proposition 1A, many local governments have imposed developer fees that exceed those allowed by the Board. For example, in 1987, fees in San Diego and Orange counties reached a high of \$8700 per house.⁵⁹ By 1990, total development fees for some homes reached \$30,000.⁶⁰ Statewide, developer fees have increased from \$31 million in 1978 to \$200 million in 1997.

In 1998, the State Allocation Board increased the fee to \$1.93 per square foot.⁶¹ With the passage of Proposition 1A in November 1998, however, local governments have apparently lost their ability to increase their fees beyond those determined by the State Allocation Board. Further conflict is likely.

The 1990s—Complicated Funding Programs

In the fall of 1990, the Legislature passed legislation that created two programs that provided additional financial incentives for schools to offer year-round education.⁶² The first of these programs provided a one-time grant to school districts to ease the expense of changing from traditional nine-month programs to year-round tracks. The second program provided an “operating grant” of between 50 percent and 90 percent of the amount districts saved the state by not having to build new schools. At the recommendation of the Office of the Legislative Analyst, the Legislature repealed the 1982 and 1986 incentive programs discussed above.⁶³

In response to the 1990 legislation, the State Allocation Board developed a new priority system for allocating lease purchase money. Under this new system, the Board apportioned funds based on a combination of when an application was received and how many priority points it garnered. Through a complex formula, priority points were given to schools that had a significant number of “unhoused students,” or had substantial rehabilitation needs. This procedure might have worked well if the state could have financed all applications in a timely manner. However, the demand for state money increased to the point where districts without special priorities could expect to wait years for the state to finance their projects.

The program was in effect for only one year when the Legislature repealed the program and created yet another system for allocating state money.⁶⁴ In 1991, the Legislature defined six priorities for funding. First priority was given to districts that had a “substantial”⁶⁵ enrollment in multi-track schedules, and that were paying at least 50 percent of the construction costs for their new schools. Second priority went to districts with a “substantial” year-round enrollment and that wanted the state to pay the entire cost of any new construction for their year-round schools. The remaining four priority levels took into consideration factors for those schools who did not meet the “substantial enrollment” criteria outlined above, or were unable to match state resources.

The complex set of formulas made it difficult for school districts to completely understand what criteria would best serve them. Further, throughout this period, the Board was

required to implement new programs and redefine its priorities. For example, in 1990 the Legislature created a program that was adopted by State Allocation Board for school districts that could not find adequate land on which to build a school. Known as the Space Saver Program, it was designed to assist urban school districts that could not obtain adequate acreage for a school campus. The first space saver school, developed in 1993, is scheduled to be completed in Spring 2000 in the Santa Ana Unified School District, in a former shopping mall.⁶⁶

Another example of shifting priorities took place in 1996 when the Legislature mandated the Board to redirect its third highest priority to class size reduction from a previous focus on child-care facilities.⁶⁷ A third took place at the end of 1997 when the priority points system was replaced by a first-come, first served system. While there were exceptions to this rule, money was offered first to school districts willing to cover some of the costs associated with constructing or repairing facilities. Schools that could not afford to cover the remaining 50 percent were placed on a separate list.

Such shifts in policy, coupled with the significant complexity of formulas that drove the priority point system, along with the sporadic creation of new programs, caused many school districts to depend on outside consultants. These consultants understood the many policy changes that the Board enacted – sometimes on a monthly basis. They were also knowledgeable of new programs, and clearly understood the workings of the staff who carried forth the Board's policies. Without the assistance of consultants, school districts were unable to keep track of policy changes and special considerations enacted by the Board. Further, while the Board and its staff advised school districts regarding changes in their policies in a regularly published document, it did not provide a centralized source of materials, such as an up-to-date handbook. Consequently, school district personnel were often uninformed about the various nuances of the programs administered by the Board.

State Bond Efforts of the Nineties

As the State Allocation Board shifted its focus and policies throughout the early 1990s, Californians approved state school bond initiatives in 1990 for \$1.6 billion and in 1992 for \$2.8 billion. In one of its 1992 reports, the Department of Finance reported that statewide K-12 enrollment was estimated to grow by 200,000 new students per year for at least five years,⁶⁸ and that an estimated \$3 billion would be needed annually for new school construction.⁶⁹ However, in spite of growing enrollments and a significant demand for facility rehabilitation, in 1994, the electorate rejected a \$1 billion bond initiative. The State was in a recession.

A lack of State bond funds was not the only problem associated with the allocation of school construction funds. The Auditor General reported in 1991 that the Office of Local Assistance mismanaged state funds. It detailed that construction funds loaned to school districts were not recovered; that districts overpaid on some projects and failed to collect the overage; that it dispersed funds without proper documentation; and that it failed to conduct required close-out audits on construction projects.⁷⁰

As a result of this audit, the Office of Public School Construction in concert with the State Allocation Board developed stringent internal and external audits and fiscal controls. These control mechanisms included increasing the detail of financial review of projects, prohibiting school districts from participating in the program unless a balance was not due, and no longer receiving rent checks for portable classrooms.⁷¹

Attempts to Ease Passage for Local Bonds

Recognizing that the State would be unable to fund the entire backlog of school construction proposals, Governor Pete Wilson in 1992 proposed a constitutional amendment to reduce the requirement for the passage of local bonds from two-thirds to a simple majority.⁷² The idea was that local governments should have to meet the same 50 percent requirement as the State for passing bonds. Further, there was strong sentiment in the Wilson administration that local governments should pay an increased share of school construction costs. However, the Legislature rejected his plan.⁷³ Other attempts in recent years to reduce the vote for passage of local bonds from two-thirds to something less have also failed.⁷⁴

1996 School Bond Issuance - Finally More Money

Proposition 203, passed by the voters in March 1996, provided \$2.065 billion for school facility construction. However, the Legislature at the time estimated that school districts would need \$7 billion in construction funds to meet enrollment growth that was anticipated during the next five years.⁷⁵ This \$7 billion did not include the needs of Los Angeles Unified School District (LAUSD), which had 20 percent of the state's student population. At the time, LAUSD alone needed \$3 billion to upgrade and modernize its schools.⁷⁶ Clearly, anticipated demand for State funds substantially exceeded available resources.

To respond to the many school district proposals, the State Allocation Board followed its general priority points policy. However, many school districts, recognizing that they would not receive funding for years because of their position in the funding queue, and because of the limited amount of resources that were available, resorted to creative means to try to secure funding for their projects. For example, some schools districts sought special consideration for funds by requesting emergency allocations. Such a tactic would allow a school district to receive funds immediately.⁷⁷ Other school districts used the appeals process to argue that their projects were needed more than those of other school districts that were higher in the queue.⁷⁸

This cannibalistic dynamic caused a fair amount of resentment among those school districts that were bumped from a relatively high position in the queue by those districts that sought emergency relief or special consideration. Further, it was clear that the most sophisticated school districts found a variety of tactics that would secure the funding of their projects. These tactics are described in greater detail later in this paper under the section that describes how the Board processed its applications.

Class Size Reduction Causes Greater Housing Needs

The distribution of funds from Proposition 203 was further complicated by the Governor's Class Size Reduction Initiative. In particular, the State Allocation Board earmarked \$95 million for the purpose of purchasing 2,500 portable classrooms for schools that were facing severe classroom shortages. This was in addition to \$200 million that the Department of Education had available for assisting schools in purchasing such facilities. The Office of Public School Construction determined that a total of 17,500 classrooms were needed to accommodate class size reduction, and that there was only enough money to fund less than half of the estimated need.⁷⁹ The State Allocation Board reinterpreted Proposition 203 by creating a new Portables Purchase Program at the expense of their other programs. This caused some school districts to again get bumped in the queue for funding.

Never Enough Money—Still a Shortfall

Since 1947, the electorate has approved all but three State bond initiatives. In spite of the voters' tendency to support various bond initiatives, by 1998, the backlog of school construction projects that were approved by the State Allocation Board, but unfunded, totaled more than \$1.3 billion. Although the voters have been generous by approving bond initiatives roughly every two years,⁸⁰ there were times during the past five decades when bond money was not available for periods of four or six years.⁸¹

The Department of Finance has estimated that \$16 billion is needed over the next decade for public school construction and rehabilitation.⁸² Various bond proposals in 1997 and 1998 were circulated that considered multiple-year bond issuances. The California Teachers Association and the California Building Industry Association presented a plan to issue \$2 billion a year for 10 years.⁸³ Governor Wilson proposed \$2 billion a year for four consecutive years. In the end, Proposition 1A was passed. It provides \$6.7 billion over a four-year period. However, while the amount appears generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following this bond issue will require roughly an additional \$10 billion in State money.

Table 1 on page 18 shows the history of state school bond initiatives from 1949 to 1998. In the next sections of this report, we discuss the various programs, the complicated application process used by the State Allocation Board that school districts had to endure to secure funding, and how Proposition 1A attempts to simplify this process.

Table 1 - STATE SCHOOL CONSTRUCTION BONDS

Title of Bond Initiative	Date & Year of Election	Funds Authorized
School Building Aid Law of 1949	November 8, 1949	\$250,000,000
School Building Aid Law of 1952	November 4, 1952	\$185,000,000
School Building Aid Law of 1952	November 2, 1954	\$100,000,000
School Building Aid Law of 1952	November 4, 1958	\$220,000,000
School Building Aid Law of 1952	June 7, 1960	\$300,000,000
School Building Aid Law of 1952	June 5, 1962	\$200,000,000
School Building Aid Law of 1952	November 3, 1964	\$260,000,000
School Building Aid Law of 1952	June 7, 1966	A)\$275,000,000
School Building Aid Law of 1952	June 6, 1972	B)\$350,000,000
School Building Aid Law of 1952 And Earthquake	November 5, 1974	\$150,000,000
School Building Lease-Purchase Bond Law of 1976 (Failed)	June 8, 1976	\$200,000,000
School Building Aid Law of 1978 (Failed)	June 6, 1978	\$350,000,000
School Building Lease-Purchase Bond Law of 1982	November 2, 1982	\$500,000,000
School Building Lease-Purchase Bond Law of 1984	November 6, 1984	\$450,000,000
Green-Hughes School Building Lease-Purchase	November 4, 1986	\$800,000,000
School Facilities Bond Act of 1988	June 7, 1988	\$800,000,000
1988 School Facilities Bond Act	November 8, 1988	\$800,000,000
1990 School Facilities Bond Act	June 5, 1990	\$800,000,000
School Facilities Bond Act of 1990	November 6, 1990	\$800,000,000
School Facilities Bond Act of 1992	June 2, 1992	\$1,900,000,000
1992 School Facilities Bond Act	November 3, 1992	\$900,000,000
Safe Schools Act of 1994 (Failed)	June 7, 1994	\$1,000,000,000
Public Education Facilities Bond Act of 1996, Proposition 203	March 1996	C)\$3,000,000,000
Class-size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, Proposition 1A	November 3, 1998	D)\$9,200,000,000

Bonds in [bold] failed to receive a majority of votes.

- A) New amount of 1966 bond authorization available for regular program is \$185.5 million after deducting \$35 million reserved for compensatory education facilities, \$9.5 million for regional occupational centers, and \$35 million for rehabilitation and replacement of earthquake damaged and unsafe schools.
- B) Up to 250 million dollars earmarked for rehabilitation and replacement of unsafe schools.
- C) One billion dollars earmarked for higher education facilities
- D) Two and one-half billion dollars is allocated for higher education.

THE PROGRAMS

Prior to the approval of Proposition 1A, the State Allocation Board oversaw six active programs associated with school facility construction, repair, and remodeling. These six programs made up the Lease-Purchase Program that was discussed earlier in this paper. This section briefly describes these programs, discusses how the State Allocation Board set priorities for school district projects, explains how the Office of Public School Construction staff reviewed and acted upon district proposals, and how the State Allocation Board considered district appeals. The purpose is to advise the reader of not only the process and administration of allocation, but also some of the pitfalls that existed under the old system. Perhaps these pitfalls of the old system can be avoided when allocating Proposition 1A resources.

The Growth and Modernization Programs

The Growth and Modernization Programs allocated funds to school districts for building new schools (Growth Program) and for repairing existing facilities (Modernization Program). School districts qualified for the Growth Program based on an “allowable building standards” formula.

For its Growth Program, the State Allocation Board developed standards for the amount of space that was necessary to house students based on a district’s number of ADA (Average Daily Attendance).⁸⁴ The Modernization Program provided funds to school districts for nonstructural improvements to permanent school facilities that were more than 30 years old, and for portable buildings that were more than 20 years old. Such nonstructural improvements included interior partitions, air conditioning, plumbing, lighting and electrical systems.

The Modernization Program provided funding for up to 25 percent of the replacement value of the building. Under some circumstances, districts could use additional funds beyond the 25 percent for handicap access compliance, including elevators when appropriate, and for alternate energy systems.

School districts could apply to this program by offering to match state funds and be listed as “Priority One,” or they could ask the State to fund their entire project and be listed as “Priority Two.”

Process for Receiving Growth and Modernization Funds

School districts that applied for growth and/or modernization funds were required to follow nine steps in three critical areas - planning, site selection and construction. Each of these three critical areas provided a separate and gradual funding stream for the school’s project.

Planning Phase

During the planning phase, a district was required to complete four forms that demonstrated that it was eligible for either the growth or modernization program.

Eligibility to participate in the programs was based on enrollment patterns or the age and condition of those schools that required modernization. If a district met these standards, it moved on to the "site development phase."

Site Development Phase

Selecting a school site was critical. If a school district was participating in the modernization program, it would move to the next phase. The site would have to be safe and able to support the school's curriculum. An adequate site would have to meet certain standards with respect to size and location. Site review could take a school district months (if not years) to investigate. Under the growth program, a school district arranged a search committee to locate available properties and narrowed its search to three sites. In addition, the school district held public hearings regarding the impact of the lands to be used for educational purposes, and notified neighbors about possible site use. A representative from the Department of Education visited three selected sites to review and determine which was the most suitable site based on criteria including, but not limited to: street traffic safety; traffic congestion; geological hazards; and other environmental issues. All school districts followed a similar process for site selection whether they financed the project themselves, or requested State funding.⁸⁵

Some school districts were unable to build new schools because they could not secure appropriate properties. This was especially true in urban and industrial areas where vacant land was not readily available or was extremely expensive.⁸⁶

Once a district found an appropriate property, it was required to prepare a site development plan that included architectural and engineering drawings, along with building contract agreements. Districts were required to follow strict site development, plan development, and construction cost guidelines in order to be eligible for state funds.⁸⁷ Once these guidelines were met, the district proceeded to the construction phase.

Construction Phase

Every construction project received an allowance for site development and to erect a building. The eligible costs associated with construction for these programs were classified into several broad categories: building construction; site development; energy conservation; and supplemental funding for multi-story construction. In addition, facility funding included adjustment costs associated with geographic and regional differences, or the demolition of an existing structure.

A project architect for each contract developed final plans and documents as part of the project's final stage. These documents were used to establish a construction budget. The Division of the State Architect approved and monitored the district's final plans. After review, a construction apportionment was recommended to the State Allocation Board, which in turn authorized the distribution of funds. Upon completion of all regulatory oversight, the district was allowed to break ground.

The Deferred Maintenance Program

The Deferred Maintenance Program provided a 50 percent State match to assist school districts with expenditures for major repair or replacement of school buildings. Such repairs or replacements were for plumbing, heating, air conditioning, electrical systems, roofing, interior and exterior painting, and floor systems. School districts were required to place one and one-half percent of their general funds into an escrow account in order to receive a State match. For school districts that could not fit the parameters of the modernization program, the deferred maintenance program was the only alternative to receive State assistance.

The State also provided critical hardship funds to repair buildings that might seriously affect the health and/or safety of pupils. When available funding was insufficient to fully fund all hardship requests in any given year, the State Allocation Board created a priority list. However, the State Allocation Board often made exceptions to its list.

The Deferred Maintenance Program differed from the modernization program in that school districts were required to submit a five-year plan as to how their projects would be implemented. The plan displayed a rank for each project, and identified those projects that the school district would likely fund.

Deferred Maintenance Application Process

Based on the most recent available material, the deferred maintenance program had 13 steps, and a school district needed to complete several forms and documents. The 13 steps were divided into categories including a letter of interest, application process, critical hardship project documentation, and fund release.

A school district notified the Office of Public School Construction each year if it wanted to participate. Upon receipt of the initial letter, the Office of Public School Construction would send the district a request for its five-year plan of maintenance needs and an "Annual Application for Funds."

The school district would then provide the OPSC with a list of items scheduled for major repair or replacement,⁸⁸ along with its five-year implementation plan. When the district received state funds, it could only expend those resources for those items on the list. It could not redirect any resources toward administrative overhead, repair and maintenance of furniture, ongoing preventative maintenance, energy conservation, landscaping and irrigation, athletic stadium equipment, drapery or blackout curtains, testing underground storage tanks for leaks, or chalkboards.

Once the Office of Public School Construction approved a school district's list of projects it allocated funds accordingly. In cases of hardship, OPSC would visit the school prior to allocating funds. The district's governing board controlled and was responsible for all deferred maintenance funds. These funds were placed in a special escrow account.

The Year-Round Air Conditioning/Insulation Program

The Year-Round Air Conditioning/Insulation Program (ACI) began in 1986, as an incentive program for schools to operate during the summer.⁸⁹ In order to participate in the program, a school district was required to have a plan for Multi-Track Year-Round Education, or have 10 percent of its students enrolled in a Multi-Track Year-Round Education program. The ACI program assisted school districts by providing resources for air conditioning and insulation.

Year-Round Schools Air Conditioning/Insulation Application Process

The application process for the ACI program differed slightly for those school districts that had a year-round program from those that were planning a year-round program. However, regardless of their status, school districts were required to complete eleven stages in two phases to receive funding. If a school district had an air conditioning system that needed repair, it could not apply to this program, but could apply for funds under the deferred maintenance program.

A school district completed forms that included information on the buildings and spaces that would be affected, along with a report regarding the project's anticipated start-date. In addition, another application was required that provided information on whether the school site was experiencing enrollment growth, and whether some level of modernization was already in progress. Further, a school district that was not on a year-round schedule was required to show how its year-round calendar would be used. If the district was approved for funding, various allowances were provided to the district.⁹⁰ In addition to these allowances, the state would provide funds for gas and electric service, general site development, and air conditioning/insulation construction.

Items that were not covered by this program included costs for heating, window solar film, classroom doors and hardware, re-roofing, lighting, security, interior housing, fire alarm systems, unrelated repairs, installations, and painting.

The State Relocatable Classroom Program

The Relocatable Classroom program was designed to meet the needs of school districts that were impacted by excessive growth or unforeseen classroom emergencies. The State Allocation Board allocated funds for the acquisition, installation, and relocation of safe portable classroom facilities. The State maintained a fleet of 5,000 furnished classrooms that could be leased to school districts for \$4,000 per year. Hardship cases could lease portables for \$2,000 per year. These portable units were available on a first-come, first-served basis. However, there was no maximum amount of time a school district could keep the portables, and districts were not required to return them. Thus, some school districts have kept the portables indefinitely.

Relocatable Classroom Application Process

In order to participate in either relocatable classroom program, a school district was responsible for site preparation costs including electrical hookup, plumbing connection, a State Architect approved plan, insurance and maintenance. After approval by the Board, the district would be reimbursed for the cost of architect fees, electrical hookup, furniture and equipment, and plumbing installation. However, reimbursements were capped at \$9,450 per classroom.

The Unused Site Program

The Unused Site Program was established in 1974 as part of the General Lease–Purchase umbrella. It required school districts and county superintendents of schools to pay a fee for district properties that were not used for “official” school purposes. “Official” school purpose was defined as being used for K-12 education, continuing or adult education, special education, childcare, or administration of any educational units.

This program did not provide funds directly to schools. However, resources generated from the fees that districts paid for unused facilities were used to cover deferred maintenance costs and to service the debt on the state’s various school construction bonds. Since the Board simply administered the return of funds to the state, the funds could not be redirected to other programs administered by the Board. Proposition 1A eliminates their fee requirements.

The Office of Public School Construction Staff Review and The State Allocation Board’s Appeals Process

The State Allocation Board meets roughly 11 times a year. At each meeting the Board reviews and approves about 200 applications for funding. Prior to the State Allocation Board’s review, the Office of Public School Construction staff processes all applications. Before Proposition 1A, the approval processes for the programs, except for the growth and modernization programs, were straightforward. Either a school district’s application fit a program’s description for reimbursement, or it did not. Due to the complicated nature of the Growth and Modernization programs, “special considerations,” or project applications that did not fit in the parameters of the program were placed in a different category. The State Allocation Board approved roughly 90 percent of all growth and modernization projects without special consideration. Issues requiring special consideration could include peculiarities of the proposed site, or the costs associated with a project. The applications were divided into special consents or “specials,” and appeals. Both types permitted the Office of Public School Construction staff great latitude in the decision-making process, as they investigated and evaluated school district applications on a case-by-case basis.

A “special” occurred when OPSC staff reviewed a school district’s application that did not meet the standards of the program, and determined that an exception should be made. This agreement may have required several meetings between the school district’s administration and the OPSC staff. With OPSC staff recommendation, which may have

been inconsistent with State Allocation Board policy, this application would be brought before the State Allocation Board for review. This category was normally granted approval in one action.

An appeal occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined an exception should not be made. If after several meetings an agreement could not be reached, the school district would bring its case before the State Allocation Board. An appeal was granted only on a case-by-case basis. At times, legislators have spoken on behalf of school districts at Board meetings.⁹¹ The difference in the two types of special considerations was that a school district or its representative would have to defend its actions in an appeal. However, as already noted, only those people who kept up with the process and policy changes were adept enough to tackle an appeal. Therefore, a school district seeking an appeal before the State Allocation Board might seek help from legislators that represented them, or hire consultants. For instance, in the May 1998 State Allocation Board meeting, a well-versed school finance consultant appeared on behalf of the Apple Valley Unified School District. Apple Valley hired both a construction manager and a general contractor to erect its new school, in the face of board policies allowing a school district to hire only one such position. On behalf of the school district, the consultant addressed the State Allocation Board, and pointed out that in five other cases the State Allocation Board had voted in favor of a school district that hired both a general contractor and a construction manager.⁹²

Less seasoned district representatives would not have known that the State Allocation Board had already set a precedent for funding projects that include both a construction manager and a general contractor.⁹³ The OPSC staff was not knowledgeable on this issue and therefore could not be a source of information.

PROPOSITION 1A—A POSSIBLE FIX TO SAB PROCESS PROBLEMS

Proposition 1A not only authorizes an additional \$6.7 billion to K-12 schools, but it also offers a fix to several of the process problems discussed above. It replaces the provisions of the previous Lease-Purchase Program. This section discusses (1) the resource allocation provisions of the legislation; (2) the programmatic components of the legislation; and (3) how the legislation improves the resource allocation process over that which existed under previous bond programs.

Total Resource Allocation Provisions of Proposition 1A

The resource allocation system in Proposition 1A is specific and detailed. Bond proceeds are to be allocated in 2 two-year cycles: \$3.35 billion available immediately; and \$3.35 billion available after July 2, 2000. Of the \$3.35 billion that is immediately available, \$1.35 billion is earmarked for new construction, \$800 million for modernization, \$500 million for hardship cases, and \$700 million for class-size reduction.

For the second \$3.35 billion distribution, \$1.55 billion will be available for new construction, \$1.3 billion for modernization, and \$500 million for hardship cases. There are no resources in the second allocation for class-size reduction.

School districts receive funding for their projects based on a per pupil formula. The formula is based on a statewide average cost for construction, adjusted each January for inflation. The figures are based on unhoused⁹⁴ average daily attendance (ADA). The per pupil ADA formula is as follows:

	Growth	Modernization
Elementary	\$5,200	\$2,496
Middle School	\$5,500	\$2,640
High School	\$7,200	\$3,456

It is anticipated that the initial \$1.35 billion available for new construction during the first round of allocations will be insufficient to meet the needs of those school districts that are facing substantial enrollment growth. Proposition 1A establishes a priority point system for new construction projects when State bond resources are exhausted.⁹⁵ The Office of Public School Construction will process applications on a first-come, first-served basis from subsequent bond offerings.

In addition to the provisions outlined above, school districts that receive bond proceeds are required to set aside three percent of their general funds each year for 20 years for the purpose of deferred maintenance.

Components of Proposition 1A

Proposition 1A establishes three categories for funding. The first is the Growth Program, in which the State finances half the cost of new construction and the school district the other half. The second is the Modernization Program, in which 80 percent of the cost of rehabilitation is provided by the state and 20 percent by the school district. The third category is “hardship,” in which the State funds up to 100 percent of the cost for emergency needs, or an increased proportion of its share for new construction or modernization.⁹⁶

Proposition 1A holds harmless those school districts that received State Allocation Board approval for the construction phase of their projects (under the previous Priority 1 - able to provide a 50 percent match). They will receive growth and modernization funds, but under the rubric of the previous “Lease Purchase Program.” This grant is supplemented by land costs, site development, and other adjustments.

Another new provision of the Proposition is that school districts can seek modernization resources after a facility is 25 years old, rather than 30 years under the previous program.

Schools districts that had received prior Board approval for Priority 2 projects (100 percent state funding) will have to either indicate their ability to finance 50 percent of their proposed projects or reapply under one of the new programs. If the school district cannot meet the provisions of the new programs, it can apply as a “hardship” case.

The California Supreme Court ruled in 1991 that cities and counties could limit housing development on the basis of the supply of classrooms.⁹⁷ Proposition 1A suspends, until 2006, the Court’s ruling.⁹⁸ With the passage of Proposition 1A, school districts will not be able to limit new housing construction based on a rationale that school facilities do not exist. However, in 2006, if adequate bond funds for new construction are not available, cities and counties can once again deny development. Further, as discussed earlier, the Proposition permits the school board to increase developer fees to up to \$1.93 per square foot.⁹⁹ Proposition 1A sets up a system where fees can be levied of up to 50 percent and 100 percent of the costs associated with building a school by developers under certain circumstances.

Proposition 1A Improves the Resource Allocation System of the State Allocation Board

Proposition 1A makes several changes to the programs administered by the State Allocation Board. It attempts to simplify the process of applying for funds, consolidates the Board’s previous six programs into two, and attempts to create a more equitable funding system. It also makes the State Allocation Board and the Office of Public School Construction staff more accountable for their actions. Table 2 presents the differences between the Board’s previous Lease Purchase Program, and the new programs that are initiated by Proposition 1A.

Table 2 - Comparison of Lease Purchase Program to Proposition 1A Programs

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
FUNDING FACILITIES	<p>Priority 1 projects-growth and modernization-received 50 percent funding based on actual costs from the state.</p> <p>Priority 2 projects-growth and modernization-received 100 percent funding form the state.</p>	<p>Growth projects receive 50 percent funding based on a per pupil formula from the state.</p> <p>Modernization projects receive 80% funding from the state. Hardship projects can receive up to 100 percent of funding from the state based on three broad categories financial, physical and excessive costs.</p>
CONSTRUCTION EXCESSIVE COSTS & COST SAVINGS	<p>Some excessive costs (i.e., change orders) were reimbursed by the state. Cost savings were returned to the state.</p>	<p>Excessive costs are not reimbursed by the state and school districts keep costs savings.</p>
MODERNIZATION PROJECTS	<p>Buildings must be at least 30 years old.</p>	<p>Buildings must be at least 25 years old.</p>
PROJECT APPROVAL	<p>Projects were approved three times in conjunction with the planning, site acquisition and construction phases.</p>	<p>Projects receive one approval (except hardships that receive two approvals).</p>
FUND ALLOCATION	<p>Funds were allotted after each phase.</p>	<p>Funds are allotted only after DSA approves plans, unless there is a hardship.</p>
MAINTENANCE OF FACILITIES	<p>Required school districts to set aside two percent of their general fund for ongoing maintenance.</p>	<p>Requires school districts to set aside three percent of their general funds for 20 years for ongoing maintenance.</p>
PROPERTY LIENS	<p>State maintains a lien to properties it funds.</p>	<p>State does not hold liens, and existing liens are released.</p>
ARCHITECTURAL APPROVAL	<p>Division of State Architect approved all plans.</p>	<p>The Division of State Architect or a state approved private engineering firm may approve plans.</p>

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
DEVELOPER FEES	The cap on fees was \$1.93 per square foot; however, cities or counties could levy a higher fee and pass it to schools districts.	The cap on fees is \$1.93 per square foot, adjusted biannually. Fees may be assessed up to 50 percent of the costs of a project if a school district has accessed other forms of financing including Mello-Roos, G. O. bonds, and parcel taxes. In order to increase fees, school districts must meet two of four criteria, including MTYRE, local school bond positive votes of 50 + 1 percent, 20 percent of students are housed in portables, 15 percent of bond debt used.
WHEN STATE FUNDS RUN DRY	Projects were placed on a pending state-funding list or charged a city-based developer fee.	Modernization projects may be placed on a pending state-funding list. Growth projects may be placed on a priority points list, or the school district may collect 100 percent of financing from a developer.
CONTAINING DEVELOPMENT (MIRA, HART MURRIETA COURT CASES)	Cities and counties on behalf of school districts were able to contain residential development by suspending the building of new facilities.	School districts can not request cities or counties to prohibit residential development based on a lack of funds or school facilities until 2006.
ARCHITECT & CONSTRUCTION MANAGEMENT FEES	Percentage caps on fees based on size of projects	No caps.
MODERNIZATION PROGRAM	Provides funding to building over 30 years old, and portables over 25 years old. Calculations done on a district basis.	Provides funding for buildings over 25 years old and portables over 20 years old. Provides funding on a site-specific basis.
AIRCONDITIONING-ASBESTOS PROGRAM	Allotted funds specifically to install AC and remove asbestos.	These are now incorporated in the modernization program.

Simplification

To further simplify the process, the Proposition reduced the number of school facility financing phases from three to one.¹⁰⁰ This is now possible because school districts receive a flat grant from the State based on the number of students they enroll, rather than on the estimated cost of a project. Under the previous program, each phase of a project was evaluated independently; thus the cost to the State for any given project could change. Under the new program, a school district receives a single grant for a single project, and cannot request that the state fund additional need beyond the original request.¹⁰¹

The Proposition also explicitly requires that the State Allocation Board initiate a public hearing process that notices any policy changes considered by the Board. It requires that the Board make available to school districts written up-to-date documentation that clearly explains its policies, and specifically describes how its new programs work.

Consolidation

Until Proposition 1A, the State Allocation Board administered as many as 13 programs. The most current six are discussed above. With the enactment of Proposition 1A, the number of programs has been reduced to two, along with a special category for hardship cases. This consolidation of programs makes it easier for school districts to choose a program that best suits their needs. It precludes the type of creative tactics that school districts were forced to pursue to match their projects to the right program in order for them to receive funding.

A More Open Process

The Proposition causes a major shift in policy direction for the State Allocation Board. Under its previous programs, the Board funded both new construction and modernization on a 50/50 matching basis. Under Proposition 1A, the Board is required to fund modernization projects more generously than new construction projects, in that the State will fund 80 percent of the cost for modernization compared to 50 percent for new construction.

Another major outcome of Proposition 1A is that the State Allocation Board no longer has the authority to offer grants to school districts that may seek funds for special projects without any real statutory framework. Now school districts must demonstrate that they meet specific hardship criteria set out in the new law. The practical effect of this change will depend on how the Board interprets this provision.

Previous legislation implicitly required that the State Allocation Board follow guidelines set forth in the Administrative Procedures Act (APA); however, the Board did not do so. Proposition 1A explicitly requires the Board to follow APA guidelines. This means that any change in policy or regulation considered by the Board must be properly noticed to the public before the Board can act. This requirement, if the Board follows the full spirit, will allow school districts to be fully informed of Board policies and procedures, as well as its rules and regulations.

PITFALLS IN THE PROCESS PRIOR TO PROPOSITION 1A

This section discusses the State Allocation Board's attempts to improve its system and the pitfalls that existed under the previous programs.

Until recently, rules governing the application process were labor-intensive, both for school districts and the state agency personnel (including the Office of Public School Construction and the Division of the State Architect). In 1989, the Legislature received a report outlining the complex application.¹⁰² The report identified 54 steps school districts had to perform in order to receive application approval and eventual financing. In addition, the process required 24 separate forms.

Process Streamlined Recently

Since 1992, the OPSC has tried to be more efficient. Changes implemented by OPSC included: simplified and streamlined applications; improved response time for application review; improved policy information dissemination; and school districts were empowered to complete their own applications.

The most concrete indication that the Office of Public School Construction was becoming more efficient was in the application process. The application process for the Growth Program was reduced from 54 steps to nine. In addition, the number of forms that were needed to apply for funding was reduced from 24 to four.

School districts complained and begged for applications to be checked and approved for a State Allocation Board meeting agenda in an expeditious fashion. As part of the efficiency movement, the Office of Public School Construction set a goal to reduce the time from when a school district filed a completed application until it was placed on a State Allocation Board meeting agenda from over 400 days to 60 days.¹⁰³ Prior to Proposition 1A, applications on average still took longer than the 60 days to be reviewed. However, the office's efficiency achievement by reducing application review days is noteworthy.

In addition, the Office of Public School Construction worked more closely with school districts in the decision making process and provided greater leeway. In particular, school district personnel could self-certify certain information pertaining to a project rather than rely on state agency personnel. The self-certification process removed the time a school district would wait for a response from the Office of Public School Construction. It thereby shortened the application process.

Under its previous programs, it was difficult for school districts to get information pertaining to the funding process from the Office of Local Assistance (OLA) staff or from written materials. The Office of Public School Construction is now more service-oriented.¹⁰⁴ One can obtain information in person or from the office's Internet site.¹⁰⁵ In fact, the staff of the Office of Public School Construction is continually placing more information on the Internet. This information includes an automated project tracking system, Senate Bill 50 regulations, office contacts, and old board policy changes.

School Districts in Line Stand on Shifting Sands

Under the previous allocation system, school districts that completed their applications and were placed in queue were never guaranteed funding in the order their applications were received. The State Allocation Board dictated that school district applications were placed in an unfunded application list on a first-come/first-served basis. However, there were four general ways that school district applications could be “bumped” up or down in the queue.

Broad Classification Decisions

The first way a school district could get bumped was if the State Allocation Board decided to redirect its emphasis and fund a broad category of projects. For instance, the SAB could decide to fund all application projects from small school districts (no matter where they were in queue). If a school district was large, hundreds of proposed school projects could jump ahead in the funding queue.

The second way a school district could get bumped was if the State Allocation Board shifted the specific funding program allocations. Thus, for example, the State Allocation Board could decide to shift funds earmarked for the Growth Program to the State Portable Classroom Program.

Specific School District Decisions

The third way a school district could get bumped was if another school district application in queue with a later application filing date appealed to the State Allocation Board to change its application filing date to be ahead of other school districts. That school district application would be funded first.

The fourth way a school district could get bumped was if an emergency situation occurred and a school district requested critical hardship money from the State Allocation Board. The Board could provide these funds when available.

The application process requires equity and balance in order to ensure fair competition by school districts for State funds. The process needs to be flexible enough to handle emergency situations, yet firm enough to prohibit jockeying among school districts for better placement in the queue.

Proposition 1A halts the movement of funds from one program to another. However, the other examples are still feasible. Jockeying of school districts by consultants for better placement in line may continue to occur. This is especially true as Proposition 1A cannot handle the pent up demand for State funds. The next section discusses options that the Legislature may consider in order to improve this system.

OPTIONS FOR IMPROVING THE SCHOOL FACILITY FINANCING SYSTEM

A Separate List for Small and Rural School Districts

When the Proposition 1A funds are exhausted, new construction project applications will receive priority points for future funding. Small and rural school districts may require separate lists to ensure that they are placed near the front of a funding queue. This is necessary because there is no guarantee that the entire queue would receive future funding. Small and rural school districts, based on the current priority points system, may not receive enough priority points to approach the front of the queue. Larger school district applications, with greater per pupil need, may be able to position themselves high enough in the queue for funding by receiving favorable OPSC evaluations. Proposition 1A allows schools to skip to higher positions in the funding queue if they score higher priority points based on their number of unhoused students or if they can demonstrate a special hardship. *The Legislature may wish to create a separate list for small and rural school districts to create a more equitable system.*

Annual Report and Independent Accounting

In the early 1990s, many state agencies, boards, and commissions, because of budget cuts, postponed writing annual reports to the Legislature. These reports provided financial and policy information to the public. The State Allocation Board was one government entity that has not prepared regular audited reports of its programs' operations and expenditures for public review. The State Allocation Board will receive \$6.7 billion over the next four years to fund school construction projects. *The Legislature may wish to require the Board to prepare for the Governor and Legislature an annual report that details how and to whom bond funds were distributed. The Legislature may wish to require that an independent accounting firm or the State Auditor General prepare the Board's report.*

On-Line Technical Assistance

Although the application and funding process administered by the Office of Public School Construction has been streamlined and simplified in recent years, certain components of the process are still cumbersome. The process should be simple enough that school districts do not need to hire consultants or lobbyists to advise them or to shepherd their proposals. *The Legislature may wish to pass legislation that would require the OPSC to develop a technical assistance program to provide school districts with the necessary information and advice they need in order to qualify for and receive bond funds. Such a system could include an automated Internet help-line.*

A Special General Fund Appropriation for School Construction

The State's bond capacity may not be able to fund every State infrastructure need, including schools, transportation, prisons, and water during the next decade. School facility needs are estimated conservatively at roughly \$10 billion, while some estimates have put the figure at \$40 billion for the next decade alone. According to the Department of Finance, the State can afford to service approximately \$25 billion in additional debt. Thus, school facility financing alone could incur the entire debt capacity of the State. *The Legislature may wish to create a special appropriation fund for public school capital outlay as part of the State General Fund to augment the State's bond programs. In addition, the State may wish to design a school construction reserve fund, which is funded from budget surplus revenues.*

ENDNOTES

¹ Chapter 243, Statutes of 1947.

² If a school district wants state funding for construction or repair of a school, it must apply to the State Allocation Board for the money. There are school districts that repair and construct school buildings without the assistance of the State Allocation Board (i.e., San Diego Unified School District, San Luis Unified School District). However, this report will focus on a school district that requires state support.

³ Chapter 243, Statutes of 1947. Initially, the State Allocation Board administered a number of Public Works programs for the State ranging from housing and employment assistance to school facilities construction. Various programs include: the Postwar Planning and Acquisition, Construction and Employment Act, Veterans Temporary Housing, State School Building Construction Programs, Emergency Relief Programs, and Community Assistance Programs (State Allocation Annual Report 1983-1984, p. 1).

⁴ California Government Code 15502.

⁵ Government Code 15490.

⁶ While the State Allocation Board submitted policy changes to school districts, an up-to-date handbook was not made available. In addition, turnover of board members and school administrators may lead to ignorance of programs and the program changes.

⁷ Amendments to the Constitution, Proposition 1, November 8, 1949.

⁸ Amendments to the Constitution, Proposition 4, November 4, 1952.

⁹ Op.cit.

¹⁰ California School K-12 enrollment grew from 1.689 million students in 1950, to 4.633 million students in 1970 (State of California. Department of Education. Education Demographics Unit. CBEDS Data Collection. "Enrollment in California Public Schools 1950 through 1997").

¹¹ This is defined by California Education Code, Section 15102, as the legal limit of debt that a school district can incur based on the assessed value of property in that school district.

¹² Known as the State School Building Aid Program. The Legislature determined qualifications in order for school districts to participate in this program. They include the following provisions:

1. To qualify for a loan from the State a school district must have voted local bonds to 95 percent of its bonding ability.
2. Borrowing districts financially able to do so must repay the money to the State. Terms of 30 or 40 years of repayments are provided.
3. No money can be borrowed by a school district unless the proposed loan is approved by two-thirds vote of the electors of the district.
4. School construction, financed in any part by State loans will be subject to cost controls to be established by State Allocation Board (includes restrictions on the number of square feet of construction allowed per pupil).

¹³ Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for \$250 million.

¹⁴ Voters set the initiative process in motion in 1911 under reform-minded Governor Hiram Johnson. Los Angeles Times. "State's Voters Face Longest List of Issues in 66 Years; November 8 Ballot to Carry Maze of 29 Propositions." July 7, 1988, p. 1-1.

¹⁵ Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for \$250 million.

¹⁶ Amendments to the Constitution, Special Election, June 7, 1960, Proposition 2, Part II, Appendix. p. 2.

¹⁷ School Building Safety Fund, December 1971.

¹⁸ The Field Act, that mandates that school construction is able to withstand earthquakes, has yet to dictate how to build an indestructible building.

¹⁹ Propositions and Proposed Laws, Together with Arguments, Primary Election Tuesday, June 6, 1972, p. 1.

²⁰ Ibid.

²¹ State Allocation Board Report to the Legislature 1972-1973 Fiscal Year, p. 3.

²² Public school K-12 enrollment declined from 4.457 million students in 1970 to 3.942 million students in 1980. (State of California. Department of Finance. Demographic Research Unit. 1997 Series California Public K-12 Graded Enrollment).

²³ Op.cit., p. 2.

²⁴ Ibid.

²⁵ Property rich communities often have more poor people than property poor communities. The presence of commercial and industrial development can make an otherwise poor district "rich" in its tax base. Conversely, affluent communities often discourage industrial development that would make them property rich, but environmentally poorer. The lack of correlation between poor people and property poor districts is often overlooked in discussions of school finance issues. Even though the distinction has been known for a long time. Campbell, Colin D.; Fischel, William A. National Tax Journal. "Preferences for School Finance Systems; Voters Versus Judges." Footnotes from Helen Ladd. "Statewide Taxation of Commercial and Industrial Property for Education." National Tax Journal (June 1976): 143-153.

²⁶ Goff, Tom. "Passage of Tax Reform School Financing Bill Urged by Riles." Los Angeles Times, July 19, 1972, p. I-1.

²⁷ Section 17700 et al., Education Code.

²⁸ Property values were increasing dramatically all over the State. This model stopped school districts from speculating on land that was financed by the State.

²⁹ Op.cit., p. 2.

³⁰ Proposition 1 of 1978 was defeated 65 percent to 35 percent. Propositions from 1976, 1978 and 1994.

³¹ Proposition 1 of 1976 would have provided \$250 million, and Proposition 1 of 1978 would have provided \$300 million.

³² Shultz, Jim. "Major Firms Gained Most With Prop. 13." Sacramento Bee, September 13, 1997, p. F-1.

³³ Ibid.

³⁴ Karmin, Bennett. California's Bankrupt Schools." New York Times, July 17, 1983, pp. 4-21. Linsey, Robert. "San Jose Schools Declare Insolvency in Wake of Tax Revolt." The New York Times, June 30, 1983, p. A-14. However, some school districts that were academically and fiscally well managed prior to Proposition 13 faced problems. In 1983, the San Jose Unified School District filed for bankruptcy. The National School Boards Association stated that it was the first insolvency of a large school district since the depression. The San Jose Unified School District, at the time, held a reputation for excellence in education. It ranked 14th in the state in the ratio of students to teachers, and its teachers' salaries ranked second highest in Santa Clara County. However, since Proposition 13, the school district set aside maintenance and construction projects, laid off teachers and non-teaching administration, until it could not make further reductions and still continue to pay its staff.

³⁵ Chapter 282, Statutes of 1979. State School Building Lease Purchase Bond Law of 1984—Voter Pamphlet Analysis.

³⁶ While the loan program was still on the books, the state made exceptions to aid school districts.

³⁷ California Education Code, Sections 17730.2, 17732. However, the Attorney General cited that 10 percent of local funds to cover the costs associated with facility development is not required. Coalition for Adequate School Housing. CASH Register, November 1984, p. 3.

³⁸ California Department of Education. CBEDS Data Collection. Education Demographics Unit. 1998.

³⁹ Coalition for Adequate School Housing. CASH Register, September 1982, p. 1.

⁴⁰ Ibid.

⁴¹ Coalition for Adequate School Housing. CASH Register, December 1982, p. 2., (in 1980-81 dollars).

⁴² This evaluation was amended annually. The State developed a formula that was based on standards that considered how a facility was used and how many pupils were unhoused. In some years, the State gave preference to unhoused pupils, while in other years, the state gave first consideration to how a facility was used. Facility use included childcare, before and after school programs, adult education, and traditional K-12 programming.

⁴³ Savage, David. "Resolution Brings Tax Cuts, Schools Told." Los Angeles Times, October 15, 1982, p. B1.

⁴⁴ Assembly Bill 62, Chapter 820, Statutes of 1982.

⁴⁵ California Department of Education. California Year-Round Education Directory 1997-98.

⁴⁶ For example, a school district that needed to build a new elementary school that cost \$4 million could receive \$400,000 from the state if it chose to redirect students to existing facilities that incorporated the MTYRE program.

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- ⁴⁷ Chapter 886, Statutes of 1986, added provisions that capped the grant at \$125 per student.
- ⁴⁸ School districts that could not offer to cover any expenses (now referred to as a Priority 2) could conceivably wait years. MTYRE continues today, and has been a successful program. In 1997, more than 1.19 million or about 22 percent of California students attended schools with year-round calendars. The State Department of Education estimates that the MTYRE program has saved that State more than \$1.8 billion in construction costs since its inception. In 1997-98, \$66 million was allocated from the "mega item" of the state budget. About \$40 million was sent to Los Angeles Unified School District to cover the reported 40,872 excess students. However, once students are "excess," they can not be counted as students for the Office of Public School Construction in the erection of new facilities. Approximately 102,000 students are "excess." While the program has provided relief for school construction, it remains a controversy whether educationally the program is successful.
- ⁴⁹ Proposition 46 on the June 1986 Ballot.
- ⁵⁰ Greene-Hughes School Building Lease-Purchase Bond Law of 1986 Voter Pamphlet.
- ⁵¹ Proposition 46: Property Taxation, June 3, 1986.
- ⁵² DeWolfe, Evelyn. "Schools Get Low Marks for Asbestos." *Los Angeles Times*, January 8, 1989.
- ⁵³ School enrollment bottomed to 4.089 million students in 1983, the same population amount that occurred in 1964. By 1986, student population increased to 4.377 million. California Department of Education. Education Demographics Unit. CBEDS. 1998.
- ⁵⁴ Op.cit.
- ⁵⁵ Op.cit.
- ⁵⁶ State Allocation Board Report to the Legislature 1984-85, 1985-86, Fiscal Years.
- ⁵⁷ AB 2926, Statutes of 1986.
- ⁵⁸ These were referred to as the Mira, Hart, Murrieta court cases.
- ⁵⁹ Later that year, fees were capped by the Legislature at \$1.50 per square foot on residential units statewide.
- ⁶⁰ Fulton, William, "California Pulls Out the Stops; Cities Cope with Government Budget Deficit." American Planning Association, p. 24, October 1992. About one-third going to school districts.
- ⁶¹ Cummings, Judith. "CA Turns to Developer Fees." *The New York Times*, January 16, 1987, p. A-15.
- ⁶² Chapter 1261, Statutes of 1990.
- ⁶³ Legislative Analyst's Office, p. 23. "Building Schools in California: What Role Should the State Take in Local Capital Development?" Linda Herbert. Jesse Marvin Unruh Assembly Fellowship Journal, Volume II, 1991, pp. 1-4.
- ⁶⁴ Op.cit.
- ⁶⁵ Substantial enrollments are defined as at least 30 percent of the district's enrollment in kindergarten or any of the grades one to six, inclusive, or 40 percent of the students in the high school attendance area, see Education Code, Section 17717.7g.
- ⁶⁶ Conversation with Mike Vail, on January 21, 1999. Mr. Vail is the Assistant Superintendent of Facilities and Governmental Relations at the Santa Ana Unified School District.
- ⁶⁷ The class size reduction program reduced the ratio of students to teachers in kindergarten to third grades. It exacerbated the obstacles for school districts that were growing in size, but lacked facilities to house the new students. School districts that were not growing had to provide additional classroom space to account for smaller ratios of teachers to students in kindergarten to third grades. The State Allocation Board provided portable classrooms to cover the smaller-sized classes. The State Allocation Board estimates that thousands more classrooms are needed.
- ⁶⁸ Department of Finance, School Populations Projections. 1998.
- ⁶⁹ Jacobs, Paul. "Backers of Education Cite Jobs, Overcrowding." *Los Angeles Times*, May 27, 1992.
- ⁷⁰ Auditor General of California. "Some School Construction Funds are Improperly Used and not Maximized." January 1991.
- ⁷¹ County of Sacramento Superior/Municipal Court, Court #97F05608, CJIS XREF #250593.
- ⁷² Vrana, Deborah. "Assembly Rejects Plan in California to Ease Passage of School Bonds." *The Bond Buyer*, January 27, 1992.
- ⁷³ The passage required a two-thirds vote by the legislature.
- ⁷⁴ November 1993, Proposition 170 failed by 70 percent.

⁷⁵ Colvin, Richard Lee. "Bond Victory Heartening to Educators." Los Angeles Times, March 28, 1996, p. A1. Anderluh, Deborah, Sacramento Bee, March 31, 1996, p. A1. Of the \$7 billion, \$1.6 billion was estimated for overhauls of buildings over 30 years old, and \$5.6 billion for new construction and classroom additions.

⁷⁶ Colvin, Richard Lee. "The California Vote (a Series)." Los Angeles Times, March 19, 1996, p. A3.

⁷⁷ If a school district has an application with the SAB to repair its roof and the roof is not fixed in a reasonable period of time, further structural damage may occur. This new or additional damage could bump the project to the top of the list.

⁷⁸ See the sub-section entitled "School Districts in Line Stand on Shifting Sands."

⁷⁹ Bazar, Emily and Jane Ferris. "Money for Portable Classrooms." Sacramento Bee, September 26, 1996.

⁸⁰ State bonds were proposed biannually in 1988, 1990, and 1992.

⁸¹ In 1976 and 1978 bond measures were defeated by the electorate.

⁸² "Lawmakers Scrap Over Billions in School Bonds." California Public Finance, May 5, 1997, p. 1.

⁸³ "Huge School Bond Mullied" California Public Finance, September 8, 1997, p. 1.

⁸⁴ This included the type of facility and the number of teaching stations (classrooms).

⁸⁵ The Department of Education, School Facilities Planning Division is responsible for site review and site plan review and is required to recommend all school locations for new schools and additions to schools site regardless of the funding source.

⁸⁶ For example, in 1988, the Los Angeles Unified School District wanted to rehabilitate a hotel into a school. The State Allocation Board paid \$48 million to an escrow account in an attempt to hold the price to acquire the Ambassador Hotel. When the school district and State Allocation Board realized that the site was not acceptable and decided to back out of the contract, they found that the developer had removed the money placed in the escrow account. In addition, when the district attempted to backpedal out of the contract, the owner sued for a breach of contract. Currently, there are negotiations between the school district and the owner of the property, Donald Trump.

⁸⁷ A school district was responsible for developing detailed cost estimates for the proposed school or addition. Site support costs provided funds for the preparation of environmental impact documents, development of relocation reports, determination of relocation claims, and negotiation of site purchases. The state reimburses up to 85 percent of the amount expended for eligible sites.

⁸⁸ This list was limited to those school facility components that have approached or exceeded their normal life expectancy.

⁸⁹ Applications for projects and appeals with correspondence from Carol A. Fisher, Apple Valley Unified School District, Author.

⁹⁰ Reimbursable fees and costs related to plans include architect fees, Division of State Architect/ORS Plan Check fee, CDE Plan Check Fee, Preliminary Tests (like soil, foundation, and exploratory borings) and other fees, for instance, advertising construction bids, and printing of plans.

⁹¹ Pascual, Psyche. "Funding to Build High School Finally Approved By State." Los Angeles Times, June 17, 1993.

⁹² Understanding the board's other five opinions would be difficult to track if not impossible to uncover.

⁹³ To evaluate the State Allocation Board's policies and procedures, it was necessary to obtain the State Allocation Board Handbook. The Handbook contains procedures and policies for reviewing and criteria for approving applications from school districts for bond funds to build new schools. When this report was initiated, the Handbook that the State Allocation Board provided was dated 1995, but contained policies adopted in 1993. Further, the State Allocation Board changes its policies and procedures often, and has no administrative process by which it updates its Handbook. An up-to-date, comprehensive list of policies and procedures was not available in any other format. A new handbook for the Lease Purchase Program was available on line - however, it also suffered from a lack of regular updating. The State Allocation Board meets every month and, hypothetically, policy changes can occur each month. Prior to Proposition 1A, despite being subject to the Administrative Procedures Act, the State Allocation Board had no public notice or participation requirements for the procedures by which it changes its policies. Only long-term policies are published in the California Regulatory Notice Register. Such policies included contracting and affirmative action requirements. Furthermore, staff reported that policies change so frequently, that it would be impossible to include relevant policies in the reporter or any other document.

⁹⁴ The number of students above the maximum number set by CDE to be in a classroom.

⁹⁵ The priority points ranking mechanism is based on, among other things, the percentage of currently and projected unhoused students relative to the total population of the applicant district or attendance area.

⁹⁶ In hardship cases, the State will fund more than 50 percent of new construction if a school district is unable to come up with its 50 percent match and had gone through a reasonable effort. Similarly, districts that are unable to offer a 20 percent match for modernization can seek relief from the State. Financial hardship is defined for those school districts that cannot afford to build, repair, or replace facilities because of fiscal restrictions (for example, an inability to match state funding because of an inability to pass local bonds or a lack of bonding capacity). Facility hardship can also apply to school districts that lack adequate housing for their pupils due to a lack of health and public safety conditions; or because of a natural disaster, traffic safety, or the remote geographic location of pupils (i.e., rural). Excessive costs may be attributed to geographic location, size of project, the cost associated with a new project in urban locations that may require high security or toxic cleanup, and sites that may require seismic retrofitting.

⁹⁷ The State Supreme Court ruled that school districts that were unable to accommodate enrollment growth could ask their city and county councils to limit real estate developers from building additional housing. Some developers found it necessary to offer additional resources (land or money) to get support from school districts and city councils for their projects.

⁹⁸ In three legal challenges, the courts have ruled that cities were not precluded from making zoning or other land-use decisions, because of the availability of classroom space, see *Mira Development Corporation v. City of San Diego*, *William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles*, *Murietta Valley Unified School District v. County of Riverside*. The practical effect of the rulings was that cities could limit development on the basis of the supply of classrooms. Some developers found it necessary to offer additional resources, land or money, to get support from school districts and city councils for their projects.

⁹⁹ If the State expends all of its Proposition 1A resources prior to 2006, school districts can ask developers to pay 100 percent of site acquisition and school construction costs. In order to receive developer support under these conditions, school districts must participate in the Multi-Track Year-Round Education program. The Proposition includes language that the State may reimburse developers for up to 50 percent of their costs if subsequent bond funds become available.

¹⁰⁰ Under the old program, school districts had three application phases for each of their projects – planning, site, and construction. Under the new program, there is only one application phase for the entire project proposal, except under hardship provisions.

¹⁰¹ However, once the funds are distributed to the school district, the school district keeps the interest accrued on the funds.

¹⁰² Price Waterhouse. Joint Legislative Budget Committee Office of the Legislative Analyst. Final Report of the Study of the School Facilities Application Process. January 10, 1988.

¹⁰³ One streamlined step is the self-certification process in the Lease Purchase Program.

¹⁰⁴ However, in light of the office's accomplishments, the author had to request information routinely more than once.

¹⁰⁵ www.dgs.ca.gov/opsc.

¹⁰⁶ School Services of California.

APPENDIX A

School District Financing Mechanisms

In addition to state bond funds, school districts have a variety of other alternatives for funding school construction. These include developer fees, certificate of participation, general obligation bonds, and Mello-Roos taxes. Also, a developer may simply build a school rather than consider other financing alternatives.

Local General Obligation Bonds

In 1986, after an eight-year hiatus, school districts could once again use general obligation bonds to finance school facilities. Bonds are a favorable method of financing, even though they require a two-thirds vote and proceeds cannot be used for items such as buses and furnishings. In 1986, 14 school districts offered bond initiatives. In 1987 and 1988, this number grew to 51 and 54 school districts, respectively. In November 1998, 36 school districts held bond elections.¹⁰⁶

Developer Fees

In 1978, the Wilsona School District was the first to use developer fees. These fees added about \$2,000 to the cost of a typical home in the Lancaster area. While school districts were exacting developer fees, there was no statute that explicitly permitted this activity. The Legislature standardized the authority by giving school districts direct authority to charge developer fees. School districts welcomed developer fees especially because they did not require an election, and the funds associated with the fees could be used for a wide variety of facilities that were associated with enrollment growth. In response to a growing number of complaints from developers, the Legislature capped the amount that could be collected in 1986. Proposition 1A prohibited local agencies from using the inadequacy of school facilities as a reason for not approving housing development projects. The authority to raise developer fees was placed with the State Allocation Board. However, developer fees generally are not enough to cover the full costs of constructing a school.

Certificates of Participation

Certificates of Participation (COPs) are another, though complicated, tool for districts to raise money without voter consent. The most common arrangement is that the district leases a new school owned by another government agency or a nonprofit agency, which in turn raises the capital to build the school by selling shares (certificates of participation). In the long run, lien revenues COPs are remarkably like bonds. One disadvantage of the COP arrangement is that it does not provide a new revenue source for the lease payments. Funds usually come from the school district's general fund.

Mello-Roos

The Mello-Roos Community Facilities Act, established in 1982, authorized school districts and local governments to form "community facilities districts." Subject to the approval of two-thirds of the voters, these special districts could sell bonds to raise revenues for the purpose of financing new buildings, or to rehabilitate existing school facilities. A majority of Mello-Roos districts are created in inhabitable areas that are proposed for development where voting is by the landowners. The district sets a specific tax per house.

EXHIBIT D

2842

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H

KATHLEEN CONNELL, as Controller, etc., et al.,
Petitioners,

v.

THE SUPERIOR COURT OF SACRAMENTO
COUNTY, Respondent; SANTA MARGARITA
WATER

DISTRICT et al., Real Parties in Interest.

No. C024295.

Court of Appeal, Third District, California.

Nov. 20, 1997.

SUMMARY

Several Water districts brought mandamus proceedings against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. The trial court entered a judgment that the state mandate was a program for which reimbursement was due, and it directed the Controller to determine the amounts of reimbursement. (Superior Court of Sacramento County, Nos. CV347181, CV357155, CV357156 and CV357950, James Timothy Ford, Judge.)

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to vacate its judgment and enter a new judgment denying the petitions for a writ of mandate. The court held that because the judgment plainly left matters undecided, the judgment was interlocutory and therefore was not appealable; however, the court treated the appeal as a writ petition. On the merits, the court held that the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. The court further held that even if the amendment constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code. § 35470). Rev. & Tax.

Code, former § 2253.2 (now Gov. Code, § 17556), provides that the board shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances. The court also held that the public *383 interest exception to the doctrine of administrative collateral estoppel permitted the Controller to raise that issue in the trial court. (Opinion by Sims, J., with Puglia, P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Appellate Review § 17--Decisions Appealable--Final Judgment--Necessity For Further Orders.

A judgment entered in litigation to determine whether a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, was not a final judgment and thus was not appealable. The challenging parties' petition sought an order directing the State Controller to issue a warrant and the State Treasurer to pay a warrant, but the judgment merely ordered the Controller to determine amounts without disposing of those matters. The record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget, but the necessary evidentiary hearing on that issue was not held. Because the judgment plainly left matters undecided, the judgment was interlocutory and therefore not appealable.

(2) Appellate Review § 10--Jurisdiction--Appealable Judgment.

An appealable judgment or order is a jurisdictional prerequisite to an appeal.

[See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § § 13-14.]

(3) Appellate Review § 17--Decisions Appealable--

Interlocutory Judgment.

An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties.

(4) Mandamus and Prohibition § 44--Mandamus--To Courts--Appeal--Scope of Review.

In reviewing a trial court's ruling on a petition for a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. However, where the facts are undisputed and the issues present questions of law, the appellate court *384 is not bound by the trial court's decision but may make its own determination.

(5) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Board of Control Decision.

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state- mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the board's decision was wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts.

[See 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 339.]

(6a, 6b) State of California § 11--Fiscal Matters--Reimbursement for State-mandated Costs--Standards for Reclaimed Wastewater--Authority of Water Districts to Levy Fees.

Even if a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470). Rev. & Tax.

Code, former § 2253.2 (now Gov. Code, § 17556), provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances.

(7) Statutes § 29--Construction--Language--Legislative Intent.

In construing statutes, a court's primary task is to determine the lawmakers' intent. To determine intent, the court looks first to the words themselves. If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature. *385

(8) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Legal Issue.

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state- mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel permitted defendant to raise the purely legal issue that Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), precluded reimbursement. The statute provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program, and plaintiffs have such authority. The board's finding to the contrary was thus not binding.

COUNSEL

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Susan R. Oie, Deputy Attorneys General, for Petitioners.

No appearance for Respondent.

James A. Curtis for Real Parties in Interest.

SIMS, J.

This case involves a dispute as to whether a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. (Cal. Const., art. XIII B, § 6 (hereafter, section 6); [FN1] Gov. Code, § 17500 et seq.; former Rev. & Tax. Code, § 2201 et seq.) The State Controller and State Treasurer appeal from a trial court judgment granting *386 petitions for writ of mandate brought by Santa Margarita Water District (SMWD), Marin Municipal Water District, Irvine Ranch Water District and Santa Clara Valley Water District (the Districts), seeking to enforce a State Board of Control (the Board) decision which found the regulatory amendment constituted a reimbursable state mandate. [FN2] Appellants contend the trial court erred because (1) the amendment did not constitute a new program or higher level of service in an existing program; (2) the Districts' claim was abolished when the statutory basis for their claim-former Revenue and Taxation Code section 2207- was repealed before their rights were reduced to final judgment, and (3) the Districts' authority to levy fees to pay for the increased costs defeats their claim of a reimbursable mandate. Appellants also challenge the trial court's determination that they were collaterally estopped from challenging the Board's decision (finding a reimbursable state mandate) by their failure timely to seek judicial review of the administrative decision. We shall conclude the Districts' authority to levy fees defeats their claim of a reimbursable mandate, and appellants are not collaterally estopped from raising this matter. We therefore need not address the other contentions. Treating this appeal from a nonappealable judgment as an extraordinary writ petition, we shall direct the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions.

FN1 Section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency

affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

FN2 The trial court first held proceedings in the matter of the petition filed by the SMWD. The other three water districts had filed petitions, which were consolidated and awaiting hearing. The parties to the consolidated case filed a stipulation indicating they did not wish to relitigate the entitlement issues already decided by Judge Ford in the SMWD case, and they stipulated to assignment of their cases to Judge Ford pursuant to California Rules of Court, rule 213 (assignment to one judge for all or limited purposes), for determination of amounts as to each district. The judgment expressly covers the petitions of all four districts.

Factual and Procedural Background

In 1975, the State Department of Health Services (DHS) adopted regulations (Cal. Code Regs., tit. 22, § § 60301-60357) implementing Water Code section 13521, which provides: "The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health." Section 60313 [FN3] of title 22 of the California Code of Regulations prescribed the level of purity required for reclaimed water to be used for landscape irrigation. *387

FN3 California Code of Regulations, title 22, section 60313, initially provided: "Landscape Irrigation. Reclaimed water used for the irrigation of golf courses, cemeteries, lawns, parks, playgrounds, freeway landscapes, and landscapes in other areas where the public has access shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if at some location in the treatment process the median number of coliform organisms does not exceed 23 per 100 milliliters, as determined

from the bacteriological results of the last 7 days for which analyses have been completed." (Former § 60313, Cal. Code Regs., tit. 22, Register 75. No. 14 (Apr. 5, 1975).)

In May 1976, SMWD adopted a plan to develop a wastewater reclamation system. In August 1976, SMWD filed an application with the responsible regional water quality control board (Water Control Board) for a permit to discharge wastewater from the proposed reclamation system. SMWD also planned to provide reclaimed water for irrigation, potentially to 2,173 acres of land.

In February 1977, the Water Control Board issued SMWD a permit for operation of a reclamation system—the Oso Creek facility. The permit required SMWD to comply with all applicable wastewater reclamation regulations then in effect.

In late 1977, SMWD learned DHS might be considering modifications to the California Code of Regulations, title 22 regulations.

In August 1978, SMWD completed construction of the Oso Creek facility, at a cost of \$17 million.

In September 1978, DHS amended the regulations. The amendment to California Code of Regulations, title 22, section 60313 [FN4] increased the level of purity required before reclaimed wastewater could be used for the irrigation of parks, playgrounds and school yards. It is this amendment which allegedly constituted a state-mandated cost. SMWD modified its facility to comply with the amended regulations, completing the modifications in 1983. *388

FN4 Section 60313 of California Code of Regulations, title 22, as amended, provides: "(a) Reclaimed water used for the irrigation of golf courses, cemeteries, freeway landscapes, and landscapes in other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not

exceed 240 per 100 milliliters in any two consecutive samples.

"(b) Reclaimed water used for the irrigation of parks, playgrounds, schoolyards, and other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized, coagulated, clarified, filtered wastewater or a wastewater treated by a sequence of unit processes that will assure an equivalent degree of treatment and reliability. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 2.2 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 23 per 100 milliliters in any sample."

On October 1, 1982, SMWD filed a "test claim" [FN5] with the Board, alleging the regulatory amendment relating to the use of reclaimed wastewater constituted a new program or higher level of service. The test claim was made pursuant to former Revenue and Taxation Code section 2231, [FN6] which required reimbursement to local agencies for costs mandated by the state (see now Gov. Code, § 17561 [FN7]), and former Revenue and Taxation Code section 2207, subdivisions (a) and (b) [FN8] defining "costs mandated by the state." (See now Gov. Code, § 17514. [FN9]) The test claim also cited section 6 (fn. 1, *ante*). *389

FN5 At the time in question, "test claim" meant "the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district." (Former Rev. & Tax. Code, § 2218; Stats. 1980, ch. 1256, § 7, p. 4249.) "Estimated claims" and "reimbursement claims" were used to make specific demand against an appropriation made for the purpose of paying such claims. (*Ibid.*)

A similar structure, distinguishing between "test claims" and various "reimbursement claims" or "entitlement claims" continues presently in Government Code sections 17521-17522.

At the time in question, the statutory procedure provided that if the Board found a mandate, it did not determine the amount to

be reimbursed to the test claimant; rather, the Board then adopted a statewide cost estimate which was reported to the Legislature. (Stats. 1980, ch. 1256, p. 4246 et seq.; Stats. 1982, ch. 734, p. 2911 et seq.) It was the State Controller who determined specific amounts to be reimbursed, after the Legislature appropriated funds for that purpose. (*Ibid.*)

FN6 Former Revenue and Taxation Code section 2231 provided in part: "(a) The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207...." (Stats. 1982, ch. 1586, § 3, n. 6264.)

FN7 Government Code section 17561 provides in part: "(a) The state shall reimburse each local agency and school district for all 'costs mandated by the state,' as defined in Section 17514...."

FN8 Former Revenue and Taxation Code section 2207 provided in part: "'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program" (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.)

The test claim did *not* invoke other subdivisions of former Revenue and Taxation Code section 2207, concerning "(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. [¶] ... [¶] ... (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program." (Stats. 1980, ch. 1256, § 4, pp.

4247- 4248.) Since these subdivisions were not invoked, we have no need to consider them.

FN9 Government Code section 17514 provides: "'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6"

On July 28, 1983, the Board determined the amended regulations imposed state mandated costs. In so doing, the Board rejected the position of state agencies seeking denial of the claim on the ground that local agencies are not mandated to use reclaimed water and because, if local agencies do choose to use it, they can recover the cost in charges made to purchasers of the water.

On January 19, 1984, the Board adopted "Parameters and Guidelines" establishing criteria for payment of claims to water districts pursuant to this mandate. (Former Rev. & Tax. Code, § 2253.2; Stats. 1982, ch. 734, § 10, pp. 2916-2917; Gov. Code, § 17557.)

On May 31, 1984, the Board amended its Parameters and Guidelines to provide for reimbursement of SMWD's cost of preparing and presenting the test claim.

In June 1984, the Board, pursuant to former Revenue and Taxation Code section 2255, [FN10] submitted to the Legislature a statewide cost estimate of \$14 million for this mandate. The Legislature did not appropriate any funds for the mandate in 1984.

FN10 Former Revenue and Taxation Code section 2255 provided: "At least twice each calendar year the Board of Control shall report to the Legislature on the number of mandates it has found and the estimated statewide costs of such mandates. Such report shall identify the statewide costs estimated for each such mandate and the reasons for recommending reimbursement.... Immediately on receipt of such report a local

governmental claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of such mandates, pursuant to the provisions of this article." (Stats. 1980, ch. 1256, § 20, p. 4255.)

The current provision is contained in Government Code section 17600, which provides: "At least twice each calendar year the commission shall report to the Legislature on the number of mandates it has found pursuant to Article 1 (commencing with Section 17550) and the estimated statewide costs of these mandates. This report shall identify the statewide costs estimated for each mandate and the reasons for recommending reimbursement."

In 1985, the Legislature included an appropriation of almost \$14 million for this state-mandated cost in the budget, but the Governor vetoed the appropriation.

In 1986, a bill including \$945,000 for the subject mandate was introduced, but the bill was not enacted.

On January 27, 1987, SMWD filed in the trial court a petition for writ of mandate pursuant to Code of Civil Procedure section 1085. The petition sought an order directing (1) the State Controller to issue a warrant "to pay the State's obligation to SMWD for its 'costs mandated by the state' " and (2) the State Treasurer to pay the Controller's warrant. *390

At a hearing, the trial court upheld the Board's decision that the amended regulations required a higher level of service and held the doctrines of waiver and collateral estoppel applied to that decision, such that the state, by failing to challenge the Board's decision within the three-year statute of limitations, was barred from challenging it now. However, the trial court did allow the state to argue that the amended regulations did not come within the definition of "program," as that word had recently been defined in County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].

The trial court recognized that, since there was no appropriation for this mandate in the state budget, the court could not grant the relief sought by SMWD (an order directing the Controller to issue a warrant and the Treasurer to pay it) unless the court found the existence of funds reasonably available in the state

budget which could be tapped for this purpose. The trial court stated it was not prepared to find the existence of funds reasonably available without a full evidentiary hearing. Rather than use the Board's statewide estimate, the court believed it needed to know the amount to which each water district would be entitled before it could determine whether there were funds reasonably available in the budget. The trial court ruled the exact amount of money to be reimbursed to the Districts had never been determined and referred the matter to a referee to make that determination.

In February 1989, a court-appointed referee began evidentiary hearings to determine the amount of reimbursement for each water district.

In 1989, the Legislature repealed former Revenue and Taxation Code section 2207 (fn. 8, *ante*), defining "costs mandated by the state." (Stats. 1989, ch. 589, § 7, p. 1978.)

On July 29, 1994, appellants filed in the trial court a motion for judgment on the pleadings/motion to dismiss, arguing repeal of former Revenue and Taxation Code section 2207 destroyed any right to reimbursement and divested the court of jurisdiction to proceed. The motion also revisited the issue presented to and rejected by the Board, that the water districts' authority to levy fees defeated a finding that the costs were reimbursable.

In February 1995, the trial court issued its ruling denying appellants' motion for judgment on the pleadings and for dismissal. The court in its minute order determined repeal of former Revenue and Taxation Code section 2207 in 1989 had not destroyed the Districts' right to reimbursement pursuant to the Board's decision, because the Board's decision was reduced to "final judgment" before the statutory repeal. The court said the Board's *391 decision on July 28, 1983, became final in July 1986, when the applicable three-year statute of limitations for seeking judicial review lapsed. The Board's decision therefore conclusively established the Districts' right to reimbursement, and appellants were collaterally estopped from challenging the Board's decision. The court further said no discernible injustice or public interest precluded this application of collateral estoppel; rather, justice would be furthered by allowing the Districts to enforce their right to reimbursement as established by the Board.

The trial court further said the statutory authority of the Districts to levy service charges and assessments

(Former Rev. & Tax. Code, § 2253.2, subd. (b)(4); [FN11] Stats. 1982, ch. 734, § 10, p. 2916; Gov. Code, § 17556 [FN12]) did not bar reimbursement for state-mandated costs. "When the Board determined that the 1978 amendment of the regulations establishing reclamation criteria imposed reimbursable state-mandated costs, it rejected the argument of the State Departments of Health Services and Finance that the costs were not reimbursable pursuant to former Revenue and Taxation Code section 2253(b)(4) and implicitly determined, in accordance with the presentation of [Santa Margarita Water District] that [the Districts] did not have sufficient authority to levy service charges and assessments to pay for the increased level of service mandated by the 1978 regulatory amendment. This implicit determination, resolving a mixture of legal and factual issues, became final and binding on respondents under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

FN11 At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part: "(b) The Board of Control shall not find a reimbursable mandate ... in any claim submitted by a local agency ... if, after a hearing, the board finds that: [¶] ... [¶] (4) The local agency ... has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." (Stats. 1982, ch. 734, § 10, p. 2916.)

FN12 Government Code section 17556 provides in part: "The [Commission on State Mandates (formerly the Board of Control)] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

At a further hearing concerning the amount owed to each water district, the trial court stated it had erred in referring the matter to a referee and should have

rendered a judgment directing the Controller to determine the amounts owed.

On June 3, 1996, the trial court entered a judgment stating (1) the Board's decision was final at the time the petitions were filed in the trial court; (2) *392 the state mandate is a program for which reimbursement is due under County of Los Angeles v. State of California, supra, 43 Cal.3d 46; (3) the court having concluded it was inappropriate for the court to determine amounts of reimbursement, the Controller was directed to make that determination. The court directed issuance of a writ commanding the Controller to determine the amounts due to the Districts.

Appellants appeal from the judgment.

The Districts filed a cross-appeal, but we dismissed the cross-appeal pursuant to stipulation of the parties.

Discussion I. Appealability

(1a) Because the petition sought an order directing the Controller to issue a warrant and the Treasurer to pay a warrant but the judgment merely ordered the Controller to determine amounts without disposing of those matters, and because the record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget [FN13] (Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d 521, 538-541 [234 Cal.Rptr. 795])-a determination requiring an evidentiary hearing which was not held-we requested supplemental briefing on the question whether the judgment was a final appealable judgment, as opposed to an interlocutory judgment.

FN13 The petition for writ of mandate alleged there was a continuously appropriated State Mandates Claims Fund upon which the Legislature had placed restrictions which on their face made the fund inapplicable to the mandate at issue in this case. The petition further alleged these restrictions were unconstitutional, such that upon a judicial declaration of their unconstitutionality, there would exist funds reasonably available to pay SMWD. The trial court made no ruling on these matters. In this appeal, we need not and do not

decide the propriety of the remedy sought by the Districts.

(2) An appealable judgment or order is a jurisdictional prerequisite to an appeal. (Code Civ. Proc., § 904.1; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § § 13-14, pp. 72-73.)

(3) An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties. (Lyon v. Goss (1942) 19 Cal.2d 659, 669-670 [123 P.2d 11].)

(1b) In their supplemental briefs, both sides maintain the judgment is a final appealable judgment but for different reasons. Both sides are wrong. *393

Appellants assert the judgment is final because nothing further remains to be done by the trial court. According to appellants, the Controller, after determining what amounts are due, is supposed to submit that amount to the Legislature to appropriate the funds (though the judgment contains no such direction). Appellants assert that, if the Legislature does not appropriate the funds, the Districts' remedy would be to file a new action in the superior court to enforce the court's prior order, and to compel payment out of funds already appropriated and reasonably available for the expenditures. Appellants assert it is thus premature to consider whether appropriated funds are reasonably available to pay any reimbursement due.

The Districts' supplemental brief, while agreeing the judgment is a final appealable judgment, disputes appellants' view of what happens after the Controller determines the amounts. The Districts maintain the trial court intended for appellants to pay the amounts determined by the Controller, despite the judgment's failure so to state. The Districts claim the unresolved factual question of the existence of available appropriated funds in the budget is merely "an administrative detail" which need not be addressed by the court except in a proceeding to enforce the judgment in the event appellants refuse to pay.

Both sides are wrong. Nothing in the judgment requires the Controller to submit an appropriations bill to the Legislature, and appellants cite no authority that would require such a procedure-which would duplicate steps previously undertaken in this case without success. Nor does anything in the

judgment call for issuance or payment of warrants. Carmel Valley Fire Protection Dist. v. State of California, *supra*, 190 Cal.App.3d 521-a case discussed in the trial court and on appeal-recognized that a court violates the separation of powers doctrine if it purports to compel the Legislature to appropriate funds, but no such violation occurs if the court orders payment from an existing appropriation. (*Id.* at pp. 538-539.) Thus, the Districts' view of this matter as an administrative detail for a later postjudgment enforcement proceeding is unsupported.

We recognize this litigation arises from a "test claim," which merely determines whether a state-mandated cost exists. (See fn. 5, *ante.*) Perhaps no issue of payment should arise at all at the test claim stage, though neither side so argues.

In any event, the judgment plainly leaves matters undecided.

We conclude the judgment is interlocutory and therefore not appealable.

Nevertheless, on our own motion, we shall exercise our discretion to treat the appeal as a writ petition and shall grant review on that basis. (Morehart *394 v. County of Santa Barbara (1994) 7 Cal.4th 725, 743-744 [29 Cal.Rptr.2d 804, 872 P.2d 143] [treating appeal as writ petition is authorized means for obtaining review of interlocutory judgments].) We shall exercise our discretion to treat the appeal as a writ petition in the interest of justice and judicial economy, because the merits of the dispositive issues have been fully briefed, both sides urge review, and the judgment compels the Controller to engage in complex factfinding determinations which may be moot if the trial court erred on the merits of the mandate issues. Given the difficulties in discerning how the former statutory process of test claims was supposed to work in practice, we believe the interests of justice and judicial economy are best served by reviewing the judgment rather than dismissing the appeal.

We stress, however, that our review is limited to contentions raised in the briefs-which do not raise issues of the propriety of the remedy sought by the Districts. We express no view on whether the remedy sought by the Districts was an available or appropriate remedy.

II. Standard of Review

(4) In reviewing the trial court's ruling on a writ of

mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407 [216 Cal.Rptr. 782, 703 P.2d 122].) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)

III. Collateral Estoppel

We first address the trial court's determination that appellants were collaterally estopped from challenging the Board's determination of state-mandated cost (except for the ability to address the effect of a new Supreme Court case defining "program"). The trial court stated the Board's decision became final for collateral estoppel purposes in July 1986, when the statute of limitations for judicial review expired.

Appellants contend the trial court erred in applying collateral estoppel, because there was no "final judgment" for collateral estoppel purposes, since the amount of reimbursement had yet to be determined.

(5) We conclude it is not necessary to decide the parties' dispute as to whether the requirements of administrative collateral estoppel are met, because even assuming the elements are met, the doctrine of collateral estoppel should be disregarded pursuant to the public interest exception. *395

Thus, our Supreme Court declined to apply collateral estoppel in a state-mandated costs case in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64-65 [266 Cal.Rptr. 139, 785 P.2d 522] (*Sacramento II*). There, a city and a county filed claims with the Board seeking subvention of costs imposed by a statute (Stats. 1978, ch. 2, p. 6 et seq., referred to in *Sacramento II* as "chapter 2/78") which extended mandatory coverage under the state unemployment insurance law to include state and local governments. The Board found there was no state-mandated program and denied the claims. On mandamus, the trial court overruled the Board and found the costs reimbursable. We affirmed the trial court in a published opinion. (*City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258] (*Sacramento I*)). On remand, the Board determined the amounts due on the claims, but the Legislature refused to appropriate the necessary funds. The city filed a class action seeking among other things payment of the state-mandated costs.

The trial court granted summary judgment for the state on the grounds the statute did not impose state-mandated costs. The Supreme Court upheld the trial court's decision.

The Supreme Court in *Sacramento II* rejected the local agencies' argument that the state was collaterally estopped from relitigating the issue whether a state-mandated cost existed, because *Sacramento I* "finally" decided the matter. (*Sacramento II, supra*, 50 Cal.3d at p. 64.) The Supreme Court said: "Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. [Citation.] '... But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed....' [Citation.]

"Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable under article XIII B and parallel statutes constitutes a pure question of law. The *state* was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

"Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies...." (*Sacramento II, supra*, 50 Cal.3d at p. 64, original italics.) *396

The Supreme Court also rejected the argument that *res judicata* applied. "Of course, *res judicata* and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. [Citations.] However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations *in general* under chapter 2/78." (*Sacramento II, supra*, 50 Cal.3d at p. 65, original italics.)

If this court's opinion finding a reimbursable mandate in *Sacramento I* did not constitute a final adjudication precluding further consideration of the matter, a fortiori the Board's decision in the instant case does not constitute a final adjudication precluding further consideration. Thus, here, as in *Sacramento II*, the issues presented are not limited to the validity of any finally adjudicated individual claim, but encompass the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the Board's decision is wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts. We reject the Districts' argument that no public interest exists in this case because only a few local entities are involved.

The Districts suggest application of the public interest exception to collateral estoppel would nullify the legislative intent to avoid multiple proceedings by creating a comprehensive and exclusive procedure for handling state mandated costs issues in the administrative forum. (E.g., Gov. Code, § 17500. [FN14]) However, we are bound by Supreme Court authority applying the public interest exception in a state-mandated costs case. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 [*39720 Cal.Rptr. 321, 369 P.2d 937].) Moreover, contrary to the Districts' implication, the administrative decision is not the final word; the statutory scheme authorizes judicial review of the administrative decision. (Gov. Code, § 17559; former Rev. & Tax. Code, § 2253.5; Stats. 1977, ch. 1135, § 12, p. 3650.) Additionally, the instant judicial proceeding was initiated by the Districts, not by appellants. Thus, in this case application of the public interest exception to collateral estoppel is not creating multiple proceedings.

FN14 Government Code section 17500 provides in part: "The Legislature finds and declares that the existing system for reimbursing local agencies ... for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in

order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. [¶] It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 ... and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6"

In light of the Supreme Court's decision in *Sacramento II*, we disregard earlier authority of an intermediate appellate court which applied administrative collateral estoppel to a question of law in a state-mandated costs case without express discussion of the public interest exception. (*Carnel Valley Fire Protection Dist. v. State of California*, *supra*, 190 Cal.App.3d at p. 536.)

We conclude that, insofar as appellants' contentions present questions of law, the public interest exception to administrative collateral estoppel governs, and we shall therefore address the legal arguments raised in appellants' brief.

IV. Authority to Levy Fees

(6a) Appellants contend that, even if the regulatory amendment is a new program for state mandated costs purposes, the Districts' authority to levy fees defeats a determination that the costs are reimbursable. We agree.

At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part:

"(b) The Board of Control shall not find a reimbursable mandate, pursuant to either Section 2250 of this code or to Section 905.2 of the Government Code, in any claim submitted by a local agency or school district, pursuant to subdivision (a) of Section 2218, if, after a hearing, the board finds that:

.....

"(4) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." [FN15] (Stats. 1982, ch. 734, § 10, p. 2917; Stats. 1980, ch. 1256, § 15, pp. 4253-4254.) *398

FN15 This case presents no issue concerning any distinction between "service charges, fees or assessment," as used in the statute. The parties on appeal frame the issue in terms of the authority to levy "fees." We adopt their usage for the sake of simplicity.

The same provision is currently contained in Government Code section 17556. [FN16]

FN16 Government Code section 17556 provides in part: "The commission [formerly the Board] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service...."

The facial constitutionality of this provision was upheld in County of Fresno v. State of California (1991) 53 Cal.3d 482 [280 Cal.Rptr. 92, 808 P.2d 235]. The *Fresno* court rejected an argument that the statute was facially unconstitutional as conflicting with section 6 (fn. 1, *ante*), which contains no exclusion of reimbursement where the local agency has authority to levy fees. Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues. (53 Cal.3d at p. 487.) Government Code section 17556, subdivision (d), "effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound." (County of Fresno v. State of California, *supra*, 53 Cal.3d at p. 487.)

Here, appellants contend that, at all pertinent times, the water districts have had *authority* to levy fees to cover the costs at issue in this case. They cite provisions such as Water Code section 35470, which

provides: "Any district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose."

We agree this statute on its face authorizes the Districts to levy fees sufficient to pay the costs involved with the regulatory amendment. We thus shall conclude the Board erred in finding a right to reimbursement despite this authority to levy fees, and we shall conclude appellants are not collaterally estopped from pressing this point.

The Districts do not dispute they have authority to levy fees for the costs involved in this case. Instead they argue the real issue is whether they had *399 "sufficient" authority. They claim this issue was a mixed question of law and fact, and appellants should be collaterally estopped from raising it. [FN17]

FN17 The Districts assert appellants are relying on evidence that was not before the Board. However, they do not explain what they mean or give us any reference to appellants' brief. We therefore disregard the assertion.

We agree with appellants that the public interest exception to collateral estoppel should be applied here, because the issue presents a pure question of law. The Districts tried to make it a factual issue, but we shall explain why the facts presented by the District were immaterial.

Thus, in proceedings before the Board (where Water Code section 35470 was cited to the Board by state agencies), SMWD did not argue it lacked "authority" to levy fees for this purpose. Instead, SMWD argued and presented evidence that it would not be economically desirable to do so. SMWD submitted declarations stating that rates necessary to cover the increased costs would render the reclaimed water

unmarketable and would encourage users to switch to potable water. SMWD maintained that imposition of higher fees on users would contravene the legislative policy expressed in Water Code section 13512, which directs the state to undertake all possible steps to encourage development of wastewater reclamation facilities.

The Board made no express finding concerning this issue. The record contains only the Board minutes, which reflect a motion was made "To find a mandate and continue the issue regarding the claimant's ability to levy a service charge, to the parameters and guidelines process." There was no second to the motion. A motion was then made to find the regulatory amendment contained a reimbursable mandate. The motion carried. The minutes then state: "Discussion: Chairperson Yost disagreed with the motion as she felt the claimant could recover their costs by levying a service charge" The Board's Parameters and Guidelines stated in part: "If service charges or assessments were levied to defray the cost of the new criteria, the claim must be reduced by the amount received from such charges or assessment."

In proceedings before the trial court, SMWD admitted the district had the authority to levy fees but argued existence of authority was not enough, and the real question was whether it was economically feasible to levy fees sufficient to pay the mandated costs. Thus, SMWD's counsel stated at the hearing in the trial court: "The state keeps focusing on the question of whether the authority to issue, to assess fees and charges exists, and we have never contested that it didn't.

"But the statute which says that the Board cannot find the existence of a mandate if there's authority to assess fees and charges, and then the critical *400 phrase, 'sufficient to pay for the mandated costs,' that's the condition with [*sic*] which they cannot satisfy.

"We proved that, the Board of Control hearing, through economic evidence. We proved it through testimony that the market was absolutely inelastic in terms of reclaimed water and potable water, that if you raise the price of reclaimed water over the potable water, that people would then buy the potable water, and that's all in the record.

"And so we showed that even though we have the authority, it was not sufficient to pay"

We note the record also reflects comments by

SMWD's counsel to the trial court, that its customers were paying the increased costs as an "advance" against the state's obligation. The court pointed out users' payment of increased costs disproved the economic evidence SMWD had presented to the Board, that it could not raise its prices without losing its customers. The record also contains indications that the Districts funded the increased costs by diverting money from other sources. As will appear, we need not address this evidence, because it is not relevant to the question of authority to levy fees sufficient to fund the increased costs imposed by the regulatory amendment, which is a question of law in this case.

The trial court's minute order stated the districts' authority to levy fees did not bar reimbursement for state-mandated costs, because the Board "implicitly determined" the districts did not have "sufficient" authority to levy fees to pay for the increased service mandated by the 1978 regulatory amendment, and this "implicit determination, resolving a mixture of legal and factual issues, became final and binding on [appellants] under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

On appeal, appellants argue the sole inquiry is whether the local agency has "authority" to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. Appellants argue this presents a question of law, such that the public interest exception to collateral estoppel would apply (assuming the requirements of collateral estoppel are otherwise met).

We agree with appellants. (7) In construing statutes, our primary task is to determine the lawmakers' intent. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) To determine intent, we look first to the words themselves. (*Ibid.*) "If the language is clear *401 and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature" (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].)

(6b) Here, the statute is clear and unambiguous. On its face the statute precludes reimbursement where the local agency has "authority" to levy fees sufficient to pay for the mandated program or level of service. The legal meaning of "authority" includes the "Right to exercise powers; ..." (Black's Law Dict.

(6th ed. 1990) p. 133, col. 1.) The lay meaning of "authority" includes "the power or right to give commands [or] take action" (Webster's New World Dict. (3d college ed. 1988) p. 92.) Thus, when we commonly ask whether a police officer has the "authority" to arrest a suspect, we want to know whether the officer has the legal sanction to effect the arrest, not whether the arrest can be effected as a practical matter.

Thus, the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program.

The Districts in effect ask us to construe "authority," as used in the statute, as a practical ability in light of surrounding economic circumstances. However, this construction cannot be reconciled with the plain language of the statute and would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by the Districts, it would have used "reasonable ability" in the statute rather than "authority."

The question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs. The Districts clearly have authority to levy fees sufficient to cover the costs at issue in this case. Water Code section 35470 authorizes the levy of fees to "correspond to the cost and value of the service," and the fees may be used "to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose." The Districts do not demonstrate that anything in Water Code section 35470 limits the authority of the Districts to levy fees "sufficient" to cover their costs.

Thus, the economic evidence presented by SMWD to the Board was irrelevant and injected improper factual questions into the inquiry.

On appeal, the Districts briefly argue economic undesirability of levying fees constitutes a lack of authority to levy fees sufficient to cover costs. They claim the evidence before the Board showed SMWD "could not" *402 increase its fees because it was already charging as much for reclaimed as it was for potable water. However, the cited portion of the record does not show SMWD "could not" increase its fees but only that an increase would render reclaimed water unmarketable and encourage users to switch to potable water. The Districts cite no authority supporting their construction of former Revenue and

Taxation Code section 2253.2 (now Gov. Code, § 17556) that *authority* to levy fees sufficient to cover costs turns on economic feasibility. We have seen the plain language of the statute defeats the Districts' position.

(8) Since the issue in this case presented a question of law, we conclude the public interest exception to collateral estoppel applies. (Sacramento II, supra, 50 Cal.3d at p. 64.)

The Districts argue application of the public interest exception in this case raises policy concerns about the finality of administrative decisions on state-mandated costs, because if collateral estoppel does not apply in this case, it will never apply. However, we merely hold, in accordance with Supreme Court pronouncement, that the public interest exception to collateral estoppel applies under the circumstances of this case to this state-mandated cost issue which presents solely a question of law.

The Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.

The Districts cite evidence presented to the referee in the aborted hearing to determine amounts owed to each District, that SMWD's director of finance testified SMWD has other sources of revenue from other services it provides (such as sewer service), maintains separate accounts, and borrowed funds internally from other accounts to cover costs incurred as a result of the subject mandate. The Districts assert this testimony reflects that SMWD "recognized the legal limitations on its authority to impose fees for the services that it provides." However, nothing in this evidence demonstrates any legal limitations on the authority to levy the necessary fees.

The Districts say appellants appear to believe the Districts should require users of other services to subsidize the Districts' cost of reclaiming and selling wastewater, through excessive user fees. However, we do not read appellants' brief as presenting any such argument and in any event do not base our decision on that ground. *403

In a footnote, the Districts make the passing comment: "In light of the adoption of Proposition 218, which added Articles XIII C and XIII D to the California Constitution this past November [1996],

the authority of local agencies to recover costs for many services will be impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees. See Section 6, Article XIII D." The Districts do not contend that the services at issue in this appeal are among the "many services" impacted by Proposition 218. We therefore have no need to consider what effect, if any, Proposition 218 might have on the issues in this case.

We conclude the Districts were not entitled to reimbursement of state-mandated costs, because they had authority to levy fees sufficient to pay for the level of service mandated by the 1978 regulatory amendment. Appellants were not collaterally estopped from raising this issue in the trial court. We thus conclude the Districts' mandamus petitions should have been denied. We therefore need not address appellants' contentions that (1) the regulatory amendment did not constitute a new program or higher level of service, or (2) any right to reimbursement was abolished upon repeal of former Revenue and Taxation Code section 2207.

Disposition

Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

Puglia, P. J., and Nicholson, J., concurred.

The petition of real parties in interest for review by the Supreme Court was denied February 25, 1998.
*404

Cal.App.3.Dist.,1997.

Connell v. Superior Court

END OF DOCUMENT

1 PROOF OF SERVICE

2 I am a resident of the State of California, over the age of eighteen years, and not
3 a party to the within action. My business address is 1001 I Street, 23rd Floor,
4 Sacramento, California 95814. On October 28, 2003, I served the within document(s):

- 5 1. Department of Toxic Substances Control's Opposition to Clovis Unified
6 School District's Test Claim No. 92-tc-43

7

BY HAND: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

8

BY MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.

9

BY OVERNIGHT MAIL: by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

10

BY PERSONAL DELIVERY: by causing personal delivery by capitol Couriers of the document(s) listed above to the person(s) at the address(es) set forth below.

11 See attached Service List

12 I am readily familiar with the firm's practice of collection and processing
13 correspondence for mailing. Under that practice it would be deposited with the U.S.
14 Postal Service on that same day with postage thereon fully prepaid in the ordinary
15 course of business. I am aware that on motion of the party served, service is presumed
16 invalid if postal cancellation date or postage meter date is more than one day after date
17 of deposit for mailing in affidavit.

18 I declare under penalty of perjury under the laws of the State of California
19 that the above is true and correct. Executed on October 28, 2003, at Sacramento,
20 California.

21 
22 Sandra Monger

SERVICE LIST

Served via U.S. Mail

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Mandate Reimbursement Services

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November 26, 2003

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED

DEC 01 2003

COMMISSION ON
STATE MANDATES

Re: Test Claim 02-TC-43
Clovis Unified School District
Hazardous Material Assessments

Dear Ms. Higashi:

I have received the opposition and comments of the Department of Toxic Substances Control ("DTSC") dated October 27, 2003, to which I now respond on behalf of the test claimant.

A. The Opposition and Comments of the DTSC are Incompetent and Should be Excluded

Test claimant objects to the Opposition and Comments of the DTSC, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DTSC opposition and comments do not comply with this essential requirement.

B. The Legal Analysis of the DTSC is Incorrect

DTSC organizes its opposition and comments into four parts:

1. District participation in the underlying program is elective or optional, and neither a compulsory nor a de facto mandate under *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (herein, "Kern").¹
2. School districts have authority to levy fees to fund their share of costs under Education Code section 17620, among others, thus disqualifying them for reimbursement under Government Code section 17556, subdivision (d), and *Connell v. Superior Court* (1997) 59 Cal.App.4th 382 (herein "Connell").
3. Jointly funded programs such as school funding are outside the coverage of Section 6, article XIII B of the California Constitution, section 6, under *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264 (herein "County of Sonoma").
4. Compliance with the funding conditions fails to provide a new program or increased level of service to the public to qualify as a reimbursable state mandate under *County of Sonoma*.

1. District Participation is not Truly Optional and is a De Facto Mandate

DTSC first refers to Education Code Sections 17210.1 and 17213.1, particularly the language that makes these two sections applicable to districts which elect to receive state funds. From the language of these two sections, DTSC argues that all hazard assessment requirements are not compulsory.

Test Claimant notes that this language is only applicable to those two sections², it is not applicable to sections 17072.13, 17210, 17211, 17212, 17212.5, 17213, 17213.2, 17251 or 17315. Therefore, even if the DTSC is correct in this argument, the objection does not apply to these other sections of the test claim legislation.

DTSC, however, is not correct as to these two cited sections, because participation is not truly optional and the test claim legislation creates a de facto mandate.

DTSC argues that the state-funded School Facilities Program conditions in the test

¹ DTSC uses the term "DOF-2003" when it refers to *Department of Finance v. Commission on State Mandates*. Test claimant will use the term "Kern" in this response since that is the term used in other matters before the Commission.

² In fact, the conditional language only applies to subdivision (a) of section 17210.1.

claim are analogous to the state-funded educational programs at issue in "Kern".

(a) School Districts, By Necessity, are Required to use State Funding
And There is no "Practical Alternative" to State Funding

The controlling case law on the subject of non-legal compulsion is still *City of Sacramento v. State of California* (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II*).

(1) Sacramento II Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(2) Sacramento I Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, inter alia, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566

so coercive as to constitute a “mandate of the federal government” under Section 9(b).³

In other words, *Sacramento I* concluded, inter alia, that the loss of federal funds and tax credits did not amount to “compulsion”.

(3) *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the “program” and “service” standards for mandatory subvention because it imposed no “unique” obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court also overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to “compulsion”.

(4) *Sacramento II* “Compulsion” Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California’s failure to comply with the federal “carrot and stick” scheme were so substantial that the state had no realistic “discretion” to refuse.

In disapproving *Sacramento I*, the court explained:

“If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments.” (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state’s employers faced only with the federal tax. The court replied to this suggestion:

³ Section 1 of article XIII B limits annual “appropriations”. Section 9(b) provides that “appropriations subject to limitation” do not include “Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly.”

“However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards.” (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically “without discretion”.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of “mandatory” versus “optional”:

“Given the variety of cooperative federal-state-local programs, we here attempt no final test for ‘mandatory’ versus ‘optional’ compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.” (Opinion, at page 76)

(b) Statutory Compulsion is not Required

In *Department of Finance v. Commission on State Mandates* (supra, at page 736) the supreme court first made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

“For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate.” (Emphasis in the original, underlining added)

After concluding that the facts in *Kern* did not rise to the standard of non-legal compulsion, the court affirmed that either double taxation or other draconian consequences could result in non-legal compulsion:

“In sum, the circumstances presented *in the case before us* do not constitute the type of non-legal compulsion that reasonably could constitute, in claimants’ phrasing, a ‘de facto’ reimbursable state mandate. Contrary to the situation that we described in (Sacramento II), a claimant that elects to discontinue participation in one of the programs *here at issue* does not face ‘certain and severe...penalties’ such as ‘double...taxation’ or other ‘draconian’ consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations.” (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

Therefore, “carrot and stick” situations must still be determined on a case by case basis.

(c) Districts’ Ability to Borrow is Strictly Limited

The authority to issue local school bonds is found in Chapter 1 of Part 10 in Division 1 of Title 1 of the Education Code, commencing at Section 15100. This authority is strictly limited.

Education Code Section 15100 allows a district, when in its judgment it is advisable, and requires it, upon a petition of the majority of its qualified electors, to order an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the purchase of school lots, the building or purchasing of school buildings and the making of alterations or additions to school buildings. Section 15102 provides that such bonded indebtedness shall not exceed 1.25 percent of the taxable property of the district. Section 15106 provides that unified school districts or community college districts may not exceed 2.5 percent of the taxable property of the district.

Chapter 1.5 of Part 10 sets forth the Strict Accountability in Local School Construction Bonds Act of 2000, commencing with Section 15264. (“Proposition 39 bonds”) Here again, bonded indebtedness is strictly limited.

Section 15266 provides that the Act is an alternative to authorizing and issuing bonds pursuant to Chapter 1 or Chapter 2 (commencing with Section 15300) when the governing board of a school district or community college district decides, pursuant to a two-thirds vote, to pursue the authorization and issuance of bonds for school facilities. Section 15268 provides that such bonded indebtedness shall not exceed 1.25 percent of the taxable property of the district and may only be issued if the tax rate levied would not exceed thirty dollars (\$30) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in

accordance with Article XIII A of the California Constitution. Section 15270 provides that a unified school district may not authorize or issue bonds that exceed 2.5 percent of the taxable property of the district and may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars (\$60) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

Chapter 2 of Part 10 sets forth the Bonds of School Facilities Improvement Districts Act, commencing with Education Code Section 15300. Here again, bonded indebtedness is strictly limited.

Section 15300 provides that the chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district and for the issuance of general obligation bonds by the school facilities improvement district. Section 15330 provides that the total amount of bonds issued shall not exceed 1.25 percent of the taxable property of the school facilities improvement district. Section 15334.5 further provides that no bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106.

DTSC has attached an article by the California Research Bureau to its opposition and comments as Exhibit C. (Cohen, Joel, "School Facility Financing - A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds", February 1999) The plight of school districts is described therein as follows:

"With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority..."
(Ibid, at page 7)

To the extent school districts and community college districts already have bonded indebtedness at or near these limits, the argument of DTSC that these districts need not apply for this new state funding is specious reasoning.

(d) The Legislative History of School Finance Legislation Shows an Intent of the Legislature that the State Should Provide the Financing For Schools

A review of the legislative history of school finance shows that the Legislature knows that the State must bear the major burden of financing the construction of new school facilities.

Chapter 4 of Part 10 of Division 1 of Title 1 of the Education Code sets forth the State School Building Aid Law of 1949, commencing with Education Code Section 15700. Section 15700 provides:

“The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid school districts of the state in providing necessary and adequate school sites and buildings for the pupils of the public school system, the system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.”

In adopting this act, the Legislature considers that the great need in school construction is for adequate classrooms for the education of the pupils of the public school system...To the end that school classrooms may be made available at once and to all school districts in need of such classrooms...” (emphasis supplied)

Section 15704 requires the State Allocation Board to adopt rules which give:

“...priority in allocating funds to districts to those districts where the children will benefit most from additional schoolhouse facilities...based on acuteness of overcrowding, on sudden growth in attendance, on amount of local tax funds expended for housing of a character within the purposes of this chapter, and on the time the district's application has been ready for allotment...”

Chapter 6 contains the State School Building Aid Law of 1952, commencing with Education Code Section 16000. Section 16001 provides:

“The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid school districts of the state in providing necessary schoolsites and buildings for the pupils of the public school system, this system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.”

In adopting this chapter, the Legislature considers that the great need in school construction is for classrooms for the education of the pupils of the public school system...To the end that school classrooms

may be made available at once and to all school districts in need of such classrooms..." (emphasis supplied)

Section 16007 requires the State Allocation Board to adopt rules which would:

"...give priority in allocating funds to districts to those districts where the children will benefit most from additional schoolhouse facilities...based on acuteness of overcrowding, on rapidity of growth in attendance, and on the time the district's application has been ready for allotment..."

Article 3 of Chapter 6, contains provisions for School Housing Aid for Exceptional Children, commencing with Education Code Section 16190. Section 16190 provides:

"The board may make apportionments...from any state bonds heretofore or hereafter authorized by the electorate for state school building aid...for assistance to school districts in providing necessary housing and equipment for the education of exceptional children."⁴

Section 16196 provides that:

"...Except as otherwise provided in this section, not more than 50 percent of the amount of any apportionment made pursuant to this section shall be repaid..."

Article 4 of Chapter 6, commencing with Section 16210, is entitled School Housing Aid For Compensatory Education Purposes. Section 16210 sets aside \$35 million dollars of the proceeds of the sale of bonds authorized by the State School Building Aid Bond Law of 1966 to assist school districts. Section 16210 provides:

"...The Director of Compensatory Education may establish priorities for purposes of allocations and grants under this article based upon comparative needs of school districts and the urgency thereof. No interest shall be charged to a school district for an allocation or grant made under this article to the school district."

⁴ Education Code Section 16191 defines "exceptional children" to mean "physically handicapped pupils, mentally retarded pupils, educationally handicapped pupils, multihandicapped pupils, or pupils enrolled in development centers for the handicapped required or allowed to be educated pursuant to Part 30 (commencing with Section 56000)."

Section 16211 provides that grants may be made to:

"...districts...maintaining schools for kindergarten, or any of grades 1 to 6, inclusive...which have reduced the number of pupils to full-time equivalent classroom teachers in kindergarten and any of grades 1 to 6, inclusive, in those schools to a ratio of 25 to 1, or better. The grants shall be made for...¶)...any of the following:

- (a) Acquisition, by purchase or lease, and the installation and equipping of portable classrooms for classroom instructional purposes.
- (b) Acquisition of land for schoolsites.
- (c) Construction and equipping of permanent school buildings and facilities.
- (d) Reconstruction, renovation or remodeling of existing school buildings and facilities.
- (e) Any combination of the above."

Section 16212 allows:

"In lieu of grants to districts pursuant to subdivision (a) of Section 16211...the board may expend moneys available for grants under this article for the acquisition of portable buildings and facilities and equipment by the state, and thereafter convey the same to the eligible districts...(in) the form of sale, lease, outright grant, or other suitable form of conveyance, as determined by the board."

Section 16214 provides:

"For each school district which receives a grant or allocation pursuant to this article...the Controller shall compute an amount equal to one cent (\$0.01) on each one hundred dollars (\$100) of the assessed valuation of property within the district...(¶)...The Controller shall make the computations and deductions required by this section for 30 fiscal years or until the time as the total of the amounts so deducted equal 50 percent of the amount of the grant or allocation which was made to the school district, whichever first occurs...(¶)...the maximum rate of school district tax for the school district for which the computation is made shall be increased by one cent (\$0.01) per each one hundred dollars (\$100) of the assessed value of property within the district..."

Article 5 of Chapter 6, commencing with Education Code Section 16230, sets forth the provisions for School Housing Aid For Districts Impacted by Seasonal Agricultural Employment. Section 16230 sets aside \$1,500,000 of the proceeds of bonds issued

under the State School Building Aid Bond Law of 1966:

“...for the acquisition of...¶... portable school and classroom buildings (and) may be made available by the board, upon the recommendation of the Director of Compensatory Education, to any school district which, because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, experiences emergency increases in school enrollments of such magnitude as to make it impossible or impractical to accommodate the additional pupils in existing school buildings and facilities available to the district.”

Section 16231 provides:

“...The use of the portable school and classroom buildings may be made available to a school district by letting the same to the district free of charge, or by lease, or by conveying the same to the district under lease-purchase agreement, sale, or outright grant, as determined by the State Allocation Board upon consultation with, and the advice of, the Director of Compensatory Education...”

Article 7 of Chapter 6, commencing with Education Code Section 16260, provides for the Children’s Center Construction Law of 1968.

Section 16261 states:

“The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to provide assistance to school districts and to county superintendents of schools for the construction of children’s center facilities. Children’s centers are of general concern and interest to all the people of the state, and the education and care of children of working parents are a joint obligation of both the state and local agencies operating children’s centers...” (emphasis supplied)

Section 16263 requires:

“...The board shall adopt any rules and regulations... (which) shall establish a system of priorities... (and) give special consideration to school districts...containing substantial numbers of families who are recipients of aid to families with dependent children or who are former or potential recipients of the aid...”

Section 16272 provides for matching funds:

“For each one dollar (\$1) of money allocated to a local agency which is expended for a project, the local agency shall expend local funds for the project in an amount which bears the same percentage to the one dollar (\$1) as the modified assessed valuation per unit of the average daily attendance of the local agency bears to the statewide modified assessed valuation per average daily attendance of all local agencies...”

Article 9 of Chapter 6, commencing with Education Code Section 16310, is entitled School Housing Aid For Rehabilitation and Replacement of Structurally Inadequate School Facilities. Section 16312 states:

“The Legislature hereby declares that it is in the interest of the state and the people thereof to provide assistance to school districts in rehabilitating or replacing structurally unsafe school facilities inasmuch as the education of children is an obligation of the state, and the obligation carries with it a corresponding responsibility for the physical safety of children while attending school.” (emphasis supplied)

Section 16313 states:

“It is the intent of the Legislature in enacting this article to provide a means through repayable state loans for school districts...to house their pupils in facilities that are structurally safe.”

Section 16317 requires the State Allocation Board to adopt rules which:

“...shall give priority in allocating funds to districts which will benefit most from the reconstruction or replacement of schoolhouse facilities...based on the age and structural safety of existing buildings at the school or schools where the construction or reconstruction will occur, acuteness of overcrowding and density of population in the attendance areas affected, or any other factors that will insure that the greatest need will be served in allocating funds under this article.”

Chapter 8 of Part 10 contains the Urban School Construction Aid Law of 1968, commencing with Education Code Section 16700. Section 16701 provides:

“The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid urban school districts of the state in reconstructing, modernizing, or replacing schoolsites and buildings for pupils of the public school system who are now housed in substandard schools...”

Section 16705 requires the State Allocation Board to adopt rules which:

“...shall give priority in allocating funds to urban districts to those districts where the children will benefit most from schoolhouse facilities...based upon the age of existing buildings and the acuteness of overcrowding at the school or schools where the construction or reconstruction will occur, the density of population in the attendance areas affected, or any other factors that will insure that the greatest need will be served.”

Section 16720 provides for repayment:

“Each district to which an apportionment or apportionments has been made under this chapter shall repay a portion or all of the principal amount of such apportionment or apportionments and the accrued interest thereon in 30 equal annual payments, as shall be determined by the Controller pursuant to this section... (§) ...In any year, beginning with the 1981-82 fiscal year, in which the annual repayment exceeds the amount which may be raised by a levy of 0.0075 percent of the full value in the district,...the Controller shall grant a deferment of the annual repayment which is in excess of the amount that would be produced by a tax of 0.0075 percent of the full value of the district...”

Chapter 12 of Part 10 establishes the "Leroy F. Greene State School Building Lease-Purchase Law of 1976", commencing with Section 17000. Section 17001 states:

“(a) The Legislature hereby declares that it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements, and to acquire new schoolsites and buildings for the purpose of making them available to local school districts for the pupils of the public school system, that system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.” (Emphasis supplied)

Article 11 of the Leroy F. Greene School Facilities Act of 1998, commencing with Education Code Section 17078.10, provides for:

“ (c) ..."preliminary apportionment"... for eligible applicants with critically overcrowded schools in advance of full compliance with all of the application requirements otherwise required for an apportionment pursuant to this chapter...”

Chapter 14 of Part 10, commencing with Education Code Section 17085 is entitled the "Emergency School Classroom Law of 1979" and is cited as the State Relocatable Classroom Law of 1979. Section 17086 states:

"...the Legislature recognizes that the ad valorem tax is no longer available as a source of revenue for the construction of necessary school facilities. The Legislature considers that the greatest need in school construction is for classrooms for the education of public school pupils. It is the intent of the Legislature to satisfy this primary need to the greatest extent possible before providing any additional educational facilities, regardless of how desirable such additional facilities may be." (Emphasis supplied)

Chapter 15 of Part 10, commencing with Section 17100, established the School District Revenue Bond Act. This Act is based on the finding of the legislature that:

"The Legislature hereby finds and declares that the State School Building Lease-Purchase Fund, pursuant to Section 17008, and the proceeds from the sale or lease of surplus school property are the two sources available to school districts to finance the construction of school facilities to relieve overcrowding. However, these sources are still insufficient to meet the construction needs statewide of school districts." (emphasis supplied)

In the article attached to its opposition and comments as Exhibit C, (Cohen, Joel, "School Facility Financing - A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds", February 1999) the author writes:

"As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand." (Ibid, at page 1)

The article goes on to say:

"Proposition 1A⁵ forges a partnership between the State and school

⁵ Proposition 1A was a \$9.2 billion school bond initiative passed by the California voters on November 3, 1998 and, at the time, was the largest of its kind passed in our nation's history. (Ibid, at page 3) It prompted Senator Quentin Kopp to request the

districts for financing the construction and repair of their schools.” (Ibid, at page 2)

The test claim alleges costs required in order to join this partnership. This comprehensive history of the financing of school facilities in California further proves Test Claimant’s position: i.e., school districts are unable to finance needed school construction and modernization projects by themselves.

In summary, the last 60 years of legislative history shows repeated and consistent recognition that school districts are unable to meet the school construction needs of their pupils. The history repeatedly reveals an admission that the education of school children is the primary responsibility of the state. The history of the inability of school districts and the obligation of the state to educate children results in the above recited litany of state money for school construction at low or no interest rates, repayment requirements of less than the amounts apportioned, and repayment terms unavailable anywhere else. Education of children is an obligation and function of the state. Classrooms are required to provide that education. Therefore, building classrooms is primarily a state obligation.

Given the fact that most schools are unable to create their own financing, and the fact that the legislature recognizes this inability, for DTSC to suggest that schools do not need to participate in state financing programs is so far beyond the realm of practical reality that the draconian results of “electing” no new or modernized schools at all is not an acceptable alternative.

2. **Districts do not have Authority to Levy Fees, Assessments and Taxes to Fully Fund the Costs of New Construction or Modernization**

(a) **Government Code Section 17556(d) Does Not Apply to Construction Funding**

DTSC offers Government Code Section 17556, subdivision (d)⁶ for the proposition that

California Research Bureau to provide research on the included topics.

⁶ In its main caption, DTSC refers to Government Code Section 17516(d), which does not exist. Its argument refers to Government Code Section 17556(d). Based on the context of the argument, Test Claimant believes DTSC intended the caption to refer to section 17556(d). Government Code Section 17556, subdivision (d), precludes a finding of mandated costs if the school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

districts are precluded from recovery since districts have the authority to levy fees, assessments and taxes under Education Code section 17620. Developer fees are not service charges, fees or assessments to the consumer of public services. Government Code section 17556(d) refers to "service charges, fees or assessments". Education Code section 17620 refers to a "fee, charge, dedication or other requirement". They are not the same.

In addition, Section 17556 presupposes the existence of a mandate which is contrary to DTSC's position. Also, subdivision (d) refers to the levy of service charges, fees and assessments against students. The levy of service charges, fees and assessments against students for any aspect of public education would be constitutionally prohibited by Article 9, Section 5, of the California constitution which requires the state to provide free schools.

In addition, the California Department of Education has issued Fiscal Management Advisory 97-02⁷ which makes it quite clear that tuition, fees, deposits and other charges may only be made when specifically authorized by law. The examples set forth in the advisory clearly demonstrate that the tuition, fees, deposits and other charges referred to in Government Code Section 17556, subdivision (d), clearly do not encompass sources for the construction of school facilities.

Test Claimant directs the attention of the Commission to the fact that there is another test claim pending on developer fees. (CM 02-TC-42) That test claim notes the various restrictions and limitations on the use of developer fees to finance public school construction. For example (and not by way of limitation), Education Code Section 17620(a)(1) limits any fee, charge, dedication, or other requirement to only certain development projects. Likewise, Government Code Section 65995 limits the amount that can be levied (e.g. \$1.93 per square foot for residential construction and \$0.31 per square foot for commercial or industrial construction). In fact, there is no guaranty that any development projects will be undertaken which may be subject to developer fees.

It is the regulations, limitations and fee restrictions of developer fees that distinguishes this case from that which faced the court in *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, relied upon by DTSC. In *Connell*, the amount or availability of the fees⁸ were not restricted, the water district could charge fees in any amount it chose to

⁷ A copy of Fiscal Management Advisory 97-02 and its cover letter dated October 30, 1997 is attached hereto as Exhibit "A" and is incorporated herein by reference.

⁸ Note: In *Connell*, the court limited its opinion to the authority to levy "fees" and did not discuss "service charges, fees or assessments", the language of the statute.

levy. Here, school districts are limited as to what properties are subject to fees, they are limited as to the amount of the fees they can charge, and they may not charge any fees whatsoever if no developer projects are undertaken. The reason Government Code Section 17556(d) does not bar a finding of costs here is that DTSC has made no legal or factual showing that the authorized service charges, fees, or assessments are "sufficient to pay for" the mandated program or increased cost of service."

DTSC adds to this section its argument that districts have the legislative authority to form community facilities districts (Government Code Sections 53311 et seq.) and to generate funds through local bond issues. These arguments have been addressed in Part 1, *supra*.

(b) Economic Hardship Provisions do not Prevent a Finding of a State Mandate

DTSC next argues that the state School Facilities Program routinely funds half of the hazard assessment requirements, and may fund them wholly in cases of economic hardship. (Education Code Sections 17072.12, 17072.13 and 17072.18) Test Claimant's response is simple, those districts who receive total funding for assessment and administrative costs will not file a claim; those who do not receive total funding, will.

3. County of Sonoma v. Commission on State Mandates Does Not Apply

DTSC cites *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264 for its sweeping conclusion that "Jointly funded programs such as school funding are outside the coverage of Section 6, article XIII B of the California Constitution." This sweeping conclusion demonstrates DTSC's incorrect analysis of this case.

In *County of Sonoma*, the challenged legislation reduced the amount of property tax revenue to be allocated to local government pursuant to a specified formula and allocated an equal amount of revenue to the Educational Revenue Augmentation Fund (ERAF) for distribution to county school districts. The legislation had the effect of decreasing the amount of the state's contribution to the constitutionally mandated minimum funding level for education in the same amount as the increased allocation to the county ERAFs. Plaintiff Counties argued that the challenged reallocation of property tax revenues was a state-mandated new program, entitling the affected local governments to reimbursement for costs incurred.

At page 1281, the court noted that "the Legislature, not this court, decides which of the

(*Id.*, at page 398, fn. 15)

innumerable public mouths tax revenues will feed. Barring a statutory or constitutional violation, it is not for this court to stop the Legislature if it transfers revenue from Peter to compensate Paul....(citation) Under these principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities. (citation).”

Taking note that the required education of children had always been a jointly funded effort of the state and local government, the court held that shifting the percentage of funding as between the state and local government did not create a mandated program on the local government. The court, adroitly noted:

“In this case, the County’s tax revenues were not expended. No invoices were sent, no costs were collected, and no charges were made against the counties in this case. Contrary to the conclusion of the trial court, it is the expenditure of tax revenues of local governments that is the appropriate focus of section 6 (citation) [stating that §6 was ‘designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues’].”

“An examination of the intent of the voters and the language of Proposition 4 itself supports our conclusion that Proposition 4 was aimed at controlling and capping government spending, not curbing changes in revenue allocations. Section 6 is an obvious compliment to the goal of Proposition 4 in that it prevents the state from forcing extra programs on local governments in a manner that negates their careful budgeting of expenditures. A forced program that would negate such planning is one that results in increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit. Section 6, located within a measure aimed at limiting expenditures, is expressly concerned with ‘costs’ incurred by local government as a result of state-mandated programs, particularly when the costs of compliance with a new program restrict local spending in other areas. (§6.) ‘No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes’. (Citation).” (Opinion, at page 1283-1284)

The *County of Sonoma* court also noted that “Government Code section 17514 defines ‘costs mandated by the state’ for purposes of section 6 as ‘any increased costs which a local agency or school district is *required to incur*...as a result of any statute...which mandates a new program or higher level of service of an existing program...Government Code section 17522 defines ‘annual reimbursement claim’ to mean ‘a claim for *actual costs incurred*...’ (Italics added) Similarly, Government Code section 17558.5 refers to a claim for ‘*actual costs* filed by a local agency...’ (Italics

added.) The obvious view of the Legislature is that reimbursement is intended to replace actual costs incurred, not as compensation for revenue that was never received..." (Opinion at page 1284-1285) Therefore, the court concluded:

"...we cannot extend the provisions of section 6 to include concepts such as lost revenue, that are not fairly implicated by the history, voter materials, language and legislative interpretation of section 6. We can only conclude that when the Constitution uses 'costs' in the context of subvention of funds to reimburse for 'the costs of such program,' that some actual cost must be demonstrated, and not merely decreases in revenue." (Opinion, at page 1285)

In *County of Sonoma*, the court did discuss the shared role of state and local governments in its historical history of the funding of schools in California. But it did not hold that jointly funded programs such as school funding are always outside the coverage of Section 6 as claimed by DTSC. The holding in *County of Sonoma* merely addressed a "robbing Peter to pay Paul" situation. Funds for education were taken away in the form of a reduction in property tax revenue and given back immediately in the form of ERAFs. The counties did not prevail because they did not, and could not, allege any "costs".

Test Claimant already alleges that state funding is available for the hazard assessments and corrections. Test Claimant seeks to recover the "costs" of the administrative duties thrust upon them in order to obtain that funding. *County of Sonoma* clearly does not stand for the proposition offered by DTSC. *County of Sonoma* dealt with a revenue allocation issue, not a cost issue, so it cannot be relevant to this test claim.

4. The Test Claim Legislation Mandates a New Program or an Increased level of Service

As it's final argument, DTSC suggests that compliance with the funding conditions fails to provide a new program or increased level of service to the public to qualify as a reimbursable state mandate.

The answer to the question of whether test claim legislation mandates a "program" subject to article XIII B, section 6 of the California Constitution is found in County of Los Angeles v. State of California (1987) 43 Cal.3d 46:

"Looking at the language of section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it

meaning...What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term—programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” (Opinion, at page 56, emphasis supplied)

Therefore, the answer to the question of whether duties imposed by test claim legislation are subject to reimbursement by article XIII B, section 6, is found in the determination of whether the test claim legislation mandates either the governmental function of providing a service to the public, or imposes unique requirements on local governments that do not apply generally to all residents and entities in the state. Only one of these findings is necessary to conclude that the test claim legislation is a “program” as used in article XIII B, section. 6. *Carmel Valley Fire Protection District* (1987) 190 Cal.App.3d 521, 537 And, public schools are an Article XIII B, Section 6 “program”. *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 172.

Here, the test claim legislation requires school districts to make hazardous material assessments and correct any hazards found before acquiring or utilizing that site for school construction. There is nothing in the law which requires all residents and entities in the state to build schools or make these assessments and corrections before acquiring real property.

Arguing that the test claim legislation does not require any new activities, DTSC states that former Education Code Section 15002.1⁹:

“...required the governing board of a school district to have a building site investigated by competent personnel, prior to acquisition, to ensure that the final site selection was determined by an evaluation of all factors affecting the public interest and not limited to selection on the basis of raw land cost only.” (DTSC Opposition and Comments, at page 7)

The test claim legislation requires districts to check for possible hazardous conditions; inquire into possible geological, soil, and environmental hazards; conduct Phase I assessments; pay oversight review fees; conduct preliminary endangerment assessments; perform appropriate responses to render a site usable; and the inclusion

⁹ See: Test Claim, at pages 2-3

of public comment and participation. It is quite clear that there are new mandated activities now required not previously required by former Education Code Section 15002.1.

DTSC admits, at page 7 of its opposition and comments that "[T]he state did not fund these site acquisition and investigation costs, including the hazard assessments, before 1975" and [T]he District correctly asserts that the environmental hazard assessment requirements for school site evaluation at issue here were enacted after January 1, 1975." It attempts to overcome this glaring admission however by arguing that the test claim does not reference the general school safety duties from statutory or case law. Legislation that transforms "General" safety duties" into specific duties requires new duties or higher levels of service. Even if school districts were performing hazardous materials assessments in the past, the new mandate that now requires these assessments causes them to be reimbursable. "If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Government Code Section 17565

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



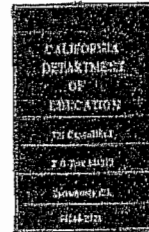
Keith B. Petersen

C: Per Mailing List Attached

EXHIBIT A
FISCAL MANAGEMENT ADVISORY 97-02



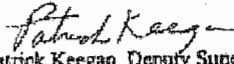
DELAINE EASTIN
State Superintendent of Public Instruction



FISCAL MANAGEMENT ADVISORY 97-02

October 30, 1997

TO: County and District Superintendents

FROM: 
Patrick Keegan, Deputy Superintendent
Finance, Technology, and Information Services

SUBJECT: Fees, Deposits, and Other Charges

School district administrators frequently ask the Department to provide additional guidance on the matter of fees. This Advisory which supersedes Fiscal Management Advisory 87-03 is provided for that purpose, and reflects the most recent legislation and California Supreme Court interpretations. The following narrative contains a number of conclusions based on legal references. Most of these references are to a particular case or opinion. Those conclusions without attribution represent the opinions of the Department's Legal Office.

TUITION, FEES, DEPOSITS, AND OTHER CHARGES IN CALIFORNIA
PUBLIC SCHOOLS, K-12 AND ADULT SCHOOLS

I. A Free Public School System

"A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law."¹

With this language the State Board of Education made clear that fees are not to be imposed except where specifically authorized by law. This administrative regulation, or "law" of the State Board was promulgated based on the authority of Article IX, Section 5 of the California Constitution. Article IX, Section 5 provides for a free school system:

"The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

The State Supreme Court in 1874 held that this provision entitled students to be educated at public expense.²

The Attorney General has, in several opinions,³ consistently ruled that school districts do not have authority to levy fees for any elective or compulsory class. Further, districts may not require security deposits for locks, lockers, books, class apparatus, musical instruments, uniforms, or other equipment.

The administrative regulation noted above prohibited fees except those "...specifically authorized by law." Certain fees have been authorized by law since the rule was promulgated.

The 1984 California Supreme Court decision, *Hartzell v. Connell*,⁴ raises serious questions about the imposition of a non-statutory fee for extracurricular activities. The lead opinion acknowledges that fees may be charged for "recreational" activities but not for "educational" activities. Extracurricular activities are described in the opinion as an integral component of public education; they are a part of the educational program according to this decision.

The court held that the "...imposition of fees for educational activities offered by public high school districts violates the free school guarantee. The constitutional defect in such fees can neither be corrected by providing waivers to indigent students nor justified by pleading financial hardship."

¹Title 5 California Code of Regulations, Section 350

²*Wade v. Flood*, 48 Cal. 36, 51 (1874)

³Ops. Cal. Atty. Gen. No. NS-4114, 1942

⁴35 Cal. 3d 899 (1984)

II. Fees Authorized by Law

The Education Code specifically authorizes certain fees. Except for home to school transportation fees discussed later, none of those Code sections have been challenged and the Hartzell v. Connell decision did not directly rule on their legality. Therefore, districts may continue to levy fees as authorized in the following Education Code sections:

- A. Fees that a district may collect for furnishing materials to a pupil for items the pupil has fabricated from such materials for his or her own use. Such fees may not exceed cost. (Education Code section 39526)
- B. Fees that a district may charge pupils for transportation to and from school under limited circumstances. (Education Code sections 38028, 39807.5 and 39837)
- C. Charges for food served to pupils. (Education Code sections 39870-39874, 39876)
- D. Charges to the parent or guardian of any pupil who loses a book, defaces books or other school property. Liability limits for lost items or damage are adjusted annually by the State Superintendent of Public Instruction pursuant to statute. (Education Code section 48904)
- E. Charges for field trips or excursions, principally for transportation. The authority to charge a fee for field trips or excursions is not directly stated in the Education Code. Rather, it provides that "No pupil shall be prevented from making the field trip or excursion because of lack of sufficient funds." (Education Code section 35330)
- F. Districts must make medical, hospital, or accident insurance available to pupils who may be injured while participating in field trips. The cost of the insurance may be paid by the pupil or his parents. (Education Code section 35331)
- G. Governing boards may expend from the general fund of the district any money which is budgeted for community services to establish and maintain community service classes. They may charge student fees not to exceed the cost of maintaining such classes. (Education Code section 51815)
- H. A governing board may charge a tuition fee to adults for any class except classes in English and citizenship for foreigners, classes in elementary subjects, and classes for which high school credit is granted when taken by a person not holding a high school diploma. (Education Code section 52612)

- I. Districts must provide, and each member of an athletic team must have, accidental death, injury and medical insurance coverage. The cost of such insurance may be paid by the pupil unless the pupil is unable to pay for such insurance. (Education Code sections 32220-32224)
- J. A school district may require a deposit from a borrower of school band instruments, music, uniforms, and other regalia for use on an excursion to a foreign country. (Education Code section 40015)
- K. Pupils whose parents are actual and legal residents of an adjacent foreign country or an adjacent state shall be charged a tuition fee. (Education Code sections 48050 and 48052)
- L. The regulations of the governing board may provide for the sale of materials purchased from the incidental expense account to pupils in classes for adults, for use in connection with such classes. The proceeds of all such sales shall be deposited in that account (Education Code section 52615). A high school district board may charge for textbooks used in classes for adults or impose a refundable deposit on loaned books. (Education Code section 60410)
- M. The governing board of a school district may sell class material to persons enrolled in classes for adults. This may include materials necessary for the making of articles by students enrolled in adult education. The materials shall be sold at not less than the cost to the district; any article made shall be the property of the person who made it. (Education Code section 39527)
- N. The governing board of any elementary, high, or unified school district may charge a fee for school camp programs, provided that payment of such fee is not mandatory. No pupil shall be denied the opportunity to participate in a school camp program because of non-payment of the fee. (Education Code section 35335)
- O. Families utilizing child care and development services shall be charged a fee by the school district, but no fees shall be assessed against families whose children are enrolled in the state preschool program, or for such services provided to severely handicapped children (Education Code sections 8263(e)(f) and 8250(d)). Standards for fees appear in Education Code section 8265. The school district may also impose a fee for a program of supervision of children before and after school. (Education Code section 8487 and 8488)
- P. School districts may offer a fingerprint program for children in kindergarten or newly enrolled children and shall assess a fee to the parent or guardian who chooses to participate. (Education Code section 32390)

III. District Obligation to Provide Without Charge.

The opinions of the Attorney General mentioned earlier indicate that charges may not be levied for the following:

- A. A deposit in the nature of a guarantee that the district would be reimbursed for loss to the district on account of breakage, damage to, or loss of school property.
- B. An admission charge to an exhibit, fair, theater or similar activity for instruction or extracurricular purposes when a visit to such places is part of the district's educational program.
- C. A tuition fee or charge as a condition to enrollment in any class or course of instruction, including a fee for attendance in a summer or vacation school, a registration fee, a fee for a catalog of courses, a fee for an examination in a subject, a late registration or program change fee, a fee for the issuance of a diploma or certificate, or a charge for lodging.
- D. Membership fees in a student body or any student organization as a condition for enrollment or participation in athletic or other curricular or extracurricular activities sponsored by the school.
- E. Education Code section 48053 prohibits charging an apprentice, or his or her parents or guardian, for admission or attendance in any class.
- F. Textbooks and workbooks must be furnished without charge by elementary and high school districts except for classes for adults. A charge may not be made for their use (Education Code sections 60070 and 60410).

Education Code section 40011 provides:

"Writing and drawing paper, pens, inks, blackboard erasers, crayons, lead pencils, and other necessary supplies for the use of the schools, shall be furnished under direction of the governing board of the school district."

The Attorney General has issued an opinion interpreting this language. He was asked specifically whether a student could be required to furnish any or all of the following:

- A. Art material for art classes and mechanical drawing sets
- B. Cloth to be used in dressmaking classes and wood for carpentry classes
- C. Gym suits and shoes for physical education classes

- D. Bluebooks in which to write a final examination
- E. Paper on which to write a theme or report when such theme or report is a required assignment.

The Attorney General concluded that all the above-mentioned materials were "necessary supplies" and as such had to be furnished by the school district. He reasoned that the articles listed in A, B, C, and D, "appear to be supplies that must be available to students in order to participate in regular classroom work in the particular subjects involved." As to E, the Attorney General stated that "paper to be used on which to write a theme or report must also be furnished when required as a part of the classroom activity."⁵

The Attorney General limited his discussion to the questions specifically asked and did not state what materials a district is not obligated to furnish. However:

"[s]upplies,...must be furnished free of cost to students when the supplies are what might be termed 'school supplies' and are necessary in order for the students to pursue a course of study."

The Attorney General's use of the term "school supplies" is meant to exclude from the district's obligation those items or materials which, although necessary for class participation, are essential regardless of whether or not a person is a student. For example, a school district would not be obligated to furnish corrective lenses, clothes, and so forth. Such items are needed whether or not one is a student.

Specifically with respect to gym clothes, Education Code section 49056(b) states that: "No grade of a pupil participating in a physical education class, however, may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil," such as, for example, lack of funds.

It should be determined whether a fee for a particular item is specifically authorized by statute. If not, it should be determined whether a particular item is required by law to be furnished free or whether it comes under the category of "necessary supplies." If it does, then the district must furnish the item without charge.

It is the position of the Department that a school district may require its students to purchase their own gym clothes of a district specified design and color so long as the design and color are of a type sold for general wear outside of school. Once the required gym uniforms become specialized in terms of included logos, school name or other characteristics not found on clothing for general use outside of school, they are school supplies and the district must provide those uniforms free of charge.

It is the opinion of the Department's legal office that a school district may not charge a fee or require students to purchase necessary materials even if the

⁵Ops. Cal Atty. Gen. No. NS-4414, 1942

district maintains a special fund to assist students with financial need or waives such fee or charge for students with financial need. The fee or charge still remains a condition for all other students not so assisted. The court in Hartzell v. Connell, discussed below, held that a fee-waiver policy for needy students does not save the fee.

IV. Extracurricular Activities

On April 20, 1984, the California Supreme Court decided, in Hartzell v. Connell 35 Cal. 3d 899, that a public school district may not charge fees for educational programs simply because they are denominated "extracurricular." As expressed by the lead opinion, the court concluded that "the imposition of fees as a precondition for participation in non-statutory educational programs offered by public high schools on a noncredit basis violates the free schools guarantee of the California Constitution and the prohibition against school fees contained in Title 5, Section 350 of the California Administrative Code." (now California Code of Regulations).

Some significant observations by the various justices and ramifications of the decision are as follows:

- A. The lead opinion was written by Chief Justice Bird with Justices Broussard and Reynoso concurring specifically. The approach taken to the issue by the Chief Justice holds that the free school guarantee extends to all activities which constitute an integral, fundamental part of elementary and secondary education or which amount to necessary elements of any school's activity. The opinion concludes that extracurricular activities constitute an integral component of public education.
- B. The lead opinion holds that fee based extracurricular activities are also illegal under Title 5 California Code of Regulations 350 (5 CCR 350) which prohibits the imposition of "...any fee, deposit, or other charge not specifically authorized by law."
- C. Apart from the fee issue, this particular holding has wide reaching significance. Along with constitutional provisions and statutes, any regulation adopted by the State Board of Education or Superintendent of Public Instruction is a "law." Education Code section 35160, the so-called "permissive code" authority allows school districts to carry on any activity or act in any manner "...which is not in conflict with or inconsistent with, or preempted by, any law..."
- D. As noted above, several provisions of the Education Code permit school districts to impose charges or fees, e.g.: Section 35330 (field trips and excursions), Section 48909 (charge for lost textbook), Section 35335 (school camps), Sections 32220-32224 (requires members of athletic teams to purchase death, accident and hospital insurance), Section 40015 (deposit for use of a school musical instrument), Section 39804 (pupil transportation), and so forth. In

his separate opinion, in which he concurs in the judgment, Justice Kaus raised the question whether, under the decision, any of the statutory fees and charges (Paragraph II, supra) would be unconstitutional. Because none of the statutory fees were in issue, the court made no ruling in that respect. The Hartzell decision is binding precedent for invalidation of any non-statutory fees of the type examined by that court. Except for home to school transportation fees (Section 39807.5), the constitutionality of the statutory fees and charges is yet to be judicially decided.

- E. In a footnote the lead opinion states that the: "[e]ducational activities are to be distinguished from activities which are purely recreational in character. Examples of the latter might include attending weekend dances or athletic events." This statement may cause future litigation on the issue of whether the challenged fee based activity is educational or recreational. The issue is complicated by the fact that while citing an athletic event as possibly being recreational, the court invalidated a fee based athletic activity because it was held to be educational. This could be reconciled by interpreting the footnote as allowing a fee if the participation is solely as a spectator.
- F. The defendants argued that their fee-waiver policy for needy students satisfies the requirements of the free school requirement. They suggested that the right to be educated at public expense amounts merely to a right not to be financially prevented from enjoying educational opportunities. The court answered that such an argument plainly contradicts the plain free school language of the Constitution.

V. Home to School Transportation Fees

Education Code section 39807.5 allows school districts to charge parents a fee for home to school transportation provided to their children by the district. On a constitutional challenge the California Supreme Court in Arcadia School District v. State Department of Education,⁶ upheld the transportation fee statute. According to the court, permitting school districts to charge parents and guardians for the transportation of students to and from school does not violate the California Constitution free school guarantee. Unlike the extracurricular activities held to be free in Hartzell v. Connell (supra), transportation is neither an educational activity nor an essential part of school activity. Home to school transportation is not included within the free school guarantee.

⁶2 Cal4th 251 (1992)

VI. Tuition for Summer School.

No statute specifically authorizes tuition for summer school. Therefore, tuition or any fee or charge is prohibited under Section 350 of Title 5 California Code of Regulations (supra at page 1), which according to the court in Hartzell v. Connell (supra), is a law within the meaning of the so-called permissive provisions of Education Code section 35160.

VII. Community Service Classes

The governing board of a school district is authorized to maintain community service classes and to charge fees to cover the costs of maintaining such classes (Education Code sections 51810 and 51815). These classes may be convened at any time during the school year as may be determined by the governing board (Education Code section 51812).

Community service classes are not intended to teach required courses that students in grades K-12 must complete as part of their instructional programs. Community service classes usually include classes in music, drama, art, handicraft, science, literature, nature study, nature contacting, aquatic sports, athletics, and other such classes of general interest to the community (See Education Code, section 51810). These classes are primarily intended for adults and are open only to those minors whom the governing board believes will profit from such classes (Education Code, section 51811). It is the Department's position, therefore, that community service classes may not be used as summer schools for K-12 students, except for the incidental attendance of students with special interest in the subjects being taught.

VIII. Summer Schools Conducted Under Contract by Private Parties

The provisions of law relating to contracts whereby private parties conduct a portion of the educational program are not entirely clear. Neither the California Constitution nor the Education Code specifically prohibits contracts for educational services. Education Code section 35160 authorizes districts to engage in any activity not prohibited by law.

Section 6, Article IX, of the California Constitution prohibits a school district from transferring, directly or indirectly, any part of the public school system, or the placing of any part of the public school system under the jurisdiction of any authority other than a public school authority. This constitutional provision was explained in CTA v. Fullerton.⁷ That case involved a school district which let a contract for a private vendor to conduct its driver training program. The court held that the district had not transferred a part of the school system, but only a part of the curriculum. The court's reasoning is that the curriculum is only a function of the system and not a part of the system. This reasoning would seem also to validate contracting for a summer school program. However, in discussing this constitutional prohibition, the court stated that the Constitution would be violated if the control and management of the driver training program were to be transferred to a private authority. This would be true because the various

⁷82 Cal.App.3d 249, 1978

administrative units authorized to maintain and administer the curriculum with the public school system constitute, along with the curriculum, a part of the system. Thus, contracting for a summer school program would be valid under Article IX, Section 6 only if the school district maintains exclusive control and management of the educational program.

The requirement for the maintenance of control and management, however, places the contracting district in a legally impossible position when tuition fees are charged. If the contractor providing the program charges tuition the district might thereby be in violation of the prohibition against tuition charges.

IX. Leasing School Buildings for Educational Use.

The Education Code provides authority for school districts to lease, or allow the use of, unneeded school buildings and classroom space, or to enter into joint occupancy or joint use agreements with private entities including private schools. (Education Code sections 39360, 39379, 39380, 39381, 39440, 39444, 39470, and 40040, et seq.)

When authorizing school buildings to be used by another entity for a summer school program, however, the district should consider the following:

- A. When leasing to a sectarian organization, the district must avoid violating the religious establishment prohibition of the First Amendment to the United States Constitution. According to the California Attorney General, a school district cannot lease or loan vacant classrooms to a sectarian institution for religious purposes while public school is concurrently in session.⁸
- B. The use granted under the Civic Center Act must not result in a monopoly for the benefit of any person or organization. (Education Code section 40041 et seq.) (Effective 1/1/98 renumbered to 38130)

X. Charter Schools.

Education Code section 47605(d) prohibits a charter school from charging tuition, but does not mention fees or other charges. Should it be argued that a certain educationally based fee or other charge is not in the nature of a tuition, the charter school would, nevertheless, be prohibited from assessing them. Although a charter school is exempt from the laws governing school districts (Education Code section 47610), the California Constitution, which is the highest law of the state, cannot be rendered inapplicable by the Legislature. Therefore, any tuition, fee or other charge relating to the charter school's educational program is prohibited by the free school guarantee of the California Constitution Article IX, Section 5, as interpreted in Hartzell v. Connell, supra.

⁸60 Ops. Cal. Atty. Gen. 269

XI. Educational Clinics.

A certified clinic may not charge any fee for services to any pupil or to the parent, guardian, or custodian of any pupil for which the clinic receives reimbursement (Education Code section 58557)

The purpose of this Advisory is to inform school districts and county superintendents of the existing law involving fees in the schools and of the various cases and opinions on the subject. Except with respect to citations and references to statutes, regulations and court decisions, this Advisory is merely exemplary and compliance therewith is not mandatory, nor is there any intent to suggest a particular course of action. Each local educational agency should seek the advice of its own legal counsel in the development of local policy.

Questions about this advisory may be directed to the Department's Legal Office
916-657-2453.

DECLARATION OF SERVICE

RE: Hazardous Materials Assessments 02-TC-43
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of November 26, 2003, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

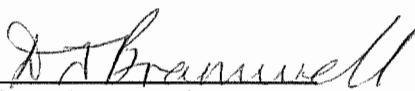
AND per mailing list attached

FAX: (916) 445-0278

- | | |
|---|--|
| <p><input checked="" type="checkbox"/> U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.</p> <p><input type="checkbox"/> OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

_____ (Describe)</p> | <p><input type="checkbox"/> FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.</p> <p><input type="checkbox"/> A copy of the transmission report issued by the transmitting machine is attached to this proof of service.</p> <p><input type="checkbox"/> PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).</p> |
|---|--|

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 11/26/03, at San Diego, California.



Diane Bramwell

Commission on State Mandates

Original List Date: 7/8/2003 Mailing Information: Other
Last Updated:
List Print Date: 08/27/2003 **Mailing List**
Claim Number: 02-TC-43
Issue: Hazardous Materials Assessments

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen SixTen & Associates 5252 Balboa Avenue, Suite 807 San Diego, CA 92117	Claimant Representative Tel: (858) 514-8605 Fax: (858) 514-8645
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Mr. Bill McGuire Clovis Unified School District 1450 Herndon Avenue Clovis, CA 93611-0599	Claimant Tel: (559) 327-9000 Fax: (559) 327-9129
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Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
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Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 987 Sun City, CA 92586	Tel: (909) 672-9964 Fax: (909) 672-9963
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Mr. Steve Smith Mandated Cost Systems, Inc. 11130 Sun Center Drive, Sulte 100 Rancho Cordova, CA 95670	Tel: (916) 669-0888 Fax: (916) 669-0889
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Ms. Antonette Cordero

Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Tel:

Fax:

SixTen and Associates

Mandate Reimbursement Services

EXHIBIT I

KEITH B. PETERSEN, MPA, JD, President
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E-Mail: Kbpsixten@aol.com

January 28, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED

JAN 30 2004

**COMMISSION ON
STATE MANDATES**

Re: Test Claim 02-TC-43
Clovis Unified School District
Hazardous Material Assessments

Dear Ms. Higashi:

We have been advised by the Department of Toxic Substances Control that the copy of our response dated November 26, 2003 (to its opposition and comments dated October 27, 2003) was received without page 18.

In the event that this clerical error might exist in all copies, I am enclosing a new original page 18 with copies thereof to all persons and agencies listed on the attached mailing list.

Thank you.

Sincerely,



Leo Shaw
Associate

- C: Mailing List Attached
- C: Ms. Vivian Murai
Department of Toxic Substances Control (OLCI)
P.O. Box 806
Sacramento, CA 95812-0806

innumerable public mouths tax revenues will feed. Barring a statutory or constitutional violation, it is not for this court to stop the Legislature if it transfers revenue from Peter to compensate Paul....(citation) Under these principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities. (citation).”

Taking note that the required education of children had always been a jointly funded effort of the state and local government, the court held that shifting the percentage of funding as between the state and local government did not create a mandated program on the local government. The court, adroitly noted:

“In this case, the County’s tax revenues were not expended. No invoices were sent, no costs were collected, and no charges were made against the counties in this case. Contrary to the conclusion of the trial court, it is the expenditure of tax revenues of local governments that is the appropriate focus of section 6 (citation) [stating that §6 was ‘designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues’].”

“An examination of the intent of the voters and the language of Proposition 4 itself supports our conclusion that Proposition 4 was aimed at controlling and capping government spending, not curbing changes in revenue allocations. Section 6 is an obvious compliment to the goal of Proposition 4 in that it prevents the state from forcing extra programs on local governments in a manner that negates their careful budgeting of expenditures. A forced program that would negate such planning is one that results in increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit. Section 6, located within a measure aimed at limiting expenditures, is expressly concerned with ‘costs’ incurred by local government as a result of state-mandated programs, particularly when the costs of compliance with a new program restrict local spending in other areas. (§6.) ‘No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes’. (Citation).” (Opinion, at page 1283-1284)

The *County of Sonoma* court also noted that “Government Code section 17514 defines ‘costs mandated by the state’ for purposes of section 6 as ‘any increased costs which a local agency or school district is *required to incur*...as a result of any statute...which mandates a new program or higher level of service of an existing program...Government Code section 17522 defines ‘annual reimbursement claim’ to mean ‘a claim for *actual costs incurred*...’ (Italics added) Similarly, Government Code section 17558.5 refers to a claim for ‘*actual costs* filed by a local agency...’ (Italics

Commission on State Mandates

Original List Date: 7/8/2003 Mailing Information: Other
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Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
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Mr. Paul Minney Spector, Middleton, Young & Minney, LLP 7 Park Center Drive Sacramento, CA 95825	Tel: (916) 646-1400 Fax: (916) 646-1300
---	--

Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 987 Sun City, CA 92586	Tel: (909) 672-9964 Fax: (909) 672-9963
---	--

Mr. Steve Smith Mandated Cost Systems, Inc. 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: (916) 669-0888 Fax: (916) 669-0889
---	--

Dr. Carol Berg

Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517

Fax: (916) 446-2011

Mr. Steve Shields

Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Tel: (916) 454-7310

Fax: (916) 454-7312

Mr. Arthur Palkowitz

San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Tel: (619) 725-7565

Fax: (619) 725-7569

Mr. Michael Havey

State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 445-8757

Fax: (916) 323-4807

Ms. Beth Hunter

Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Tel: (866) 481-2642

Fax: (866) 481-5383

Mr. Gerald Shelton

California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Tel: (916) 445-0554

Fax: (916) 327-8306

Mr. Keith Gmeinder

Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814

Tel: (916) 445-8913

Fax: (916) 327-0225

Ms. Antonette Cordero

Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Tel:

Fax:



February 3, 2004

RECEIVED

FEB 06 2004

COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance has received and reviewed Commission on State Mandates' Test Claim No. 02-TC-43, Hazardous Materials Assessments, submitted by the Clovis Unified School District (Claimant). Based on our review of the claim and the relevant State statutes, we believe that a school district's compliance with hazardous materials assessment requirements does not create a State-mandated reimbursable activity and cite the following reasons as the basis for our position:

Voluntary Activities—The Claimant cites Education Code Section 17072.13 as one State statute that has created a new State-mandated activity. While we acknowledge that the statute does require certain hazardous materials removal activity, we note that the cited code section is part of the Leroy F. Greene School Facilities Act of 1998—the School Facilities Program (SFP), Chapter 12.5 of Part 10 of the Education Code, commencing with Section 17070.10—and a school district's participation in the program is strictly voluntary and the result of elective action taken by the governing board of the district. In *Department of Finance v. Commission On State Mandates (2003) 30 Cal. 4th 727*, the California Supreme Court confirmed the merits of the argument that where a local government entity voluntarily participates in a statutory program, the State may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for increased level of activity. Moreover, Education Code Section 17213.1(b) states, "The costs incurred by school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5...Part 10 and may be reimbursed in accordance with Section 17072.13." Among other provisions, the referenced section applies to hazardous material assessment. Further, although the SFP has a local matching requirement, the program also provides for a "financial hardship" provision whereby the State pays the full cost of a school district project when a district can demonstrate an inability to fund the local amount.

We also note that nothing in State law or regulation requires a school district to acquire any site for the purpose of constructing a school building. Instead, the law provides school districts with flexibility, discretion, and choice over the manner in which districts elect to house their student populations. For example, school districts have the discretion to operate year round multi-track schools or two kindergarten sessions per day, use portable classrooms, or transport students to under-used schools. In addition, although a school district that elects not to receive State funds pursuant to Chapter 12.5 may not approve a construction project unless the project complies with certain requirements, including hazardous materials assessment (see Education Code Section 17268), it is the district's voluntary decision to construct a school facility rather than using an aforementioned alternative that forced the district to carry out the required activities.

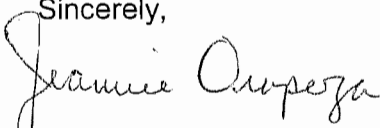
Fee Authority—Education Code Section 17620(a)(1) states: “The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities...” Government Code Section 17556(d) provides that the Commission shall not find a reimbursable mandate if the local agency has “authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” Further, in *Kathleen Connell v. Superior Court of Sacramento County (1997) 59 Cal.App.4th 382*, the court found that the fee authority can exist even if it is not economically feasible or practical to implement the fee.

Based on the aforementioned reasons, we conclude that the cited State law does not create a State-mandated reimbursable activity; therefore the test claim should be denied.

As required by the Commission's regulations, we are including a “Proof of Service” indicating that the parties included on the mailing list which accompanied your July 11, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Walt Schaff, Principal Program Budget Analyst at (916) 445-0328, or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF WALT SCHAFF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-44

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the various statutes sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

February 3, 2004
at Sacramento, CA

Walt Schaff
Walt Schaff

PROOF OF SERVICE

Test Claim Name: Deferred Maintenance Programs
Test Claim Number CSM-02-TC-44

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On February 3, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to State agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

E-08
Department of Education
Fiscal and Administrative Services Division
Attention: Gerald Shelton
1430 N Street, Suite 2213
Sacramento, CA 95814

T-01
Department of Toxic Substances Control
Attention: Antonette Cordero
400 P Street
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Mandated Cost Systems, Inc.
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

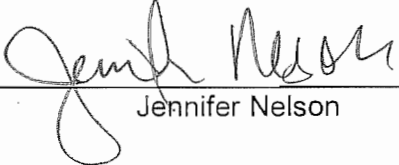
Clovis Unified School District
Attention: Bill McGuire
1450 Herndon
Clovis, CA 93611-0599

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Blvd., Suite 307
Sacramento, CA 95842

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 3, 2004, at Sacramento, California.



Jennifer Nelson



EXHIBIT K



Department of Toxic Substances Control

Edwin F. Lowry, Director
1001 "I" Street, 25th Floor
P.O. Box 806
Sacramento, California 95812-0806

Arnold Schwarzenegger
Governor



Terry Tamminen
Agency Secretary
Cal/EPA

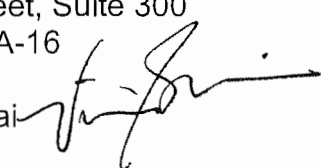
MEMORANDUM

RECEIVED

FEB 06 2004

**COMMISSION ON
STATE MANDATES**

TO: Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento A-16

FROM: Vivian S. Murai 
Staff Counsel
Office of Legal Counsel & Investigations

DATE: February 6, 2004

SUBJECT: OPPOSITION OF THE DEPARTMENT OF TOXIC SUBSTANCES
CONTROL TO CLOVIS UNIFIED SCHOOL DISTRICT'S TEST CLAIM
NO. 02-TC-43

The Department of Toxic Substances Control (DTSC) has received the response of the Clovis Unified School District (Claimant), dated November 26, 2003 (Clovis' Response), to our earlier comments. We submit this memo in reply to Clovis' Response and to reaffirm our previously submitted opposition to and comments on the Clovis Unified School District's Test Claim (Clovis' Claim) under Government Code section 17553, subdivision (a). DTSC hereby certifies, incorporates by this reference, and adopts its prior comments of October 27, 2003 (Exhibit 1 to this memo), as clarified below. We also reserve the right to submit additional comments on Clovis' Claim as may appear necessary and proper.

As a general matter, we assure the Commission on State Mandates (Commission) and the Claimant that we take seriously the financial constraints facing all of California's public entities. In fact, our opposition to the test claim is in no way a rejection of the School Facilities Program, the hazard assessment provisions' value or policy goals, or of a local entity's actual need for fiscal or physical resources. Besides this test claim process, we would also note that a local entity has or may seek alternative funding through legislated collection authorities, state and federal legislative change, constitutional change, or bond issues.

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U. S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.

Paula Higashi
DTSC Opposition to Test Claim 02-TC-43
February 6, 2004
Page 2

We limit our comments in this forum to whether the test claim legislation meets certain necessary elements that, in turn, require the State to reimburse the local entity under Section 6 in Article XIII of the state Constitution (Section 6). Based on our review of the subject laws, the Claimant is mistaken and no state-imposed mandate exists because the subject legislation fails to create a state-mandated program to acquire land or construct schools, let alone a mandate to participate in this state funding program. Clovis' Response points to no law requiring that a district acquire land to build new schools rather than use other options, such as multiple tracks of students, year-round schooling, and the like. In this, we agree with Department of Finance staff. We also believe that the Department of Education's comments regarding School Facilities Funding Requirements in Test Claim 02-TC-30 would apply here. For ease of reference we quote their language below:

“School Facilities Funding Requirements (02-TC-30)

“This is not a mandated program. It is one of various capital funding mechanisms available to school districts for the funding of facilities. School districts elect to participate in this program and any requirements regarding this program are applicable only after districts elect to participate in this program.” (Exhibit 2, page 1).

For these reasons, we limit our comments to the criteria for reimbursement as a state mandate. The Claimant's exhaustive description of various revenue mechanisms and limitations and the districts' resulting poverty are not critical to this stage of the test claim process.

The hazard assessment provisions in the Education Code also have offsetting benefits in that districts employing the process and standards receive DTSC oversight and approvals. The Belmont Learning Center and the Jefferson New Middle School in Los Angeles were the very real cases in point that precipitated the subject legislation. (Please see Exhibit 3.¹) First, this forward-thinking approach avoids spending millions of dollars, only to discover that the site is too dangerous for children to occupy. Second, DTSC's certification that the district successfully completed necessary assessment and remediation work typically limits and deters potential litigation and tort liability for harm to children, a most susceptible population. Third, the district obtains our expertise in dealing with these hazards and children's health. DTSC will also oversee the

¹ This White Paper, as attached at Exhibit 3, is available from the DTSC website <http://www.dtsc.ca.gov>.

hazardous substance assessment process for locally funded school construction projects under a voluntary agreement. When all necessary work is complete, DTSC will provide its certification that site conditions are protective of human health and the environment. In this manner, any district may gain the same advantages from employing the hazard assessment standards to its own project(s).

In addition, we see no contradiction in finding that the test claim legislation fails multiple criteria for subvention as a state mandate. (See Clovis' Response, page 16.) We need not assume that a mandate exists to note that the Claimant's bid for subvention fails on other grounds, such as Government Code section 17556 exclusions. The test-claim process is but one avenue that local entities may use to seek funds.

Clovis' Acknowledgments: Turning next to Clovis' Response, the Claimant acknowledges and admits numerous points adverse to its claim, the most pertinent of which follow:

1. That certain of the Education Code requirements are conditions of state funding (Clovis' Response, page 2). We maintain that the other sections listed in Clovis' Response still fail to require districts to acquire land and build new schools. They merely provide the parameters for those who choose to do so with state money.
2. That school districts repaid state loans for school facilities before Proposition 13 in 1978 (Clovis' Response, page 7, referring to DTSC's Exhibit C). We note that this obligation predated 1975, when the state's Constitutional obligation for unfunded state mandates began. School facility funding was, therefore, not fully state funded when Section 6 came into effect and no unconstitutional shifting of costs occurs under *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264 at 1287.
3. That no proper claim lies for costs funded through the School Facilities Program (Clovis' Response, page 17).
4. That the *County of Sonoma* decision, a previous state mandate case, found that "education has long been a jointly funded effort" (Clovis' Response, page 17). We add for the Commission's consideration the fact that, in *County of Sonoma*, the court denied the claim that reduced Proposition 98 budget allocations to school districts resulted in reimbursable state-mandated costs by noting as follows:

"The critical point in the analysis is that school funding in California was, at the time section 6 became effective, a jointly funded partnership between the state and local governments. These joint budget allocations are not subject to section 6. To hold otherwise would impermissibly cripple the ability of the Legislature to function in the critical area of budget planning." (*County of Sonoma*, 84 Cal.App.4th at 1289).

We also note that the Claimant's quoted statutory language regarding historical facility funding needs is precatory and permissive language, not mandatory language (Clovis' Response, pages 8-14). The mandatory language applies only to those school districts that participate in those programs, or cases where the state must forgive at least 50% of some loan amounts.

Kern applies because it considered the Sacramento Cases and Found No De Facto Mandate. We note that *Kern* also analyzed the *de facto* mandate issue and found none there. (*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 749-752 (previously *DOF-2003*, hereafter *Kern*)). The court examined the program statutes and found no penalties or double taxation to the district or other private entities for non-participation and, therefore, found no draconian consequences and no *de facto* state mandate. (*Kern*, 30 Cal.4th at 749-752.) The *Kern* Court analyzed the Sacramento I and Sacramento II cases, and stated:

". . . [W]e conclude that, contrary to the situation we described in that case [referring to *City of Sacramento v State of California* (1990) 50 Cal. 3d 51 (Sacramento II)], claimants here have not faced "certain and severe . . . penalties" such as "double . . . taxation" and other "draconian" consequences (*City of Sacramento v State of California* (1990) 50 Cal. 3d at p. 74, 266 Cal.Rptr. 139, 785 P.2d 522), and hence have not been 'mandated' under article XIII, section 6 to incur increased costs." (*Kern*, 30 Cal.4th at 751.)

Similarly, the Claimant cites no penalty scheme and no double taxation in their Response. We again affirm our position that Clovis' Claim fails to establish a *de facto*, reimbursable mandate for the same reasons. Consequently, we believe the Commission need not reach the *de facto* mandate analysis, but if it chose to do so, *Kern* would still apply and would still refute the Claimant's argument based on the *Sacramento* cases. [*City of Sacramento v. State of California* (1990) 50 Cal.3d 51 (*Sacramento II*); *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182

(*Sacramento I*)]

Sacramento II found no mandate for failure on the program an service elements:

We would also remind the Commission that *Sacramento II* actually held that the “obligations imposed by chapter 2/78 fail to meet the ‘program’ and ‘service’ standards for mandatory subvention we recently set forth in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46” (*Sacramento II*, 50 Cal.3d at 57). The Court’s discussion of de facto mandates continued, arguably “a gratuitous advisory opinion,” according to the dissent, to examine the state’s discretion in implementing the federal mandate for the sole conclusion that any taxing and spending for these costs would fall outside the limits of Section 6. (*Sacramento II*, 50 Cal.3d at 70-71; dissent by Justice Kaufman, 50 Cal.3d at 77) We remind the Commission that this latter dictum was beyond the issues there on appeal, but was instructive for its statement that no reimbursable state mandate existed under those facts (*Sacramento II*, 50 Cal.3d at 70-71).

Funding Authority Exists: We note to the Commission that the Department of Education has produced guidance materials for the School Facilities Program.² Page 11 lists general obligation bond funds, Mello-Roos, developer fees, proceeds from the sale of surplus property, and federal grants as financing mechanisms available to districts to fund the Participant’s share of costs. (Attached as Exhibit 4.)

Education Code 17620 is Disqualifying Funding under Government Code 17556(s): We also disagree with the Claimant’s contention that Government Code 17556(d) does not apply to construction funding or somehow excludes funding mechanisms of Education code 17620, whose clear purpose is to provide revenue-collecting authority. We find no exclusions within Government Code 17556(d). We also find no authority for the Claimant’s assertion that Government Code section 17556(d) references to “a fee, charge, dedication, or other requirement” mean only fees charged “to the consumer” as the Claimant argues in its discussion of Government Code 17556(d) and Education Code 17620 (Clovis’ Response, page 18). We respectfully remind the Commission that Government Code 17556(d) and Education Code 17620 actually reads in pertinent part as follows:

² This Guidebook and DTSC’s Exhibit C within Exhibit 1 to this letter are available in full text form from the Office of Public School Construction website <http://www.opsc.dgs.ca.gov>. Although many chapters of this Guidebook contain helpful information regarding the school Facilities Program, we attach only the pages through Chapter 4 to conserve resources.

"Gov. Code section 17556. The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

"(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. (emphasis added)

"Educ. Code section 17620(a)(1). The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code." (emphasis added)

We believe the plain language of the cited statutes and the previously cited court opinions make clear that Clovis' Claim fails to establish a reimbursable state mandate on funding grounds, as well as those grounds noted earlier.

Finally, we thank SixTen and the Claimant for pointing out typographical errors so that we may correct them here. All references in our Exhibit 1 to this letter to Government Code section 17556 or 17516 should be references to Government Code section 17556. We would, however, note that we did not locate the Claimant's certification of the documents attached to its written declarations.

CONCLUSION

The Commission on State Mandates has numerous grounds to reject the District's Claim that hazard assessment conditions on state funding are reimbursable state mandates.

For all the reasons noted above and in the attached exhibits, as well as any other grounds the Commission may deem proper, DTSC respectfully submits these comments and urges denial of Clovis Unified School District's Test Claim No. 02-TC-43.

LIST OF EXHIBITS

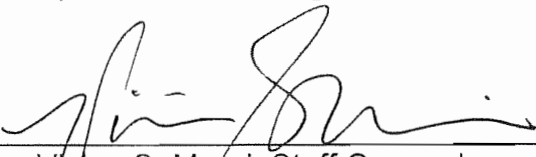
- Exhibit 1: DTSC's Comments on Clovis' Claim of October 27, 2003, including Exhibits A through D, thereto.
- Exhibit 2: California Department of Education Letter from Juan Sanchez, Commenting on Test Claims including Clovis Unified School District's Test Claim Number 02-TC-30: School Facilities Funding Requirements, August 11, 2003 (Facsimile Copy).
- Exhibit 3: California Department of Toxic Substances Control, DTSC White Paper *Schools White Paper – Prepared by the California Department of Toxic Substances Control (DTSC)*, October 14, 1999, Excerpted pages 1-14, only. (The same excerpt is available on <http://www.dtsc.ca.gov>)
- Exhibit 4: Office of Public School Construction, California Department of General Services, *School Facilities Program Guidebook*, January 2003, Excerpted pages including Table of Contents and Chapters 1-4. The full text is available on <http://www.opsc.dgs.ca.gov>.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that:

- The statements in this document and in Exhibit 1 to this memorandum are true and complete to the best of my own personal knowledge or information and belief; and
- The documents attached to this memorandum are also true and complete copies, as indicated, to the best of my own personal knowledge or information and belief.

Dated: February 6, 2004

By: 
Vivian S. Murai, Staff Counsel
Office of Legal Counsel & Investigations

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 1001 I Street, 23rd Floor, Sacramento, California 95814. On February 6, 2004, I served the within document(s):

1. Department of Toxic Substances Control's Opposition to Clovis Unified School District's Test Claim No. 02-TC-43



BY HAND: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814



BY MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.

See attached Service List



BY OVERNIGHT MAIL: by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.



BY PERSONAL DELIVERY: by causing personal delivery by capitol Couriers of the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 6, 2004, at Sacramento, California.

Sandra Monger

Test Claim 02-TC-43 Mailing List

Mr. Keith Petersen
SixTen & Associates
5252 Balboa Avenue, Ste 807
San Diego, CA 92117

Mr. Bill McGuire
Clovis Unified School District
1450 Hemdon Avenue
Clovis, CA 93611-0599

Ms. Harmeet Barkschat
Mandate Resouce Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Mr. Paul Minney
Spector, Middleton, Young & Minney,
LLP
7 Park Center Drive
Sacramento, CA 85825

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

Mr, Steve Smith
Mandated Cost System, Inc.
11130 Sun Center Drive, Ste 100
Rancho Cordova, CA 95670

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Ste 1060
Sacramento, CA 95814

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Mr. Michel Havey
State Controller's Office (b-08)
Division of Accounting & Reporting
3301 C Street, Ste 500
Sacramento, CA 95816

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Ste 101
Rancho Cucamonga, CA 91730

Mr. Gerald Shelton
California Dept. of Education (E-08)
Fiscal and Administrative Services
Division
1430 N Street, Ste 2213
Sacramento, CA 95814

Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814

Ms. Vivian Murai
Department of Toxic Substances
Control – OLCI
1001 "I" Street, 23d Floor
P.O. Box 806
Sacramento, CA 95812-0806

54 bits 1



Department of Toxic Substances Control



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Edwin F. Lowry, Director
1001 "I" Street, 25th Floor
P.O. Box 806
Sacramento, California 95812-0806

Gray Davis
Governor

October 27, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: Department of Toxic Substances Control's Opposition to
Clovis Unified School District's Test Claim No. 02-TC-43

Dear Ms. Higashi:

The Department of Toxic Substances Control (DTSC) submits this letter as our opposition to and comments on the Clovis Unified School District's Test Claim (Clovis' Claim) under Government Code section 17553, subdivision (a). DTSC reserves the right to submit additional comments on Clovis' Claim as may appear necessary and proper.

DTSC opposes the claim that the geological, soil and environmental assessment and cleanup ("Hazardous Material Assessment") conditions constitute a reimbursable state mandate on school districts (districts) on four grounds. First, district participation in the underlying program is elective or optional, and neither a compulsory nor a de facto mandate under *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731-735 (hereafter *DOF-2003*). Second, school districts have authority to levy fees to fund their share of costs under Education Code section 17620, among others, thus disqualifying them for reimbursement under Government Code section 17556, subdivision (d), and *Connell v. Superior Court (Santa Margarita Water District)* (1997) 59 Cal.App.4th 382 (*Santa Margarita Water District*). Third, jointly funded programs such as school funding are outside the coverage of Section 6, article XIII B of the California Constitution (Section 6) under *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App.4th 1264 (*County of Sonoma*). Fourth, compliance with these funding conditions fails to provide a new program or increased level of service to the public to qualify as a reimbursable state mandate under *County of Sonoma*. Consequently, DTSC maintains that these geological, soil and environmental assessment and cleanup (hazard assessment requirements) are not reimbursable state mandated costs under Constitution, article XIII B, section 6.

INTRODUCTION

Clovis' Claim asserts that these hazard assessment procedures impose reimbursable, state-mandated costs on grant applicants for state school construction funds under Education Code sections 17072.13, 17212, 17213.1, and the various associated sections added and amended by various legislation between 1976 and 2002. These procedural safeguards effect safety standards in that they provide informed, interim decision points for districts to withdraw or proceed with school site acquisition and construction projects after checking for hazards associated with the site. These hazard assessment requirements apply only to applicants for state money, and are conditions on state funds under the School Facilities Program (Educ. Code § 17070.10 et seq.) to assure that resulting school sites are safe for their intended population -public school children - as noted in the sections quoted by Clovis' Claim, itself. Districts that do apply for state funding may fund their share of the project costs with local bonds, developer fees, Mello-Roos fees, improvement district levies, and certificates of dedication. (Educ. Code § 17620; Gov. Code § 53311 et seq.; Educ. Code § 15350 et seq.)

The Schools Facilities Program funds local construction in equal shares with the district under Education Code section 17072.13. When a school district applies for state funds from the School Facilities Program for school construction projects, including site acquisition, the district must check for possible hazardous conditions at the site using the process specified at Education Code sections 17072.13 and 17210 et seq. Education Code section 17212 continues the pre-1975 condition that districts must investigate prospective school sites using competent personnel. The district may choose at any time to stop pursuing a prospective school site. To assure that state construction money funds a reasonably safe environment, the Education Code sections 17072.13, 17212 and 17213.1 require inquiry into the possible geological, soil and environmental hazards of the site. The applying district must conduct a Phase I assessment for environmental hazards (including contamination from hazardous substances) using existing documents, materials and studies, and must submit the review with \$1,500 for DTSC oversight. DTSC refunds to the district any unused portion of this \$1,500.

If the Phase I indicates that contamination may be present and the applying district chooses to continue pursuing the site, Education Code section 17213.1 requires the district to conduct a Preliminary Endangerment Assessment (PEA) under an environmental oversight agreement with DTSC that includes reimbursement. This PEA may include limited or extensive sampling, depending on the results of the Phase I. If the district decides to acquire or construct on a contaminated site, it must also conduct an appropriate response to render the site usable by children under Education Code section 17213.2. As part of the response activities, the district must fund DTSC oversight as well as the necessary public comment and participation activities required by Health and Safety Code sections 25358.7 and 25358.7.1.

BASES FOR OPPOSITION

1. As conditions of an optional state funding program, hazard assessments are neither actual nor de facto reimbursable state mandates under *DOF-2003*.

A. Hazard assessment requirements are not compulsory

The Clovis Unified School District (District) properly quotes Education Code sections 17210.1 and 17213.1, at pages 33-34, including language noting that the section applies to state funded entities. (Test Claim, pages 18, 19, 23.) Education Code section 17210.1 expressly addresses only sites for which "school districts elect to receive state funds." Education Code section 17213.1 also states, "[a]s a condition of receiving state funding" and clearly applies these requirements to districts seeking state funding of their projects. However, the District overlooks this state funding condition precedent in its analysis and omits any reference to the *County of Sonoma* and *DOF-2003* case decisions rejecting claims that such elective activities' costs are state mandates. The District also fails to mention the existing state funding for part or all of the hazard assessment work under Education Code sections 17072.12 and 17072.13 that reduces the unfunded costs or invalidates their grounds for reimbursement as an unfunded mandate. The School Facilities Program provides optional, joint state and local funding for school facilities construction as demonstrated by the language limiting application of the sections to applicants for funds. (E.g., Educ. Code § 17072.13, 17072.18, et al.)

The state-funded School Facilities Program conditions in Clovis' test claim are analogous to the state-funded educational programs at issue in *DOF-2003*. In that case, the California Supreme Court examined and rejected various school districts' claims that the statutes compelled participation in the various programs, making the program's meeting and agenda posting requirements reimbursable unfunded state mandates. (*DOF-2003, supra*, 30 Cal.4th 727, 732.) In the *DOF-2003* case, the California Supreme Court found that participation in the underlying programs was neither mandated nor legally compelled by requirement or by a penalty for non-participation (de facto). In addition, to the extent that participation in the last of the nine programs was not optional, the district could claim reimbursement under that program, and thus the state had funded any new costs. (*Id. at p. 730-731.*) As a consequence, the meeting and agenda posting requirements in that case were not reimbursable mandates because the participation in the underlying program was optional, and the state would fund any additional costs. (*DOF-2003, supra*, 30 Cal.4th at p. 731.)

The hazard assessment requirements are not rendered mandates because the state funds only part of the total costs under Education Code sections 17072.1, 17213.13 and 17213.18. The *DOF-2003* court noted, "[w]e reject the suggestion, implicit in claimants' argument that the state cannot legally provide school districts with funds for voluntary programs, and then effectively reduce that funding grant by requiring school districts to incur expenses in order to meet conditions of program participation." (*DOF-2003, supra*, 30 Cal.4th at p. 754.)

Here the geological, soil and hazardous material assessment requirements are analogous to this aspect of the *DOF-2003* case. Since the districts elect to apply for state funds, participation in the Schools Facilities Program is not compulsory, and therefore does not qualify for reimbursement as a state mandate under Section 6.

B. Participation is not compelled de facto.

The Supreme Court in *DOF-2003* also rejected the districts' claim that participation in the educational programs at issue was de facto compulsory, in that the districts had no true choice but to continue participation, having already begun to participate. (*DOF-2003, supra*, 30 Cal.4th at p. 748, 751-754.) The court reasoned that, since there was no showing that withdrawal would result in severe penalties, double taxation, or other draconian consequences to the districts, no de facto compulsion existed. (*DOF-2003, supra*, 30 Cal.4th at p. 754.) Regarding Clovis' Claim, the School Facilities Program statute contains no penalties for failing to apply for funds, nor any tax or fee imposed for failure of a district to participate. Furthermore, the Phase I and PEA provide advance notice of possible contamination on the site, allowing the district to cease pursuing a school site at any time without penalty. The hazard assessment requirements inform district decision-making without dictating school siting choices.

The District might claim a de facto reimbursable state mandate because there is no feasible alternative to participation in the state funding program for school construction projects where hazard assessment costs are sizable. The *DOF-2003* court acknowledged that some programs could have compliance costs so great that funded program benefits would not cover the compliance costs or might violate a spending limitation in the applicable regulations or statutes. In that case, "a compulsory program participant likely would be able to establish the existence of a reimbursable state mandate under . . . section 6." (*DOF-2003, supra*, 30 Cal.4th at p. 751-754.) Again, however, DTSC would point out that districts may elect to stop pursuing such a high cost site at any time without compulsion or penalty.

As further discussed below, any costs borne by the district are also partially funded, if not fully funded, by the state, thus also disqualifying the hazard assessment requirements as reimbursable state mandates.

I. Districts' existing authority to fund these hazard assessments through fees, levies, taxes and assessments disqualifies them for reimbursement under Government Code section 17516, subdivision (d).

A. Districts have Authority to Levy Fees, Assessments and Taxes under Education Code 17620 to fund the local share of costs.

Government Code section 17556, subdivision (d), prohibits the commission from determining costs are mandated by the state if it finds that the district "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." *Connell v. Superior Court (Santa Margarita Water District)* (1997) 59 Cal.App.4th 382 (*Santa Margarita Water District*) addressed

the meaning of these phrases under Revenue and Taxation Code section 2253.3, subdivision (b)(4), with respect to water quality requirements for certain irrigation uses of recycled water. The court expressly notes that the same provision is now contained in Government Code section 17556, subdivision (d). (*Id.* at 398.) The Third District Court of Appeal in *Santa Margarita Water District* found that "sufficient" referred to the authority being sufficient to levy the fees and charges to fund the local costs at issue. (*Id.* at 400, 403.) The court ruled that the test was not whether actual revenues levied are sufficient to cover the costs of the program. (*Id.* at 400.)

For Clovis' Claim, we refer the Commission to Education Code section 17620 which states in pertinent part:

(a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code.

In addition, the Mello-Roos Community Facilities Act of 1982 (Gov. Code § 53311, et seq.) allows a district to form a community facilities district to assess fees to generate school facility funding. Furthermore, the Legislature also authorizes districts to generate funds through bond issues for school facilities improvement districts under Education Code section 15350 et seq.

Based on these references alone, the districts have the means to generate revenues to cover the local share of costs required as conditions on state funding under the School Facilities Program. To the extent a district is unable to cover the local share, it may also apply for additional economic hardship grants from the state as noted below.

B. The state also funds local costs in economic hardship cases under Education Code section 17072.13.

The state School Facilities Program routinely funds half of the hazard assessment requirements, and funds them wholly in cases of economic hardship under Education Code sections 17072.12, 17072.13 and 17072.18. State funds also cover response costs to address actual contamination in the same proportion. (Educ. Code § 17072.18.) Districts unable to fund the local share of construction project costs, may also apply for economic hardship funding to defray part of or the entire remaining local share. (Educ. Code § 17072.13, subdivision (e).) Therefore, the state actually funds these hazard assessment costs under the existing School Facilities Program, sometimes funding 100 percent of project costs. Even if the hazard assessment requirements force a reallocation of funds between entities already jointly responsible for providing a service, the requirements do not create a reimbursable state mandate under *Los Angeles v. Commission of State Mandates*. (*Los Angeles 2003, supra*, 110 Cal.App.4th at pp. 1193-1194.) For these reasons, the hazard assessment

requirements remain voluntary, are fully or partially state-funded, and thus, are not reimbursable state mandates.

II. The *County of Sonoma* court opined that the California Constitution's Section 6 of article XIII B does not cover jointly-funded programs such as the School Facilities Program.

School construction was locally funded, with the state acting as a bank in the 1950s. (*Whittier Elementary School Dist. of Los Angeles County v. Kirkwood* (1956) 147 Cal.App.2d 330, 333-334 (*Whittier*)). School construction became a jointly-funded effort after 1975 with the Leroy F. Green School Lease-Purchase Law of 1976. (Educ. Code § 17000 et seq.) In 1979, the State Allocation Board restructured the Lease Purchase Program into a grant-based program under which school districts submitted cost proposals for which they would be given grants. However, the state funds had numerous spending limitations and controls. (California Research Bureau (CRB), *School Facility Financing: A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds*, page 13 citing formerly Educ. Code § 17730.2, 17732; presently Educ. Code § 17030, 17032). The districts continued to be responsible for up to 10 percent of the projects' costs. (*Ibid.*) School funding has long been a jointly-funded effort with the local share funded by local bonds, fees, assessments, and taxes. (*County of Sonoma, supra*, 84 Cal. App.4th 1264, 1286; Educ. Code § 17620.)

Therefore, since Section 6 became effective in 1980, districts have borne or shared school facility costs with the state whether through local bonds, fees or taxes, analogous to educational program funding examined in the *County of Sonoma* case. (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1289.) "These joint budget allocations are not subject to Section 6." (*Ibid.*) The *County of Sonoma* case found that public school education was a jointly-funded venture between state and local government and was, therefore, outside the scope of Section 6. (*Ibid.*) Furthermore, as noted above, when the state reduces or reallocates funding, the loss suffered by the local entity is not a reimbursable mandate. (*Ibid.*) For these additional reasons, the Clovis test claim does not qualify as a reimbursable state mandate.

III. Hazard Assessments are part of the District's continuing duty to provide safe school sites, not a new program shifted from the state to the district.

Here, the program at issue concerns school facility safety, an area that the state has long regulated to assure safety of school children in facilities for compulsory education. (Former Educ. Code § 39002; *Hall v. City of Taft* (1956) 47 Cal.2d 177, 185-186.) A mandate is a new program if the local entity had not previously been required to implement it. (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App.4th 1176 at p. 1189 (*Los Angeles 2003*)). However, to qualify for reimbursement, the program must be one that the state previously funded in whole and would newly be funded solely by local tax revenues and not by other levies. (*Los Angeles 2003, supra*, 110 Cal. App.4th at p. 1193, citing *County of Sonoma v.*

Commission on State Mandates (2000) 84 Cal. App.4th 1264 at p. 1289). The state did not fund these site acquisition and investigation costs, including the hazard assessments, before 1975 so the state did not shift state program costs to the districts.

If anything, these hazard assessment requirements merely clarify and specify how districts may assure proper use of public funds in providing reasonably safe venues for public education. Upon entering the field, the state has directed its money to provide reasonably safe facilities for their intended purpose: here, the compulsory education of children. (See former Educ. Code § 15002.1 protecting against earthquake danger.) The state has exclusive authority to set safety standards for compulsory education. (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 185-186 [partially superseded by subsequent legislation requiring compliance with local ordinances.]) The various subsequent enactments and revisions to the Education Code create no new program or increased level of service to the public. If anything, the new requirements merely give criteria and procedures to clarify how districts ascertain a site's fitness for use as a school. Consequently, under *Connell v. Superior Court (Santa Margarita Water District)* (1997) 59 Cal.App.4th 382, the hazard assessment requirements merely clarify safety standards, and do not comprise a new program or increased level of service to the public to qualify as a reimbursable state mandate under Constitution, article XIII B, section 6.

DTSC would also note to the Commission that a mandate for safe school sites was in effect on January 1, 1975 (former Education Code section 15002.1) and remains in Education Code section 17212. (Clovis' Claim, page 2.) Education Code section 15002.1 was originally enacted in 1967, and was renumbered as 39002 and now is 17212. Education Code section 15002.1 required the governing board of a school district to have a building site investigated by competent personnel, prior to acquisition, to ensure that the final site selection was determined by an evaluation of all factors affecting the public interest and not limited to selection on the basis of raw land cost only. Now, more specific measures to achieve those ends accompany such acquisitions. The District correctly asserts that the environmental hazard assessment requirements for school site evaluation at issue here were enacted after January 1, 1975. The claim omits, however, to reference the general school safety duties from statutory or case law.

As section 39002, the section referred to section 39101, requiring the California Department of Education to develop standards for school district use in the selection of school sites considering safety, along with educational merit and conformity with local general plans. (Educ. Code § 39101(a), derived from former section 15302, and ultimately from former section 18102 in, the School Code.) The state has specified facility standards for occupancy of school sites since 1933 when the School Code was in force as noted also in *Hall v. City of Taft* (1956) 47 Cal.2d 177, 185-186. (Educ. Code § 17365, formerly Educ. Code § 39210.) In 1956, the California Supreme Court considered school safety issues in *Hall v. City of Taft* and found that the state fully occupied the field in specifying construction requirements for schools to be sure they were reasonably safe for their intended use as schools. (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 185-186.) Subsequently, building standards for school facilities were

enacted under the Field Act (Educ. Code § 17281 et seq.) "to expedite the provision of safe educational facilities for California school children." (Educ. Code § 17366, formerly Educ. Code § 39211.) Districts had to consider and evaluate all costs of site acquisition under Education Code section 15002.1 (subsequently Education Code section 39002, presently section 17212) before 1975, and therefore have no claim to a new reimbursable state mandate on those grounds.

The hazard assessments do not provide a new service to public. Instead, they require research and periodic evaluation at key decisions points, such as the Phase I and PEA, to help inform public spending decisions to assure reasonable use of state school facility funds. This increased level of information also protects against commitment to sites with unknown contamination levels. In addition, these processes assure that the site is reasonably safe for its intended use: occupancy by children for compulsory education. The situation here is similar to *County of Los Angeles v. Department of Industrial Relations* where the court found costs of complying with new elevator fire and earthquake safety standards were not reimbursable as state mandates because they provided no new or increased level of service to the public. (*County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1546.)

Similarly, Education Code sections 17072.13, 17212 and the School Facilities Program statutes (Educ. Code § 17070.10 et seq.) merely clarify and further specify the means to be employed in providing safe schools, as intended by the Legislature as far back as 1933. (See annotations to Educ. Code § 39101, *Hall v. City of Taft* (1956) 47 Cal.2d 177, 185-186.) Here the hazard assessment requirements specify procedures and oversight mechanisms to assure consideration of various hazards without providing a new service to the public. To the extent that the public comment process in hazard assessment requirements are a service to public, the state shares the incremental costs as project costs under the schools facilities program (Educ. Code § 17213.18), thus preventing these costs from becoming either an unfunded mandate or a de facto state mandate under *DOF-2003*.

CONCLUSION

The Commission on State Mandates has numerous grounds to reject the District's Claim that hazard assessment conditions on state funding are reimbursable state mandates.

First, because the districts have the option to apply for state school site funding from the School Facilities Program, their participation in the underlying program is voluntary, optional and not compulsory. Given that districts may choose to stop pursuing a contaminated site at any time, they can avoid the exorbitant hazard assessment costs and are not compelled to participate in the School Facilities Program, which would create a reimbursable mandate. Furthermore, to the extent that local funding sources prove insufficient, the state provides additional economic hardship funding for these hazard assessment requirements under Education Code section 17072.13, subdivisions (d) and (e). For these reasons, therefore the School Facilities Program hazard

assessment requirements are optional and do not qualify as reimbursable state mandates in fact or de facto under *DOF-2003*.

Second, Education Code section 17620, among others, authorizes districts to levy fees, charges, and dedications to fund the local share of school site costs. The multiple levying authorities appear sufficient to cover local costs and the district could withdraw from site acquisition if the costs became exorbitant. Whether the district chooses to levy fees in sufficient quantity is not the proper test. Therefore, the levying authority disqualifies the hazard assessment requirements from being reimbursable under Government Code section 17556, subdivision (d) and the *Santa Margarita Water District* case.

Third, *County of Sonoma* held that shared funding programs such as the school facilities program were not within the ambit of Section 6 of article XIII B of the California Constitution. Therefore the School Facilities Program, a shared state local funding program, is outside the realm of reimbursable mandates. Even if it were not, costs associated with participation in the program do not arise from shifting costs from state to local entities to provide the same services to the public.

Fourth, providing safe school sites was and remains the fiscal and legal duty of the district before 1975 under the various enactments. The hazard assessment conditions on state funding work to provide necessary information to prevent the resulting facility from being unhealthful to children obtaining their compulsory public education. As public safety and health standards, the hazard assessment conditions do not provide a new program or increased level of service to the public as contemplated under the California Constitution's Section 6 of article XIII B, Government Code section 17514, *County of Los Angeles v. Department of Industrial Relations* or *Santa Margarita Water District*.

For all the reasons noted above, as well as any other grounds the Commission may deem proper, the DTSC respectfully urges denial of Clovis Unified School District's Test Claim No. 02-TC-43.

Respectfully submitted,

Antonette Benita Cordero
Chief Counsel and Deputy Director

Dated: October 27, 2003

By: Steve Koyasales, for
VIVIAN S. MURAY
Staff Counsel

Exhibits

LIST OF EXHIBITS

Exhibit A: *Whittier Elementary School Dist. of Los Angeles County v. Kirkwood* (1956) 147 Cal.App.2d 330 (*Whittier*).

Exhibit B: *Hall v. City of Taft* (1956) 47 Cal.2d 177.

Exhibit C: California Research Bureau (CRB), *School Facility Financing: A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds* (1999).

Exhibit D: *Connell v. Superior Court, (Santa Margarita Water District)* (1997) 59 Cal. 4th 382.

EXHIBIT A

(Cite as: 147 Cal.App.2d 330, 305 P.2d 110)

District Court of Appeal, Second District, Division 1,
California.

WHITTIER ELEMENTARY SCHOOL DISTRICT
OF LOS ANGELES COUNTY, Plaintiff and

Respondent,

v.

Robert C. KIRKWOOD, as Controller of the State of
California, Defendant and
Appellant.


Civ. 21915.

Dec. 31, 1956.


Declaratory judgment action by school district against State Controller to determine authority of State Allocation Board to amend order apportioning funds from Public School Building Loan Fund so as to permit district to retain proceeds from sale of replaced school site instead of applying such proceeds toward repayment of the state allocation as required by the resolution which initially approved the allocation. The Superior Court, Los Angeles County, Philip H. Richards, J., entered judgment adverse to Controller and Controller appealed. The District Court of Appeal, Fourn, J., held that Board was authorized to amend the original order so that school district would be entitled to retain the proceeds from sale of the replaced school site.

Judgment affirmed.

West Headnotes

[1] Schools  74
345k74 Most Cited Cases

State Allocation Board has discretion to determine whether proceeds from subsequent sale of replaced school facilities shall be applied toward cost of school construction project financed by funds obtained from the board. West's Ann.Education Code, § § 5041 et seq., 5044.5, 5045, 5048, 5050, 5053-5063, 5058, 5059, 5071-5073.

[2] Schools  74
345k74 Most Cited Cases

Where State Allocation Board had, in original order apportioning funds from Public School Building

Loan Fund for construction of school, required that proceeds from sale of replaced school site be applied toward the repayment of the state allocation, board was thereafter authorized to amend the original order so that school district would be entitled to retain the proceeds from sale of the replaced school site. West's Ann.Education Code, § § 5041 et seq., 5044.5, 5045, 5048, 5050, 5053-5063, 5058, 5059, 5071-5073.

**111 *331 Edmund G. Brown, Atty. Gen., Richard L. Mayers, Deputy Atty. Gen., for appellant.

Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Asst. County Counsel, Los Angeles, for respondent.

FOUR, Justice.

This is an appeal by the defendant from a judgment in an action in declaratory relief brought to determine the authority of the State Allocation Board to amend an order apportioning funds from the Public School Building Loan Fund so as to permit the respondent School District to retain the proceeds from the sale of a replaced school site, instead of applying such proceeds toward the repayment of the state allocation, as set forth in the resolution initially approving such allocation.

On about June 5, 1950, respondent, pursuant to the provisions of chapter 1.6 of Division 3 of the Education Code, filed a written application with the State Allocation Board for an allocation of \$2,689,632.70, for the acquisition and construction of certain school facilities set forth therein. The electors of the respondent District, at an election, had authorized the Board of Trustees of the District to accept and expend an apportionment from the State in an amount not to exceed \$3,250,000, pursuant to the law.

On or about January 9, 1951, the State Allocation Board, by Resolution numbered 1389-106, approved an allocation of \$2,452,472, for the purposes set forth in the application. By this Resolution the respondent District was required to contribute to the costs of the contemplated school project 'the net proceeds or credits allowed from the disposition of any sites, improvements, or facilities sold, transferred, or exchanged as a result of the acquisition or construction of any sites, improvements, or facilities pursuant to Chapter 1.6. * * *' The Resolution further provided: 'That the District shall proceed to dispose of any school building area in excess *332 of the

maximum prescribed by Paragraph 2 of this resolution, and any site or sites scheduled to be abandoned as a result of the acquisition or construction of any sites, improvements or facilities pursuant to Chapter 1.6 above, not later than the date the new construction authorized by this resolution is available for occupancy, provided that the terms, conditions and manner of disposition thereof shall be subject to the approval of the Director of Finance, and provided further that if such excess area or sites have not been disposed of by said date, the District shall dispose of the same in accordance with the instructions of the Director of Finance.'

**112 On or about January 20, 1953, the respondent District requested permission to sell the real property owned by the District, known as the Jonathan Bailey School and site, and to retain the proceeds therefrom 'to be used for the construction of additional classroom facilities in accordance with the needs of the District.'

On or about December 16, 1953, the State Allocation Board adopted Resolution No. 1389-106V, which amended Resolution No. 1389-106, in that it deleted from the original Resolution the requirement that the respondent School District contribute to the cost of the specific project as approved the net proceeds obtained from the disposition by the District of any sites, improvements, or facilities sold, transferred, or exchanged. Said Resolution further purported to authorize respondent District to sell the Jonathan Bailey School and site for not less than \$253,600, and to apply the net proceeds obtained from said sale toward providing or constructing additional but unspecified school facilities.

On or about April 26, 1954, the Attorney General advised the appellant that the State Allocation Board had no authority to amend the original Resolution and that such purported amendment was invalid. About September 8, 1954, the respondent District entered into an agreement with the city of Whittier for the sale of the school site for the sum of \$250,600.

The Attorney General, in his brief, sets forth that on October 27, 1954, the State Allocation Board adopted Resolution numbered 1389-106X, which said Resolution apparently took notice of the fact that the Attorney General had been requested by the Chief of the Local Allocation Division to reconsider his opinion of April 26, 1954. Further, it is said that by this Resolution the approval of the State Allocation Board, in allowing the respondent District to retain

the proceeds *333 from the sale of the Jonathan Bailey School and site was specifically made subject to the approval of the Attorney General. The respondent District points out that this particular Resolution (1389-106X) was never received in evidence.

On or about November 12, 1954, the Attorney General reaffirmed his previous opinion. On January 12, 1955, by Resolution numbered 1389-106Y, the State Allocation Board, after taking notice of the opinions of the Attorney General, reaffirmed its previous position. In this latter Resolution there is contained the following:

'2. That Paragraph 2 to-wit: 'That the approval of the Board, allowing the District to retain the proceeds from the disposition of the Jonathan Bailey School and site, is subject to approval of the Attorney General of the State of California', of Resolution No. 1389/106X, adopted October 27, 1954, is hereby rescinded.'

Thereafter, the appellant demanded that the entire sum received, or to be received, by the respondent District from the sale of the Jonathan Bailey School and site be paid to the State of California, and in his demand stated that if said sums were not paid, that the State Controller would deduct the same from the yearly allotments of state funds to the respondent School District.

Some of the pertinent, relevant provisions of the law involved are as follows: Section 5048 of the Education Code as it read in 1950, and as it now reads, authorizes school districts to file applications for state apportionments with the State Allocation Board, and requires that Board to approve or reject the application.

Section 5050 of the Education Code requires that before an allocation becomes final 95% of the bonded capacity of a school district be outstanding, or if not, that the outstanding bonds be within \$25,000 of the total bond limit. The section then provides as follows:

'At the time the board makes a conditional apportionment pursuant to Section 5048, it shall determine what portion of the total amount of bonds which a district is permitted to issue and sell by law shall be issued and sold by such district, the **113 proceeds of which shall be applied toward the cost of the project for which the apportionment is sought. The portion so determined by the board shall be not less than the minimum amount required for such

apportionment to become final under this section.'

The section also requires the electors of the school district, *334 by a two-thirds vote, to authorize the government board of the district 'to accept, expend, and repay, as provided in this chapter, an apportionment under the provisions of this chapter.' As heretofore indicated, such an election was held in the respondent District and authorized the governing board to accept, expend and repay an amount not to exceed \$3,250,000.

A complete scheme of repayment to the State of apportionments made, with interest, over a period of years is provided by sections 5053 to 5063 of the Education Code, section 5059 providing that interest shall cease after twenty-five years and at the end of thirty years any unpaid balance of an apportionment shall be cancelled. Section 5058 provides for the disposition of the repayments as follows:

'5058. The State Controller shall, during the next fiscal year following that in which he determines the annual repayment as herein provided, deduct the total amount of the annual repayment of each district in equal amounts from each installment of the apportionments made to such district from the State School Fund under Chapter 15 of this division; and, on order of the State Controller, the amount so deducted shall be transferred to the Public School Building Loan Fund. All money transferred to the Public School Building Loan Fund under the provisions of this section shall be available only for transfer to the General Fund under the provisions of Section 5103.'

Other than as provided in the above referred to sections, there is no provision, so far as we are able to locate, requiring school districts to apply any other funds, either available at the time of the application or to become available from the sale of assets, towards the construction project or as a reduction or repayment of the apportionment, nor is there any provision in any of the sections requiring the State Allocation Board to include such provisions in the granting of the apportionment, this matter resting wholly within its discretion.

Pursuant to its rule-making power, the State Allocation Board adopted, among others, two rules as follows: Rule 1778 provides that at the time of making an apportionment the State Allocation Board shall prescribe the amount of funds to be contributed by the district toward the construction project, and in determining the amount of available funds may specify that proceeds from the sale of any facilities to

be replaced through an apportionment shall be applied toward the cost of the construction project as such proceeds become available. Thus, by its own rule, the Board has discretion to *335 require the proceeds from the sale of facilities to be used toward the project.

Rule 1781 provides, so far as material, as follows: 'Notwithstanding anything to the contrary in these rules and regulations, the Board shall have power:

* * *

'(c) To modify any apportionment or resolution of apportionment, either conditional or final, where the Board determines that good cause exists therefor.

'This section shall apply to any apportionment or resolution of apportionment heretofore or hereafter made or adopted by the Board.'

The respondent has pointed out that under section 5058 of the Education Code it is required that the State Controller deduct the amount of annual repayments of each district from the apportionments made to such district from the State School Fund and to transfer the amount so deducted to the Public School Building Loan Fund and from there to the General Fund under the provisions of section 5103. The latter section provides for the accumulation of money to retire the State school bonds. Thus, **114 should the appellant deduct the amount here involved from the regular yearly State apportionment to respondent District, it would eventually come to rest in the General Fund and would not be available for an allotment to any other school district.

The only provisions we have been able to locate providing for reimbursing the Public School Building Loan Fund after an allocation has been made to a school district are when the money allocated has been expended for unauthorized purposes, or is in excess of the final cost of the project, under section 5071 of the Education Code; when any unexpended portion of an allocation remains after three years has expired, section 5072 of the Education Code; and when a school site acquired with money allocated is sold within three years, section 5073 of the Education Code. The money in question in the instant case does not fall within any of the categories named.

The respondent also points out that the legislature, in the 1955 session amended section 5048 by adding thereto, among other things, the following:

'The board may for such good cause as it shall

determine, reduce the amount of, or modify any provisions relating to, any contribution required of a school district under the terms of an apportionment, other than any contribution required *336 of such district under Section 5050 from the sale of bonds; provided, that the board may not, without the consent of the district, increase the amount of any district contribution under the terms of an apportionment, in the absence of mistake arising from any source, or misrepresentation, concealment, or omission, on the part of the district, intentional or otherwise. *The provisions of this paragraph shall be applicable to apportionments heretofore or hereafter made.*' (Emphasis added.) (Stats.1955, ch. 1734, §. 3.)

It would appear therefore, that the legislature validated the actions of the State Allocation Board.

The trial judge in this matter prepared an opinion in writing wherein he set forth his reasoning and the law of the case. We believe the cause was correctly and properly disposed of in the trial court and we adopt as part of this opinion the memorandum opinion of the trial court which is as follows:

'The sole question for determination in this case is the authority of the State Allocation Board to amend an order apportioning funds from the Public School Building Loan Fund, so as to permit the plaintiff School District to use the proceeds from the sale of a replaced school site for the construction of additional school buildings, instead of applying such proceeds toward the repayment of the allocation as originally provided in the resolution approving such allocation.

'It is clear that the school building aid program embraced in Article 1, Chapter 1.6, Division 3 of the Education Code is to provide necessary and adequate school sites and buildings for financially distressed school districts.

'While the Act (Section 5048) requires the Director of Finances to determine the district's financial ability to meet all or a portion of the cost out of available funds, there is no provision in the Act which requires the Board to compel the district to contribute any of its available funds or funds which thereafter become available, except in the case of a sale within three years of a site or improvements purchased or improved in whole or in part from an apportionment (Section 5073).

'Rule 1778 adopted by the Board, pursuant to authority of Section 5045, provides that the Board *shall* prescribe the amount of funds to be contributed by the District and *may* specify that the proceeds

from the sale of any facilities to be replaced through an apportionment shall be applied toward the cost of the approved project.

[1]*337 'In the first instance then, it is within the Board's discretion to determine **115 if proceeds from the subsequent sale of replaced facilities shall be applied toward the cost of the project.

'Rule 1781 provides that the Board may modify any apportionment, conditional or final, where the Board determines that good cause exists therefor. With no statutory provision relating to the use of funds subsequently becoming available from the sale of replaced facilities, and with authority to modify an apportionment for good cause, it would appear that the Board has authority to modify the provision of an apportionment requiring the District to contribute the net proceeds from the disposition of any replaced facilities by excepting therefrom the net proceeds acquired by the District from the sale of a particular school and site.

'The Attorney General contends that both the statute and the Board rules require the District to make use of all its available funds before obtaining State aid. This contention is not supported by any provision of the statute or by the Board rules.

'The Attorney General further contends that by modifying the apportionment provision relating to the contribution of proceeds from the sale or replaced facilities, by exempting the proceeds from the sale of one site and improvements, the Board has in effect approved the use of such proceeds for a project without first requiring the District to apply for an apportionment of such sum in the manner prescribed by law. The fallacy of this contention is that the Board is not required by law, nor by its own rules to require such contribution in originally approved apportionment. An expenditure of the District's funds subsequently becoming available is not an allocation from the Public School Building Loan Fund.

'It is a further contention of the Attorney General that to permit the plaintiff to retain and use the proceeds received from the sale of replaced facilities subverts the entire statutory scheme envisaged in the State Building Aid program in that it would render completely ineffectual the priority system contained in the Act. Sec. 5044.5 provides that the Board shall by rule give priority in allocating funds to districts where the children will benefit most from additional facilities. After setting forth the several bases for priority, the section provides that the Board may make exceptions when it determines that it will be for

(Cite as: 147 Cal.App.2d 330, 305 P.2d 110)

the benefit of the children affected. Thus it appears that even a waiver of *338 priority is within the discretion of the Board and not in conflict with the enabling statute.

[2] 'We conclude that the Board was authorized to amend the original resolution by the adoption of the resolution of December 16, 1953, authorizing the District to sell the Jonathan Bailey School and site and to apply the proceeds to the construction of the facilities specified in the amendatory resolution.'

Judgment affirmed.

WHITE, P. J., and DORAN, J., concur.

305 P.2d 110, 147 Cal.App.2d 330

END OF DOCUMENT

KEYCITE

CITATION: Whittier Elementary School Dist. of Los Angeles County v. Kirkwood, 147 Cal.App.2d 330, 305 P.2d 110 (Cal.App. 2 Dist., Dec 31, 1956) (NO. CIV. 21915)

History

=> 1 Whittier Elementary School Dist. of Los Angeles County v. Kirkwood, 147 Cal.App.2d 330, 305 P.2d 110 (Cal.App. 2 Dist. Dec 31, 1956) (NO. CIV. 21915)

EXHIBIT B

Supreme Court of California, In Bank.

Guy HALL, Plaintiff and Respondent,

v.

The CITY OF TAFT, a Municipal Corporation, Glen Black, Jack Kirsher, Ted Pheal, William O. Erickson, Dale Huey, as members of the City Council thereof, and Walter McKee, as Chief of Police thereof, Defendants and Appellants.

L. A. 24244.

Oct. 19, 1956.

Building contractor's action to enjoin city and others from enforcing its building ordinance against him in connection with construction of public school building. The Superior Court, Kern County, William L. Bradshaw, J., entered judgment for contractor and defendants appealed. The Supreme Court, Carter, J., held that the state had pre-empted the field of regulating public school building construction so that construction of such building by school districts is not subject to building regulations of municipal corporation within which building is erected.

Affirmed.

Opinion 297 P.2d 686, vacated.

West Headnotes

[1] Schools 20
345k20 Most Cited Cases

The public schools are a matter of state-wide rather than local concern and their establishment, regulation and operation are governed by the Constitution. West's Ann.Const. art. 4, § 25; subd. 27; art. 9, § § 1, 3, 3.1, 4, 5, 7; art. 13, § 15.

[2] Schools 20
345k20 Most Cited Cases

The power of the state Legislature over the public schools is plenary subject only to any constitutional restrictions. West's Ann.Const. art. 9, § § 6, 6 1/2, 8, 14.

[3] Municipal Corporations 592(1)
268k592(1) Most Cited Cases

Public school system is of state-wide supervision and concern and legislative enactments thereon control over attempted regulation by local government units. West's

Ann.Const. art. 9, § § 6, 6 1/2, 8, 14.

[4] Schools 65
345k65 Most Cited Cases

Public school property is held in trust for school purposes by the persons and corporations authorized for the time being to control such property, and it is within the power of the Legislature to provide for a change in the trusteeship of such property in certain contingencies.

[5] Schools 71
345k71 Most Cited Cases

Constitutional provision giving and county, city, town or township power to enforce within its limits all local, police, sanitary and other regulations not in conflict with general laws, does not confer upon local unit power to regulate construction of public school buildings. West's Ann.Const. art. 11, § 11; West's Ann.Gov.Code, § § 38601, 38660.

[6] Municipal Corporations 592(1)
268k592(1) Most Cited Cases

The state has completely occupied the field of regulating public school building construction, and construction of such school buildings by school districts is not subject to the building regulations of a municipal corporation in which the building is constructed. West's Ann.Education Code, § § 5021, 5041, 18001, 18002, 18009, 18055, 18057, 18101, 18102, 18151, 18191, 18193, 18194-18196, 18199-18201.

[7] Municipal Corporations 592(1)
268k592(1) Most Cited Cases

A city may not enact ordinances which conflict with the general laws on statewide matters.

[8] Schools 71
345k71 Most Cited Cases

The provisions of the Health and Safety Code requiring buildings with certain exceptions to meet certain standards as well as requiring building permits to be obtained from proper city or county officers charged with enforcement of laws for regulating construction, do not limit or modify provisions of Education Code delineating standards for public school buildings. West's Ann.Health & Safety Code, § § 19100-19170, 19130, 19132, 19150, 19151; West's Ann.Education Code, § § 18191 et seq., 18202-18204, 18221, 18222.

[9] Schools 71
345k71 Most Cited Cases

17
18

Purpose of rules adopted for construction of school buildings under the Education and Health and Safety Codes is to protect lives and property of people by regulating the design and construction of public school buildings so that, in addition to the normal loads to which such buildings are subjected, they shall resist future earthquakes. West's Ann. Health & Safety Code, § 19100-19170, 19130, 19132, 19150, 19151; West's Ann. Education Code, § 18191 et seq., 18202-18204, 18221, 18222.

[10] Administrative Law and Procedure 330
15Ak330 Most Cited Cases

The final construction of a statute is the function of the courts.

**575 *178 Henry G. Baron, City Atty., Taft, and Allen Grimes, Modesto, for appellants.

Mack, Bianco, King & Eyherabide and Dominic Bianco, Bakersfield, for respondent.

Edmund G. Brown, Atty. Gen., Richard H. Perry, Deputy Atty. Gen., Johnson & Stanton, Gardiner Johnson and Thomas E. Stanton, Jr., San Francisco, as amici curiae on behalf of respondent.

*179 CARTER, Justice.

Defendants, Taft, a non-chartered city of the sixth class, its council and chief of police appeal from a judgment enjoining it from enforcing against plaintiff, a building contractor, its building ordinance.

**576 There is no dispute as to the facts. On April 22, 1955, plaintiff as contractor entered into a contract with Taft Union High School and Junior College District, hereafter called district, a school district duly organized under the state laws, to construct in Taft for the district, a school building for \$614,113. The plans and specifications for the building were approved by the State Department of Education and State Division of Architecture. Plaintiff commenced construction which was to be completed in 320 days, but work was 'stopped' by Taft, the city, demanding that plaintiff obtain a building permit from it involving a \$300 fee and submission to the building ordinance[FN1] of Taft. The district has employed an inspector to assure that the building is constructed according to the plans and specifications. Defendants assert that plaintiff has refused to obtain a permit from the city for the construction of the building and they intend to enforce the penal and civil provisions of the building ordinance of the city.

FN1. Taft by ordinance had adopted the 'Uniform Building Code 1952 edition adopted and published by the Pacific Coast Officials Conference in 1950.'

The issue is whether a municipal corporation's building regulations are applicable to the construction of a public school building by a school district in the municipality. Taft argues that it had power to adopt police regulations building construction regulations under the Constitution.[FN2]

FN2. 'Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws.' Cal. Const. art. XI, s 11.

[1] The public schools of this state are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution and the state Legislature is given comprehensive powers in relation thereto. The Legislature shall not pass local or special laws 'Providing for the management of common schools.' Cal. Const. art. IV, s 25, subd. 27. 'A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement.' Emphasis added; id., art. IX, s 1. There *180 is a State Board of Education, an elected superintendent of public instruction and there are county superintendents whose salary and qualifications are prescribed by the Legislature, id., art. IX, ss 3, 3.1, 7. The proceeds of all public lands that have been or may be granted by the United States to the state and other property is 'inviolably' appropriated to the support of the common schools, id., art. IX, s 4, and 'Out of the revenue from state taxes for which provision is made in this article, together with all other state revenues, there shall first be set apart the moneys to be applied by the State to the support of the Public School System and the State University.' Id., art. XIII, s 15. 'The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.' Emphasis added; id., art. IX, s 5. 'The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be directly or indirectly

transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System. * * *

[2][3][4] 'The Legislature shall provide for the levying annually by the governing body of each county, and city and county, **577 of such school district taxes, at rates not in excess of the maximum rates of school district tax fixed or authorized by the Legislature, as will produce in each fiscal year such revenue for each school district as the governing board thereof shall determine is required in such fiscal year for the support of all schools and functions of said district authorized or required by law.' Emphasis added; *id.*, art. IX, s 6. A school district may lie in more than one county and may issue bonds. *Id.*, art IX, s 6 1/2. No money shall ever be appropriated for 'any school not under the exclusive control of the officers of the public schools * * *.' *Id.*, art. IX, s 8. 'The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and junior college districts, of every kind and class, and may classify such districts.' Emphasis added; *id.*, art. IX, s 14. In harmony with those provisions it has been held that the power of the state Legislature over *181 the public schools is plenary, subject only to any constitutional restrictions. Pass School Dist. of Los Angeles County v. Hollywood Dist., 156 Cal. 416, 418, 105 P. 122, 26 L.R.A.,N.S., 485; Kennedy v. Miller, 97 Cal. 429, 32 P. 558; Worthington School Dist. v. Eureka Dist., 173 Cal. 154, 159 P. 437; Merrill Elementary School Dist. of Tehama County v. Rapose, 125 Cal.App.2d 819, 271 P.2d 522; see Woodcock v. Dick, 36 Cal.2d 146, 222 P.2d 667; Seidel v. Waring, 36 Cal.2d 149, 222 P.2d 669. The public school system is of statewide supervision and concern and legislative enactments thereon control over attempted regulation by local government units. Esberg v. Badaracco, 202 Cal. 110, 259 P. 730; Cloverdale Union High School Dist. of Sonoma County v. Peters, 88 Cal.App. 731, 264 P. 273; Piper v. Big Pine School Dist., 193 Cal. 664, 226 P. 926; Kelso v. Board of Education, 42 Cal.App.2d 415, 109 P.2d 29; Kennedy v. Miller, *supra*, 97 Cal. 429, 32 P. 558; Worthington School Dist. v. Eureka Dist., *supra*, 173 Cal. 154, 159 P. 437; Board of Education of City of San Rafael v. Davidson, 190 Cal. 162, 210 P. 961; Phelps v. Prussia, 60 Cal.App.2d 732, 141 P.2d 440; Lansing v. Board of Education, 7 Cal.App.2d 211, 45 P.2d 1021; People ex rel. Davidson v. Mertz, 2 Cal.2d 136, 39 P.2d 422; Gerth v. Dominguez, 1 Cal.2d 239, 34 P.2d 135. It is said in Piper v. Big Pine School Dist., *supra*, 193 Cal. 664, 669, 226 P. 926, 928: 'It (the education of the children of the state) is in a sense exclusively the function of the state which cannot be delegated to any other agency. The education of the children of the state is an obligation which the state took over to itself by the adoption of the Constitution. To accomplish the purposes therein expressed the people must keep under their exclusive

control, through their representatives, the education of those whom it permits to take part in directing the affairs of state.' School districts are agencies of the state for the local operation of the state school system. Cloverdale Union High School Dist. of Sonoma County v. Peters, *supra*, 88 Cal.App. 731, 738, 264 P. 273; Board of Education of City of San Rafael v. Davidson, *supra*, 190 Cal. 162, 168, 210 P. 961; Butler v. Compton Junior College Dist., 77 Cal.App.2d 719, 176 P.2d 417; Lansing v. Board of Education, *supra*, 7 Cal.App.2d 211, 45 P.2d 1021; Merrill Elementary School Dist. of Tehama County v. Rapose, *supra*, 125 Cal.App.2d 819, 271 P.2d 522. The beneficial ownership of property of the public schools is in the state. It is said in Pass School Dist. of Los Angeles County v. Hollywood Dist., *supra*, 156 Cal. 416, 419, 105 P. 122, 124, 26 L.R.A.,N.S., 485: 'To the contention that a transfer of ownership thus accomplished works the taking of property without due process of law, it should be sufficient *182 to point out that in all such cases the beneficial owner of the fee (of public school property) is the state itself, and that its agencies and mandatories the various public and municipal corporations in whom the title rests are essentially nothing but trustees of the state, holding the property and devoting it to the uses which the state itself directs. The transfer of title without due process **578 of law, of which appellant so bitterly complains, is nothing more, in effect, than the naming by the state of other trustees to manage property which it owns and to manage the property for the same identical uses and purposes to which it was formerly devoted. In point of law, then, the beneficial title to the estate is not affected at all. All that is done is to transfer the legal title under the same trust from one trustee to another. In this sense the trustees of the Hollywood City School District became, by operation of law, successors to the trustees of the Pass School District, as is directly held in (School Township of) Allen v. School Town of Macey, 109 Ind. 559, 10 N.E. 578, where it is said: 'It is now a well-recognized legal inference deducible as well from general principles as from the decided cases that under the Constitution and laws of this state, public school property is held in trust for school purposes by the persons or corporations authorized for the time being to control such property, and that it is in the power of the Legislature to provide for a change in the trusteeship of such property in certain contingencies presumably requiring such a change, or, indeed, to change the trustees of that class of property whenever it may choose to do so.'

[5] Even if such well-established principles could be set aside under the plea that they work injustice in the individual case, this plea here presented is without merit. The state is profoundly interested in the education of its young, but has no deep concern over the personality of the trustees who shall administer this trust, so long as the administration is in the orderly form of law.' See.

Fawcett v. Ball, 80 Cal.App. 131, 136, 251 P. 679; Butler v. Compton Junior College Dist., 77 Cal.App.2d 719, 176 P.2d 417; Kennedy v. Miller, 97 Cal. 429, 32 P. 558; Gridley School District v. Stout, 134 Cal. 592, 66 P. 785. While a large degree of autonomy is granted to school districts by the Legislature, we are referred to no statute or constitutional provision which, as far as the question here involved is concerned, expressly makes school buildings or their construction any more amenable to regulation by a municipal corporation than structures which are *183 built and maintained by the state generally for its use. When it engages in such sovereign activities as the construction and maintenance of its buildings, as differentiated from enacting laws for the conduct of the public at large, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation. Section 11 of article XI of the state Constitution, supra, should not be considered as conferring such powers on local government agencies. Nor should the Government Code sections which confer on a city the power to regulate the construction of buildings within its limits, see Government Code, ss 38601, 38660, be so considered. It is said in In re Means, 14 Cal.2d 254, 258, 93 P.2d 105, 107, 123 A.L.R. 1378, holding that a state employee working on a state structure in a city need not meet the requirements of a city charter provision: 'If one who has been employed by the state may not work on state property within a municipality without the consent of the municipality obtained after examination, the city has, in effect, added to the requirements for employment by the state, and restricted the rights of sovereignty. * * *

'Turning to the contentions of the respondent that the regulation of plumbing is a municipal affair, the rule to be applied is not entirely a geographical one. Under certain circumstances, an act relating to property within a city may be of such general concern that local regulation concerning municipal affairs is inapplicable. * * * For example, where one of the city's streets has been declared by an act of the legislature to be a secondary highway, the improvement of that street is not a municipal affair within the meaning of the Constitution. * * * Also, regulations prescribed by charter or ordinance of a city requiring that the work of altering and improving buildings be subject to **579 local supervision have been held inapplicable to state buildings. City of Milwaukee v. McGregor, 140 Wis. 35, 121 N.W. 642, 17 Ann.Cas. 1002.

'In the case of Kentucky Institution for Education of Blind v. City of Louisville, 123 Ky. 767, 97 S.W. 402, 404, 8 L.R.A., N.S., 553, the city attempted to enforce an ordinance relating to fire escapes with respect to a state institution for the blind. The court held the ordinance inapplicable, stating: 'The principle is that the state, when creating municipal governments, does not cede to them any control of the state's property situated within them,

nor over any property which the state has authorized another body or power to control. *184 The municipal government is but an agent of the state not an independent body. It governs in the limited manner and territory that is expressly or by necessary implication granted to it by the state. It is competent for the state to retain to itself some part of the government even within the municipality, which it will exercise directly, or through the medium of other selected and more suitable instrumentalities. How can the city have ever a superior authority to the state over the latter's own property or in its control and management? From the nature of things it cannot have." See, also, Board of Education of City of St. Louis v. City of St. Louis, 267 Mo. 356, 184 S.W. 975; Salt Lake City v. Board of Education, 52 Utah 540, 175 P. 654; 31 A.L.R. 450.

Pasadena School Dist. v. City of Pasadena, 166 Cal. 7, 134 P. 985, 47 L.R.A., N.S., 892, fails to consider the factors above mentioned and insofar as it is inconsistent with this opinion it is overruled. The question here considered was not involved in Roman Catholic Welfare Corporation of San Francisco v. City of Piedmont, 45 Cal.2d 325, 332-333, 289 P.2d 438.

[6][7] Moreover, in connection with the foregoing and as an additional ground why the construction of school buildings by school districts are not subject to the building regulations of a municipal corporation in which the building is constructed, is that the state has completely occupied the field by general laws, and such local regulations conflict with such general laws, when we consider the activity involved. A city may not enact ordinances which conflict with general laws on statewide matters. Simpson v. City of Los Angeles, 40 Cal.2d 271, 253 P.2d 464; Pulcifer v. County of Alameda, 29 Cal.2d 258, 175 P.2d 1; Ex parte Daniels, 183 Cal. 636, 192 P. 442, 21 A.L.R. 1172; Atlas Mixed Mortar Co. v. City of Burbank, 202 Cal. 660, 262 P. 334; Ganley v. Claeys, 2 Cal.2d 266, 40 P.2d 817; In re Murphy, 190 Cal. 286, 212 P. 30; In re Mingo, 190 Cal. 769, 214 P. 850; Natural Milk Producers Ass'n of California v. City & County of San Francisco, 20 Cal.2d 101, 124 P.2d 25; Pipoly v. Benson, 20 Cal.2d 366, 125 P.2d 482, 147 A.L.R. 515; Tolman v. Underhill, 39 Cal.2d 708, 249 P.2d 280. The particular situation presented and discussed in those cases is not helpful. In re Means, supra, 14 Cal.2d 254, 93 P.2d 105, 123 A.L.R. 1378, herein discussed is most pertinent as it involves the attempted regulation of a state activity by a city, as distinguished from regulations of the members of the public.

The Education Code sets out a complete system for the construction of school buildings. The Legislature there declares *185 that it is in the interest of the state to aid school districts in the construction of school buildings for the maintenance of the public school system.

inasmuch as the system is of general concern and the education of the children is an obligation and function of the state. Ed.Code, ss 5021, 5041. The governing board of any school district shall manage and control the school property within its district, id., s 18001. It (the board) shall furnish and repair the school property. Id., s 18002. It shall provide as a part of school buildings patent flush water closets for the use of the pupils, id., s 18009. It may repair old buildings by day's labor or by force account, id., ss 18055, 18057. The State Department of Education shall: 'Establish standards for school buildings', review and approve all plans and specifications for buildings and disapprove those not meeting the standards, furnish plans, specifications and 'building codes,' and make rules and regulations to carry out those activities, id., ****580**ss 18102, 18101. 'The governing board of any school district may, and when directed by a vote of the district shall, build and maintain a schoolhouse', id., s 18151. Except in cities having a board of education the county superintendent shall pass upon all plans for school buildings and plans shall be submitted to him. 'The Division of Architecture of the Department of Public Works under the police power of the State shall supervise the construction of any school building or, if the estimated cost exceed four thousand dollars (\$4,000), the reconstruction or alteration of or addition to any school building, for the protection of life and property.' Id., s 18191. "Construction or alteration' as used in this article includes any construction, reconstruction, or alteration of, or addition to, any school building.' Id., s 18193. 'The Division of Architecture shall pass upon and approve or reject all plans for the construction or alteration of any school building. To enable it to do so, the governing board of each school district and any other school authority before adopting any plans for a school building shall submit the plans to the Division of Architecture for approval, and shall pay the fees prescribed in this article.' Id., s 18194. 'Before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Division of Architecture, shall be first had and obtained.' Id., s 18195. 'In each case the application for approval of the plans shall be ***186** accompanied by the plans and full, complete, and accurate specifications, and structural design computations, and estimates of cost, which shall comply in every respect with any and all requirements prescribed by the Division of Architecture.' Id., s 18196. All plans and specifications shall be prepared by a duly state licensed architect or engineer and the supervision of the work shall be by a duly licensed person. Id., s 18199. No contract for construction is valid and no public money shall be paid for any work or materials furnished thereunder 'unless the plans, specifications, and estimates comply in every particular with the provisions of this article and the requirements prescribed by the Division of Architecture and unless the approval thereof in writing has first been had and obtained from the division.' Id., s

18200. Progress reports must be made to the division, id., s 18201. 'The State Division of Architecture shall make such inspection of the school buildings and of the work of construction or alteration as in its judgment is necessary or proper for the enforcement of this article and the protection of the safety of the pupils, the teachers, and the public. The school district, city, city and county, or the political subdivision within the jurisdiction of which any school building is constructed or altered shall provide for and require competent, adequate, and continuous inspection during construction or alteration by an inspector satisfactory to the architect or structural engineer and the Division of Architecture. The inspector shall act under the direction of and be responsible to the architect or structural engineer.' Emphasis added; id., s 18203. The division may adopt rules and regulations to carry out its duties and a violation of the provisions is a felony, id., ss 18202, 18204. If the supervisor of health of any school district notes any defect in 'plumbing, lighting, or heating,' he shall report to the district and if it does not act, to the county superintendent. Id., s 18221. Each building, if two or more stories, shall have fire escapes, id., s 18222.

[8] It is urged, however, that the foregoing provisions must be read in the background in which they were adopted, that is, that some of them were placed in the ****581** Education Code from the Field Act adopted in 1933, Stats.1933, ch. 59, and must be construed with the Riley Act of 1933, Stats.1933, ch. 601, now in the Health & Safety Code, sections 19100-19170. The Riley Act provides that all buildings (with certain exceptions Health & Safety Code, s 19100) must meet certain standards which are set forth, id., ss 19150, 19151. ***187** Building permits must be obtained from the proper city or county officers charged with the enforcement of laws regulating construction, id., s 19130. Any city or county may establish construction standards higher than those established by sections 19150 and 19151 of the Health & Safety Code. Plans and specifications for buildings shall be filed with the application for a building permit, id., s 19132. Both the Field and Riley Acts were enacted as urgency measures, the urgency being stated to be the series of earthquakes occurring shortly prior thereto, Stats.1933, ch. 59, s 9; 1933, ch. 601, s 8. We do not believe, however, that the Health & Safety Code provisions (Riley Act) limit or modify the provisions of the Education Code (Field Act) above discussed. The former deal with structural design aimed at procuring buildings less dangerous from the standpoint of earthquakes, Health & Safety Code, ss 19150, 19151, while the latter, as above pointed out, are broad and comprehensive including the whole field of construction regulations. The urgency that impelled the Legislature to enact both as urgency measures may have been the same but the scope is clearly different. Hence the provisions in the former providing for more stringent local regulations are not applicable to the latter.

[9] Reference is made to rules and regulations, past and present, adopted for the construction of school buildings under the Education and Health & Safety Codes. Calif. Administrative Code, Title 21, Public Works, Division of Architecture, Chap. 1, subchap. 1. The purpose of the rules (we refer to the rules now in existence) is to protect lives and property of the people by regulating the design and construction of public school buildings so that, in addition to the normal loads to which such buildings are subjected, they shall resist future earthquakes. Title 21, subchap. 1, Group 1, Art. I, s 1. The rules are intended to establish 'reasonable standards and minimum requirements' for the construction of such buildings in order to attain the requisite stability to withstand loads and forces 'and to insure safety of construction' id., s 2. The detailed regulations set forth in sections 101 to 1206 have been adopted as a basis for the approval of plans and specifications. 'It is not the intention to limit the ingenuity of the designer nor to interfere with existing building rules and regulations where such rules and regulations are more stringent. Where the designer desires to depart from the methods of analysis set up by these rules and regulations, it will be necessary that he submit his method in detail *188 together with complete information including computations and test data covering the design in question. Permission to deviate from these rules and regulations is optional with the Division of Architecture and is dependent upon the division being satisfied that the structural members or portions of the building involved would provide at least such safety as would have been obtained had these rules and regulations been adhered to strictly.' Id., s 70. 'Regulations and design values established in these rules and regulations are minimum requirements. Nothing herein contained shall be interpreted to interfere with or to waive the requirements of applicable local or state building laws or ordinances where the requirements of those laws are more stringent than the requirements of these rules and regulations.' Id., s 115. However, it is also provided that: 'No rule or regulation shall be construed to deprive the Division of Architecture of its right to exercise the powers conferred upon it by law, or to limit the division in such enforcement of the act as is necessary to secure safety of construction and the proper administration of the law.' Id., s 5.

**582 [10] It is very doubtful that those rules indicate an intention to interpret the Education Code sections to mean that a city's building regulations must be met in the construction of a school building. They tend more to indicate that the school districts could follow such regulations as well as those of the state but are not bound to do so. In any event, since the final construction of a statute is the function of the courts (2 Cal.Jur.2d, Administrative Law, s 17), we hold the statutes here involved should not be construed as requiring a school district to comply with the building regulations of a city.

There is no necessity for comparing in detail Taft's building code and the numerous comprehensive building regulations contained in the Education Code and the rules and regulations of the Division of Architecture, for as we have seen the state has occupied the field. As said in In re Means, supra, 14 Cal.2d 254, 258, 260, 93 P.2d 105, 107, 123 A.L.R. 1378, in speaking of the effect of a city ordinance, establishing standards for plumbers, on a state employee in a city, the state civil service system provides a comprehensive plan for the selection of state employees and although the city ordinance does not purport to prescribe the conditions for state employment, 'If one who has been employed by the state may not work on state property within a *189 municipality without the consent of the municipality obtained after examination, the city has, in effect, added to the requirements for employment by the state, and restricted the rights of sovereignty. * * *

'Although the legislature has enacted no statute regulating plumbing, if the city's ordinance is a valid exercise of power, then one whom the state has examined and found eligible for employment as a plumber and who has later entered the state civil service, may be unable to work on state property because he cannot pass the examination of a city health officer or licensing board. The result is a direct conflict of authority. Either the local regulation is ineffective or the state must bow to the requirement of its governmental subsidiary. Upon fundamental principles, that conflict must be resolved in favor of the state.' (Emphasis added.) The same comments apply to the references in the instant construction contract and specifications that the building is to be constructed in compliance with local regulations.

The judgment is affirmed.

GIBSON, C. J., and SHENK, TRAYNOR, SCHAUER, SPENCE and McCOMB, JJ., concur.

302 P.2d 574, 47 Cal.2d 177

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School Facility Financing

A History of the Role of the State
Allocation Board and Options
for the Distribution of
Proposition 1A Funds

By Joel Cohen

*Prepared at the Request of
Senator Quentin Kopp*

FEBRUARY 1999

CRB 99-41

C A L I F O R N I A R E S E A R C H B U R E A U

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EXECUTIVE SUMMARY

As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand. Recognizing the substantial need for infrastructure, in November 1998, California voters passed Proposition 1A, a bond measure that provides \$6.7 billion for public K-12 school construction and repair.

This measure establishes two new programs for the disbursement of bond funds and simplifies the application process by which schools apply for school construction resources. This change in programs, and in the methods by which funds are allocated, is important to the people of the State, as school districts, many of which have facilities in serious disrepair or require new construction, vie for their portion of the \$6.7 billion pie.

Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.

In order to understand the significance and relevance of this new process and its concomitant programs, however, it is useful to review the history of school construction financing in California and to understand the various pitfalls that existed under previous programs so as to avoid similar pitfalls in the future. This paper discusses that history and highlights the problems with preexisting programs.

It begins with an examination of the State Allocation Board and its staff (the Office of Public School Construction). Specifically, it reviews the role of the Board which is responsible for establishing policies for the distribution of school facility financing funds. It discusses how the Board, which was established in 1947, has evolved during the past five decades from one that set policy for various *loan* programs to one that today sets policy for *grant* programs.

The paper also discusses how various externalities—legislative or voter imposed initiatives, such as Proposition 13—have affected the Board's policies and procedures. The paper notes that the Board changed its policies often, and its policy shifts created an untenable dynamic for school districts as they attempted to secure funding. In particular, the paper highlights how districts were forced to weave their way through a complex, bureaucratic maze of applications, forms, and plans; and how this dynamic forced school districts to employ sophisticated personnel, or to contract with savvy consultants, in order to secure state financing for their construction projects.

This paper also presents a history of bond initiatives during the past five decades. It is clear that throughout this history there was never enough State money available to school districts for facility construction or repair. In fact, in spite of the \$6.7 billion approved by Proposition 1A, experts estimate that an additional \$10 billion will be required during the next decade. This paper discusses how the constant shortage of funds caused districts to use "whatever" means available to them to secure funding.

Voters have consistently been generous in approving the vast majority of statewide bond initiatives. Only three bond proposals out of 24 have failed in the past 50 years, and those that failed did so during times of recession. However, it is not clear how much additional debt voters will be willing to incur. This has especially been true since the passage of Proposition 13 in 1978, when the State began taking on a larger role in supporting school construction than it had before. To that end, this paper discusses how Proposition 1A creates a mechanism for school districts to tap state resources, and how school districts may need to tap other sources of facility funding.

Proposition 1A forges a partnership between the State and school districts for financing the construction and repair of their schools. Under its new programs, the State will provide 50 percent of the cost associated with building new schools, and provide 80 percent of the cost associated with modernizing existing facilities. It requires school districts to match state resources. However, school districts that are unable to offer this match can receive hardship funds based on prescriptive criteria. This paper provides details regarding these new programs and compares them to programs previously administered by the State Allocation Board. It also discusses how the Board is required to respond to district requests.

Proposition 1A is not the only impetus behind simplifying the school facility financing process. Concurrently, the Office of Public School Construction has rewritten the application process for funds to make it more user-friendly to school districts and has even offered applications and program information via the Internet. This paper discusses these changes.

The paper concludes with options that the Governor and the Legislature may wish to consider, including: offering protection to small and rural school districts when bond funds are exhausted; requiring annual financial reporting by the State Allocation Board; providing an on-line technical support for program applicants; and redeveloping the State funding source for school facility construction and rehabilitation.

REQUEST FOR RESEARCH

Programs and administrative procedures in Proposition 1A may produce significant changes to the previous programs and the manner by which the State Allocation Board distributes resources for school facility construction. In light of these changes, Senator Quentin Kopp requested that the California Research Bureau provide research on the following topics:

- A history of the State Allocation Board. How was the board's funding program intended to work and how has it evolved?
- An explanation of the State Allocation Board process. How does the State Allocation Board work? What are the procedures and criteria for receiving allocations? How are priorities set?

INTRODUCTION—THE PASSAGE OF PROPOSITION 1A

On November 3, 1998, California voters passed Proposition 1A - a \$9.2 billion school bond initiative, and the largest of its kind passed in our nation's history. Over the next four years, revenues from Proposition 1A's general obligation bonds will provide \$6.7 billion to public K-12 schools and \$2.5 billion to public colleges and universities for the purposes of constructing new facilities and repairing existing ones.

The State Allocation Board will have the responsibility for determining a fair means of distributing the \$6.7 billion available to K-12 schools. Many experts feel that developing such a system will be a daunting task, in spite of the fact that Proposition 1A/Senate Bill 50 is very prescriptive regarding the allocation of its bond funds.

This paper begins with a history and a discussion of the role of the State Allocation Board. Next, it examines the 24 state bond initiatives since 1947 and discusses how the Board has evolved its policies for distributing resources generated by these bond efforts. It then presents an overview of Proposition 1A and how this initiative creates a new allocation program that differs from previous ones. The paper also discusses the various problems that existed within the State Allocation Board's previous resource allocation systems and how Proposition 1A addresses these problems. It concludes with a section that offers options that the Legislature may wish to consider regarding the policies that the State Allocation Board should use for the equitable distribution of bond funds.

HISTORY OF THE STATE ALLOCATION BOARD AND ITS ROLE IN SCHOOL FACILITY FINANCING

There is a long and complex history regarding public school construction in California. This paper begins a review of the history in 1947¹ when the state legislature created the State Allocation Board.² Chapter 243, Statutes of 1947, established the State Allocation Board³ as a successor to the Post War Public Works Review Board. That statute specifically authorized the board to allocate funds for building and repairing schools. In addition, it designated the State Allocation Board to make allocations for public works projects when no other state officer or agency had authority to appropriate state or federal funds.⁴ Although it had many other fund allocation requirements during its five-decade history, the State Allocation Board today allocates funds only for school construction and renovation.

Composition of the Board

The State Allocation Board is comprised of seven members: two Senate members appointed by the Senate Rules Committee; two Assembly members appointed by the Speaker of the Assembly; the Director of the Department of General Services or his/her designee; the Director of the Department of Finance or his/her designee; and the Superintendent of Public Instruction or his/her designee. This appointment structure has existed since the Board's inception in 1947.⁵

Although its basic appointment structure is set in statute, its actual membership changes over time. One member, Senator Leroy Greene, served on the Board for over 20 years. Some Board members have served for only one meeting, while others have served an entire legislative session.

The four legislatively appointed State Allocation Board members provide a strong policy influence to the State Allocation Board. Through them, other members of the Legislature have input into the Board's policy and decision-making processes.

Policy Requirements

Members of the State Allocation Board are charged to formulate fair systems for determining priorities among project proposals. Prior to the passage of Proposition 1A/SB 50 in 1998, the Board was responsible for developing a fair and equitable appeals process that addressed the "special needs" of school districts. Such "special needs" included disaster relief, inability to secure matching funds, or inability to locate affordable property.

Board members also had extraordinary power to set school facility financing policy. Although the Board falls under the auspices of the State Administrative Procedures Act, it has often ignored the Act's provisions. It was common that board policies were changed from meeting to meeting, and that these new policies were not readily made public.⁶ Therefore, school districts that were uninformed of existing policy operated at a distinct disadvantage. They may not have known the appropriate procedures for receiving

financing approval. Conversely, school districts that utilized hired consultants or had staff that regularly monitored the Board's actions knew exactly what mechanisms and procedures would be necessary for them to secure funding.

State Allocation Board Staff

The Office of Public School Construction (formerly the Office of Local Assistance), within the Department of General Services, was and continues to be responsible for providing staff work that is necessary to carry out the policies and implement the various programs of the State Allocation Board. The State Allocation Board is responsible for policies regarding the allocation of funds for building new schools and for repairing, upgrading, and rehabilitating old ones.

The Office of Public School Construction staff is also responsible for disseminating to school districts information regarding board policy and programs. Under its previous programs, the staff was responsible for making recommendations to the State Allocation Board regarding various appeals made by school districts that may have been denied funding, or that may have required special funding consideration. To that end, the Office of Public School Construction staff influenced where school districts fell on the long queue of project proposals considered and passed by the State Allocation Board. Staff also could have influenced Board decisions by advocating for specific school district projects.

Outside Influence

The State Allocation Board and the Office of Public School Construction staff have also been influenced by a variety of external interest groups. These include, but are not limited to, private school facility financing consultants, school board members, school administrators, teachers, parents, developers, California Building Industry Association, financial institutions, and other members of the Legislature. In addition, various state agencies with influence included the Division of State Architect, Department of Finance, and the Department of Education. These interests groups played and are likely to play a significant role in determining funding for projects that may have been denied or required special consideration. Consultants in particular, whether employed by or on contract with school districts, played an active role in the process. Many of these consultants, whose offices are in the same building as that of the Office of Public School Construction, influenced decisions of both the Office of Public School Construction staff and the State Allocation Board. Consultants were current on Board policies and procedures, and were highly sophisticated about the complicated processes that school districts must follow in order to obtain funding. They have been instrumental in shepherding proposals through the complex maze of funding phases - application to construction. School districts that did not contract with such advocates were often at a competitive disadvantage.

Evolution of State Allocation Board Programs—From Loans to Grants

The State Allocation Board has evolved markedly during the past five decades. Initially, its school programs provided resources to school districts via *loan programs* in which

districts were required to repay their assistance with property tax revenues. In addition, school districts used local school bonds to finance their various construction projects. In both cases, a two-thirds popular vote was required.

Proposition 13

With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority, and the Legislature and Governor were forced to rethink how school districts could repay their existing loans to the State Allocation Board.

Recognizing that many school districts faced bankruptcy by being unable to service their loans, the Legislature in 1979 directed the State Allocation Board to allow school districts four options: (1) withhold payments on their loans; (2) temporarily delay their payments; (3) pay only a portion of their loan obligations; (4) or not pay back their loans at all. Further, with the implementation of these options, the Legislature required that the State Allocation Board shift its policy focus from a *loan-based* program to a *grant-based* program. This shift to grant-based programs remains today.

HISTORY OF SCHOOL BOND INITIATIVES—A CYCLE OF UNDER-FUNDING

The electorate of the state has been ultimately responsible for determining the availability of resources for school construction. The electorate must have confidence in the state's economy, and perceive a need for new and upgraded schools. Without such assurances, the electorate can and has rejected various bond efforts. Since 1949, voters have been asked to approve 24 bond measures related to school construction and renovation, and have passed 21 of these proposals. However, an interesting history follows regarding the content of these initiatives.

State as a Bank—The Loan Program 1949-1978

Legislation enacted in 1949⁷ and 1952⁸ established a loan-grant program "to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the public school system."⁹ During this time period, the first baby boomers entered school, and for the next two decades, California public school enrollment increased by roughly 300 percent.¹⁰ The Legislature recognized that many school districts faced substantial enrollment growth, while lacking the bond debt capacity that was necessary to finance large building programs. In fact, many school districts had reached their financial capacity to service the bonds that they previously incurred.

As a result, the Legislature developed a program to provide loans to school districts that were approaching or were likely to exceed their legal level of bonded indebtedness.¹¹ This new program was financed through State general obligation bonds. This program also required building construction standards and placed fiscal controls on the districts, including maximum cost standards and square feet per pupil limitations.¹² School districts, however, retained control over the design and construction of their facilities. Districts that wanted to participate in the state loan program were required to receive approval from two-thirds of their district's electorate in order to incur the debt. A surcharge on the local property tax provided revenues to service the loan debt.

The State formula provided that the total amount due on some loans would be less than the total amount of the actual loan. Some experts believe that the state's willingness to forgive part of school district loans through this formula was a precursor to the state grant program discussed below.

The First Loan Program Bond Initiatives

In 1949, the state issued its first bond proposal for education facilities financing¹³ in the amount of \$250 million.¹⁴ This first initiative also began a cycle of inadequate funding. In that year, the Legislature thought that \$400 million was necessary (over what school districts could afford above their debt limits) to meet the need of school districts that were facing enrollment growth from the new generation of baby boomers. However, after substantial debate, the bond proposal was reduced to \$250 million, because the sponsors thought, "the people would not vote for such a large sum at one time."¹⁵ In arguments

against the bond, opponents argued that \$250 million was insufficient. Therefore, absent full funding, voters should reject the initiative. The measure passed.

In 1952, another school construction bond of \$185 million was put before the voters. Proponents of this initiative stated that the amount was "extremely" conservative. A comprehensive study by the State Department of Education at that time revealed that \$198 million was needed, while the Department of Finance estimated the need at \$250 million. Again, the amount of needed resources surpassed the amount proposed, and the cycle of chronically under-funded facility financing for schools continued.

To further exacerbate the shortfall, the 1952 proposition, along with subsequent propositions offered in 1956, 1958, and 1960, included "poison pill" language that limited the Legislature's ability to appropriate any additional funds for school construction beyond that in the various propositions.¹⁶ If the Legislature approved any additional resources for school construction, the amount of bonds that were sold would be reduced by an amount equal to the additional appropriation. After 1960, however, bond proposals excluded the language that precluded the Legislature from raising additional capital outlay funds.

During a two-decade period, the State Allocation Board administered this program as a bank. Resources from the state were limited, and many school districts were uncomfortable with the concept of borrowing money from the state, rather than from their local constituents. Further, since school districts were obligated to reach full bond indebtedness before applying for state loans, many did not participate. For these reasons, many school districts chose not to build facilities until their bonding capacity grew. Hence, many school districts found themselves chasing dollars after their schools were overcrowded—a situation not unlike today.

The Early 1970s

As a result of a major earthquake in the San Fernando Valley (Sylmar) in 1971, the state authorized \$30 million¹⁷ for a new program to finance the rehabilitation and construction of earthquake safe schools,¹⁸ and for the renovation of buildings that the earthquake damaged.¹⁹ This program was known as the School Buildings Safety Fund. Like its predecessor programs, the 1971 Act created a state loan program for eligible school districts. The Act also included provisions to forgive loans for school districts that had reached their bonding capacity. The 1971 program was augmented by a 1972 state bond initiative of \$350 million of which \$250 million was set aside for structural repairs due to earthquakes.²⁰ This latter bond initiative also provided a method for financing buildings in districts that did not meet the criteria of the program that was initiated in 1971,²¹ and it required the State Allocation Board to first approve those applications from school districts for earthquake repairs. The State Allocation Board gave second consideration to funding projects for other types of repairs or upgrades. Hence, the Board began a new system for not only new construction but also repairs, as well as a system that set priorities.

A Changing Paradigm

From 1970 to 1980, public school enrollment statewide decreased by roughly one percent per year.²² Reductions in both immigration and domestic in-migration to the state, as well as a decrease in the state's birth rate caused this decline. During this decade, there were sufficient resources available from local property tax revenues and from the state's loan program to meet the various rehabilitation needs especially of those school districts that were experiencing enrollment declines. The State Allocation Board thus shifted its loan program emphasis from new construction to rehabilitation, and to upgrading unsafe facilities that were damaged due to the 1971 earthquake.²³

Nevertheless, some school districts continued to experience enrollment growth in response to suburban housing development.²⁴ In spite of such growth patterns, the State Allocation Board set its priorities to favor rehabilitation projects over new construction. The Board's orientation accentuated the differences between growing school districts and those that required rehabilitation, and caused an unequal state spending system that favored property rich urban districts over fiscally poor and growing suburban districts.²⁵

To counter the State Allocation Board's orientation toward urban rehabilitation, growing suburban school districts recognized that in order to fund new school construction, they would have to depend almost entirely on their local property tax base. As more people demanded affordable housing in suburban neighborhoods, developers accommodated them by building numerous suburban housing units. The sheer increase in the number of suburban homes added significant resources to the property tax base, thereby benefiting the school districts that served those communities. Furthermore, the ongoing demand for suburban housing caused the prices of homes in these areas to increase precipitously, adding even more resources to the property tax base. Although school districts could have requested to reduce those tax rates that supported them to a minimum amount, they did not. Most districts kept their rates steady, and some even increased them. Homeowners, unhappy about menacing property taxes, sought relief. In 1972, the Legislature enacted a multi-year package, funded by the state's general fund, of \$1.2 billion for school operation to be allocated over a three-year period and to serve as property tax relief.²⁶ In spite of this legislation, property taxes remained relatively high to cover local bond debt, and continued to be the primary source for school construction for growing school districts. Concurrently, the state continued to loan money to enrollment-static school districts for the purpose of rehabilitation.

Leroy Greene State School Building Lease Purchase Law

In 1976, the Leroy Greene State School Building Lease Purchase Law was signed into legislation.²⁷ This law established a state fund to provide loans to school districts for reconstruction, modernization, and replacement of school facilities that were more than 30 years old. The Act significantly altered the state's role in how school facilities construction was financed. Specifically, the state would no longer loan money; but it would finance school construction based on a leasing model.²⁸ Although the legislation was passed, the voters of the State remained unconvinced that more money was needed to

improve schools. Consequently, they did not pass the bond initiative that was necessary to fund the Lease Purchase Program.

The 1976 Act had specific language that created "priority points" for school districts that would apply for state funding. This was the first time that the State Allocation Board used a point system for creating a queue of approved projects. Priority points were given based on the number of unhoused students in the district, the rate of student enrollment growth, and how much rehabilitation a facility needed. Further, the Board instituted a first-come, first-served policy in which each accepted school district's application was stamped with a time and date.

Under the previous program, the state loaned money to school districts to build their facilities, and the school districts owned their property. Under the Greene legislation, however, the State maintained a lien on the property for the duration of the loan via a lease purchase agreement.²⁹ The State wanted to preclude school districts from purchasing land on a speculative basis using State money, only to sell the State funded property at a profit at a later date. This meant that the state would control the disposition of any school facility that it financed until the school district repaid its obligation on the lease.

The Proposition 13 Epoch 1978-1986.

Proposition 13—Local Governments and School Districts Fiscally Stymied

With its passage, Proposition 13 eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness. Proposition 13 capped the ad valorem tax rate on real property at one percent of its value, thereby reducing the income from property taxes to such an extent that it virtually eliminated this source as a means for lease payments. Proposition 13 also prohibited the electorate of a school district from authorizing a tax over-ride to pay debt service on bonds for the purpose of constructing needed school facilities.

To exacerbate this problem, the voters soundly defeated school construction bonds in both 1976 and 1978. They were two of only three³⁰ state general obligation bonds rejected by voters since 1947. The non-passage of these two successive bond initiatives, coupled with suburban enrollment growth, caused a statewide shortfall of \$550 million³¹ that was needed for school construction projects throughout the state in 1978.

Post Proposition 13

The limitations set by Proposition 13 caused school districts, counties and cities to turn to the state, which had a \$3.8 billion surplus, to fill the gap.³² In 1979, lawmakers approved a \$2.7 billion (in 1978 dollars) "bailout" plan to assist schools and local governments.³³ Within a year, the state surplus was reduced to roughly \$1 billion. Furthermore, the state had taken on a larger role as a funding source for school operations and capital improvement. To that end, it expected school districts to conform to its programs and projects.³⁴

Effects of Proposition 13 on the Lease Purchase Program

In 1979, legislation implementing Proposition 13 included provisions for restructuring the State's Lease Purchase Program.³⁵ School districts that received funds from the state were required to pay rent to the State as low as \$1 per year, creating an "unofficial" grant program.³⁶ In addition, school districts were to contribute up to 10% of the project's cost from local funds.³⁷ However, many school districts could not raise these matching funds through local bonds. They requested that the State fund their entire projects. The State Allocation Board created a waiting list of projects.

A Recession Further Complicates School Facility Financing

Beginning in 1982, California was in a recession that lasted until 1984. During this time period, the State's budget surplus was expended. School districts' recession experiences were complicated by the fact that student enrollments again began to increase again.³⁸ Approximately 60 percent of California's 1,034 districts at the time projected annual growth rates of over two percent between 1980-81 and 1983-84, with some districts projecting a doubling in their enrollment.³⁹ At the same time, estimates indicated that over one-third of the State's school buildings were over 30 years old and many needed substantial rehabilitation.⁴⁰ The Coalition for Adequate School Housing (CASH) estimated that the one-time cost of rehabilitating these older facilities would be \$1.9 billion.⁴¹ Further, CASH estimated that school districts would need an additional \$400 million annually for the next five years for building and repairing school buildings. Since the State was in recession, such funds were not available. Thus the State had to rethink how it would prioritize its school facilities projects.

A New System for Funding School Construction

In light of the backlog of applications for state funds, the Office of Local Assistance (now known as the Office of Public School Construction) designed a numerical ranking system that used "priority points" to determine a school district's eligibility for funds. This system gave priority to school districts who had students who were "unhoused," and special consideration was given to how districts used certain facilities.⁴² The more points a project application received, the higher on the list it was placed. Recognizing that school districts were facing enrollment growth and required further rehabilitation, the Legislature in 1982 authorized a general fund appropriation of \$200 million for school construction projects. This amount was later reduced to \$100 million.⁴³

Further, in order to ease the burden that many school districts felt because of the recession, the State loosened the repayment schedule for its lease-purchase program. School districts were allowed, for 10 years, to pay one percent of the cost of state funded lease-purchase projects, rather than the 10 percent they initially were required to pay.⁴⁴ Again, the State Legislature and the State Allocation Board moved away from a loan program and more toward a grant program.

Multi-Track Year-Round Education

Recognizing that the State had very limited bond resources, the Legislature wanted a more cost-effective facilities financing incentive system for school districts. That system would force districts to use their space more efficiently. In response to the shift in policy, the Legislature passed Chapter 498, Statute of 1983. This statute encouraged school districts that were experiencing growth pressure to adopt multi-track year-round education (MTYRE) programs. MTYRE programs enroll students in several tracks throughout the entire calendar year. At any given time, one track is on vacation, but vacation periods are short in duration.⁴⁵ The MTYRE program allows a more intensive use of existing facilities, thereby reducing the need for new facilities in growing districts.

School districts received an immediate financial return if they participated in the MTYRE program. A school district that redirected its students into a MTYRE program received a grant of up to 10 percent⁴⁶ of the cost that would be necessary to build a new facility not to exceed \$125 per student.⁴⁷ School districts that participated in MTYRE were eligible for air conditioning and insulation in their buildings.

In 1988, as pressure for state financing continued, the Legislature required that top priority for financing new construction projects be given to districts that used multi-track year-round education programs. School districts that offered MTYRE and were willing to match 50 percent of their construction costs received a funding priority from the State Allocation Board.⁴⁸ This put other school districts that could not meet these MTYRE and funding criteria at a distinct disadvantage. These latter school districts sought relief from the voters in 1986. Small school districts were one exception to the MTYRE requirement.

1986 Lease Purchase Program

In 1986, the voters approved Proposition 46. Proposition 46 amended Proposition 13⁴⁹ by restoring to local governments, including school districts, the ability to issue general obligation bonds and to levy a property tax increase to pay the debt service subject to a two-thirds vote of the local electorate.⁵⁰ This amendment allowed school districts to augment the one-percent cap on property taxes and to secure additional bond indebtedness to build and improve their schools.⁵¹

Passage of Proposition 46 helped, but did not solve school districts' financing problems. Many school districts were unable to secure the necessary two-thirds vote to authorize local funding, and still relied on state funding to assist them. Further, the federal government in 1986 passed legislation that required each state to remove friable asbestos from their educational facilities – another charge that the school districts could ill afford.

California adopted similar asbestos standards to those established by the federal government in 1986; however, few school districts reported their estimated costs for removing the substance. In light of the need to remove the asbestos, and in order to address the growing backlog of proposed school construction projects, voters passed Proposition 79 in 1988 - an \$800 million bond initiative. It specifically set aside \$100 million to cover asbestos removal.⁵²

A Growing Shortfall and Greater Scrutiny

There is no doubt that from 1982 to 1988 state support for public school construction was limited and difficult to secure. The demand for new school facilities, for modernization, and for asbestos removal was great.⁵³ As of June 1, 1986, applications that were submitted by school districts to the State Allocation Board for state funding of *new school construction* projects alone totaled roughly \$1.3 billion. In addition, applications for state funding for *reconstruction or rehabilitation* of school facilities totaled over \$991 million.⁵⁴ Total demand for school facility improvement in 1986 was nearly \$2.3 billion - an amount that significantly outweighed the \$800 million voters approved in that year's bond initiative.⁵⁵ Even with a boost of funding of \$150 million per year from Tidelands revenues in fiscal years 1984 and 1985, the Lease Purchase Program fell short.⁵⁶ By 1988, the shortfall had grown to \$4 billion, in spite of the fact that voters had approved \$2.5 billion in bond money from 1982-1988.

The State Allocation Board was forced to scrutinize every request for school construction funding, recognizing that absent a major infusion of State bond money, most districts would not receive funding for their projects. This scrutiny created an extremely competitive environment for the limited resources that were available to the schools. Many participants believe that school districts that contracted with knowledgeable consultants, or had district staff who were familiar with the State Allocation Board's policies and criteria, were the most successful in securing a high ranking place in the queue for resources, once those funds become available.

There is no definitive research or data that support this belief. Consultants are not required to report their involvement in the application process. However, there is substantial anecdotal evidence to support the assertion.

School Financing as a Collective Effort—The Three Legged Stool

In 1986, the Legislature recognized that resources were scarce and that no one governmental or private entity could finance school construction. It attempted to equalize the burden of school facilities financing between state government, local government and the private sector.⁵⁷ This concept was known as the "three legged stool." The idea was that the state would provide funds through bonds. Local government would provide its share through special taxes, general obligation, Mello-Roos and other bond proceeds. The private sector would provide funds through developer fees. Appendix A describes funding alternatives for these latter two legs of the stool.

The "three legged stool," however, never quite worked. For example, to assure that developers would not fund a disproportionate share of the cost to build schools, the Legislature, in 1986, capped the amount new homebuyers would pay for developer fees at \$1.50 per square foot, and empowered the State Allocation Board to raise the cap by a certain amount each year. However, school districts found a loophole around the cap by requesting that cities impose a fee on their behalf, and cities imposed rates on some

developers that exceeded those allowed.⁵⁸ California courts upheld these fees in the Mira, Hart, Murrieta court cases.

Until the recent passage of Proposition 1A, many local governments have imposed developer fees that exceed those allowed by the Board. For example, in 1987, fees in San Diego and Orange counties reached a high of \$8700 per house.⁵⁹ By 1990, total development fees for some homes reached \$30,000.⁶⁰ Statewide, developer fees have increased from \$31 million in 1978 to \$200 million in 1997.

In 1998, the State Allocation Board increased the fee to \$1.93 per square foot.⁶¹ With the passage of Proposition 1A in November 1998, however, local governments have apparently lost their ability to increase their fees beyond those determined by the State Allocation Board. Further conflict is likely.

The 1990s—Complicated Funding Programs

In the fall of 1990, the Legislature passed legislation that created two programs that provided additional financial incentives for schools to offer year-round education.⁶² The first of these programs provided a one-time grant to school districts to ease the expense of changing from traditional nine-month programs to year-round tracks. The second program provided an "operating grant" of between 50 percent and 90 percent of the amount districts saved the state by not having to build new schools. At the recommendation of the Office of the Legislative Analyst, the Legislature repealed the 1982 and 1986 incentive programs discussed above.⁶³

In response to the 1990 legislation, the State Allocation Board developed a new priority system for allocating lease purchase money. Under this new system, the Board apportioned funds based on a combination of when an application was received and how many priority points it garnered. Through a complex formula, priority points were given to schools that had a significant number of "unhoused students," or had substantial rehabilitation needs. This procedure might have worked well if the state could have financed all applications in a timely manner. However, the demand for state money increased to the point where districts without special priorities could expect to wait years for the state to finance their projects.

The program was in effect for only one year when the Legislature repealed the program and created yet another system for allocating state money.⁶⁴ In 1991, the Legislature defined six priorities for funding. First priority was given to districts that had a "substantial"⁶⁵ enrollment in multi-track schedules, and that were paying at least 50 percent of the construction costs for their new schools. Second priority went to districts with a "substantial" year-round enrollment and that wanted the state to pay the entire cost of any new construction for their year-round schools. The remaining four priority levels took into consideration factors for those schools who did not meet the "substantial enrollment" criteria outlined above, or were unable to match state resources.

The complex set of formulas made it difficult for school districts to completely understand what criteria would best serve them. Further, throughout this period, the Board was

required to implement new programs and redefine its priorities. For example, in 1990 the Legislature created a program that was adopted by State Allocation Board for school districts that could not find adequate land on which to build a school. Known as the Space Saver Program, it was designed to assist urban school districts that could not obtain adequate acreage for a school campus. The first space saver school, developed in 1993, is scheduled to be completed in Spring 2000 in the Santa Ana Unified School District, in a former shopping mall.⁶⁶

Another example of shifting priorities took place in 1996 when the Legislature mandated the Board to redirect its third highest priority to class size reduction from a previous focus on child-care facilities.⁶⁷ A third took place at the end of 1997 when the priority points system was replaced by a first-come, first served system. While there were exceptions to this rule, money was offered first to school districts willing to cover some of the costs associated with constructing or repairing facilities. Schools that could not afford to cover the remaining 50 percent were placed on a separate list.

Such shifts in policy, coupled with the significant complexity of formulas that drove the priority point system, along with the sporadic creation of new programs, caused many school districts to depend on outside consultants. These consultants understood the many policy changes that the Board enacted – sometimes on a monthly basis. They were also knowledgeable of new programs, and clearly understood the workings of the staff who carried forth the Board's policies. Without the assistance of consultants, school districts were unable to keep track of policy changes and special considerations enacted by the Board. Further, while the Board and its staff advised school districts regarding changes in their policies in a regularly published document, it did not provide a centralized source of materials, such as an up-to-date handbook. Consequently, school district personnel were often uninformed about the various nuances of the programs administered by the Board.

State Bond Efforts of the Nineties

As the State Allocation Board shifted its focus and policies throughout the early 1990s, Californians approved state school bond initiatives in 1990 for \$1.6 billion and in 1992 for \$2.8 billion. In one of its 1992 reports, the Department of Finance reported that statewide K-12 enrollment was estimated to grow by 200,000 new students per year for at least five years,⁶⁸ and that an estimated \$3 billion would be needed annually for new school construction.⁶⁹ However, in spite of growing enrollments and a significant demand for facility rehabilitation, in 1994, the electorate rejected a \$1 billion bond initiative. The State was in a recession.

A lack of State bond funds was not the only problem associated with the allocation of school construction funds. The Auditor General reported in 1991 that the Office of Local Assistance mismanaged state funds. It detailed that construction funds loaned to school districts were not recovered; that districts overpaid on some projects and failed to collect the overage; that it dispersed funds without proper documentation; and that it failed to conduct required close-out audits on construction projects.⁷⁰

As a result of this audit, the Office of Public School Construction in concert with the State Allocation Board developed stringent internal and external audits and fiscal controls. These control mechanisms included increasing the detail of financial review of projects, prohibiting school districts from participating in the program unless a balance was not due, and no longer receiving rent checks for portable classrooms.⁷¹

Attempts to Ease Passage for Local Bonds

Recognizing that the State would be unable to fund the entire backlog of school construction proposals, Governor Pete Wilson in 1992 proposed a constitutional amendment to reduce the requirement for the passage of local bonds from two-thirds to a simple majority.⁷² The idea was that local governments should have to meet the same 50 percent requirement as the State for passing bonds. Further, there was strong sentiment in the Wilson administration that local governments should pay an increased share of school construction costs. However, the Legislature rejected his plan.⁷³ Other attempts in recent years to reduce the vote for passage of local bonds from two-thirds to something less have also failed.⁷⁴

1996 School Bond Issuance - Finally More Money

Proposition 203, passed by the voters in March 1996, provided \$2.065 billion for school facility construction. However, the Legislature at the time estimated that school districts would need \$7 billion in construction funds to meet enrollment growth that was anticipated during the next five years.⁷⁵ This \$7 billion did not include the needs of Los Angeles Unified School District (LAUSD), which had 20 percent of the state's student population. At the time, LAUSD alone needed \$3 billion to upgrade and modernize its schools.⁷⁶ Clearly, anticipated demand for State funds substantially exceeded available resources.

To respond to the many school district proposals, the State Allocation Board followed its general priority points policy. However, many school districts, recognizing that they would not receive funding for years because of their position in the funding queue, and because of the limited amount of resources that were available, resorted to creative means to try to secure funding for their projects. For example, some schools districts sought special consideration for funds by requesting emergency allocations. Such a tactic would allow a school district to receive funds immediately.⁷⁷ Other school districts used the appeals process to argue that their projects were needed more than those of other school districts that were higher in the queue.⁷⁸

This cannibalistic dynamic caused a fair amount of resentment among those school districts that were bumped from a relatively high position in the queue by those districts that sought emergency relief or special consideration. Further, it was clear that the most sophisticated school districts found a variety of tactics that would secure the funding of their projects. These tactics are described in greater detail later in this paper under the section that describes how the Board processed its applications.

Class Size Reduction Causes Greater Housing Needs

The distribution of funds from Proposition 203 was further complicated by the Governor's Class Size Reduction Initiative. In particular, the State Allocation Board earmarked \$95 million for the purpose of purchasing 2,500 portable classrooms for schools that were facing severe classroom shortages. This was in addition to \$200 million that the Department of Education had available for assisting schools in purchasing such facilities. The Office of Public School Construction determined that a total of 17,500 classrooms were needed to accommodate class size reduction, and that there was only enough money to fund less than half of the estimated need.⁷⁹ The State Allocation Board reinterpreted Proposition 203 by creating a new Portables Purchase Program at the expense of their other programs. This caused some school districts to again get bumped in the queue for funding.

Never Enough Money—Still a Shortfall

Since 1947, the electorate has approved all but three State bond initiatives. In spite of the voters' tendency to support various bond initiatives, by 1998, the backlog of school construction projects that were approved by the State Allocation Board, but unfunded, totaled more than \$1.3 billion. Although the voters have been generous by approving bond initiatives roughly every two years,⁸⁰ there were times during the past five decades when bond money was not available for periods of four or six years.⁸¹

The Department of Finance has estimated that \$16 billion is needed over the next decade for public school construction and rehabilitation.⁸² Various bond proposals in 1997 and 1998 were circulated that considered multiple-year bond issuances. The California Teachers Association and the California Building Industry Association presented a plan to issue \$2 billion a year for 10 years.⁸³ Governor Wilson proposed \$2 billion a year for four consecutive years. In the end, Proposition 1A was passed. It provides \$6.7 billion over a four-year period. However, while the amount appears generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following this bond issue will require roughly an additional \$10 billion in State money.

Table 1 on page 18 shows the history of state school bond initiatives from 1949 to 1998. In the next sections of this report, we discuss the various programs, the complicated application process used by the State Allocation Board that school districts had to endure to secure funding, and how Proposition 1A attempts to simplify this process.

Table 1 - STATE SCHOOL CONSTRUCTION BONDS

Title of Bond Initiative	Date & Year of Election	Funds Authorized
School Building Aid Law of 1949	November 8, 1949	\$250,000,000
School Building Aid Law of 1952	November 4, 1952	\$185,000,000
School Building Aid Law of 1952	November 2, 1954	\$100,000,000
School Building Aid Law of 1952	November 4, 1958	\$220,000,000
School Building Aid Law of 1952	June 7, 1960	\$300,000,000
School Building Aid Law of 1952	June 5, 1962	\$200,000,000
School Building Aid Law of 1952	November 3, 1964	\$260,000,000
School Building Aid Law of 1952	June 7, 1966	A)\$275,000,000
School Building Aid Law of 1952	June 6, 1972	B)\$350,000,000
School Building Aid Law of 1952 And Earthquake	November 5, 1974	\$150,000,000
School Building Lease-Purchase Bond Law of 1976 (Failed)	June 8, 1976	\$200,000,000
School Building Aid Law of 1978 (Failed)	June 6, 1978	\$350,000,000
School Building Lease-Purchase Bond Law of 1982	November 2, 1982	\$500,000,000
School Building Lease-Purchase Bond Law of 1984	November 6, 1984	\$450,000,000
Green-Hughes School Building Lease-Purchase	November 4, 1986	\$800,000,000
School Facilities Bond Act of 1988	June 7, 1988	\$800,000,000
1988 School Facilities Bond Act	November 8, 1988	\$800,000,000
1990 School Facilities Bond Act	June 5, 1990	\$800,000,000
School Facilities Bond Act of 1990	November 6, 1990	\$800,000,000
School Facilities Bond Act of 1992	June 2, 1992	\$1,900,000,000
1992 School Facilities Bond Act	November 3, 1992	\$900,000,000
Safe Schools Act of 1994 (Failed)	June 7, 1994	\$1,000,000,000
Public Education Facilities Bond Act of 1996, Proposition 203	March 1996	C)\$3,000,000,000
Class-size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, Proposition 1A	November 3, 1998	D)\$9,200,000,000

Bonds in [bold] failed to receive a majority of votes.

- A) New amount of 1966 bond authorization available for regular program is \$185.5 million after deducting \$35 million reserved for compensatory education facilities, \$9.5 million for regional occupational centers, and \$35 million for rehabilitation and replacement of earthquake damaged and unsafe schools.
- B) Up to 250 million dollars earmarked for rehabilitation and replacement of unsafe schools.
- C) One billion dollars earmarked for higher education facilities
- D) Two and one-half billion dollars is allocated for higher education.

THE PROGRAMS

Prior to the approval of Proposition 1A, the State Allocation Board oversaw six active programs associated with school facility construction, repair, and remodeling. These six programs made up the Lease-Purchase Program that was discussed earlier in this paper. This section briefly describes these programs, discusses how the State Allocation Board set priorities for school district projects, explains how the Office of Public School Construction staff reviewed and acted upon district proposals, and how the State Allocation Board considered district appeals. The purpose is to advise the reader of not only the process and administration of allocation, but also some of the pitfalls that existed under the old system. Perhaps these pitfalls of the old system can be avoided when allocating Proposition 1A resources.

The Growth and Modernization Programs

The Growth and Modernization Programs allocated funds to school districts for building new schools (Growth Program) and for repairing existing facilities (Modernization Program). School districts qualified for the Growth Program based on an "allowable building standards" formula.

For its Growth Program, the State Allocation Board developed standards for the amount of space that was necessary to house students based on a district's number of ADA (Average Daily Attendance).⁸⁴ The Modernization Program provided funds to school districts for nonstructural improvements to permanent school facilities that were more than 30 years old, and for portable buildings that were more than 20 years old. Such nonstructural improvements included interior partitions, air conditioning, plumbing, lighting and electrical systems.

The Modernization Program provided funding for up to 25 percent of the replacement value of the building. Under some circumstances, districts could use additional funds beyond the 25 percent for handicap access compliance, including elevators when appropriate, and for alternate energy systems.

School districts could apply to this program by offering to match state funds and be listed as "Priority One," or they could ask the State to fund their entire project and be listed as "Priority Two."

Process for Receiving Growth and Modernization Funds

School districts that applied for growth and/or modernization funds were required to follow nine steps in three critical areas - planning, site selection and construction. Each of these three critical areas provided a separate and gradual funding stream for the school's project.

Planning Phase

During the planning phase, a district was required to complete four forms that demonstrated that it was eligible for either the growth or modernization program.

Eligibility to participate in the programs was based on enrollment patterns or the age and condition of those schools that required modernization. If a district met these standards, it moved on to the "site development phase."

Site Development Phase

Selecting a school site was critical. If a school district was participating in the modernization program, it would move to the next phase. The site would have to be safe and able to support the school's curriculum. An adequate site would have to meet certain standards with respect to size and location. Site review could take a school district months (if not years) to investigate. Under the growth program, a school district arranged a search committee to locate available properties and narrowed its search to three sites. In addition, the school district held public hearings regarding the impact of the lands to be used for educational purposes, and notified neighbors about possible site use. A representative from the Department of Education visited three selected sites to review and determine which was the most suitable site based on criteria including, but not limited to: street traffic safety; traffic congestion; geological hazards; and other environmental issues. All school districts followed a similar process for site selection whether they financed the project themselves, or requested State funding.⁸⁵

Some school districts were unable to build new schools because they could not secure appropriate properties. This was especially true in urban and industrial areas where vacant land was not readily available or was extremely expensive.⁸⁶

Once a district found an appropriate property, it was required to prepare a site development plan that included architectural and engineering drawings, along with building contract agreements. Districts were required to follow strict site development, plan development, and construction cost guidelines in order to be eligible for state funds.⁸⁷ Once these guidelines were met, the district proceeded to the construction phase.

Construction Phase

Every construction project received an allowance for site development and to erect a building. The eligible costs associated with construction for these programs were classified into several broad categories: building construction; site development; energy conservation; and supplemental funding for multi-story construction. In addition, facility funding included adjustment costs associated with geographic and regional differences, or the demolition of an existing structure.

A project architect for each contract developed final plans and documents as part of the project's final stage. These documents were used to establish a construction budget. The Division of the State Architect approved and monitored the district's final plans. After review, a construction apportionment was recommended to the State Allocation Board, which in turn authorized the distribution of funds. Upon completion of all regulatory oversight, the district was allowed to break ground.

The Deferred Maintenance Program

The Deferred Maintenance Program provided a 50 percent State match to assist school districts with expenditures for major repair or replacement of school buildings. Such repairs or replacements were for plumbing, heating, air conditioning, electrical systems, roofing, interior and exterior painting, and floor systems. School districts were required to place one and one-half percent of their general funds into an escrow account in order to receive a State match. For school districts that could not fit the parameters of the modernization program, the deferred maintenance program was the only alternative to receive State assistance.

The State also provided critical hardship funds to repair buildings that might seriously affect the health and/or safety of pupils. When available funding was insufficient to fully fund all hardship requests in any given year, the State Allocation Board created a priority list. However, the State Allocation Board often made exceptions to its list.

The Deferred Maintenance Program differed from the modernization program in that school districts were required to submit a five-year plan as to how their projects would be implemented. The plan displayed a rank for each project, and identified those projects that the school district would likely fund.

Deferred Maintenance Application Process

Based on the most recent available material, the deferred maintenance program had 13 steps, and a school district needed to complete several forms and documents. The 13 steps were divided into categories including a letter of interest, application process, critical hardship project documentation, and fund release.

A school district notified the Office of Public School Construction each year if it wanted to participate. Upon receipt of the initial letter, the Office of Public School Construction would send the district a request for its five-year plan of maintenance needs and an "Annual Application for Funds."

The school district would then provide the OPSC with a list of items scheduled for major repair or replacement,⁸⁸ along with its five-year implementation plan. When the district received state funds, it could only expend those resources for those items on the list. It could not redirect any resources toward administrative overhead, repair and maintenance of furniture, ongoing preventative maintenance, energy conservation, landscaping and irrigation, athletic stadium equipment, drapery or blackout curtains, testing underground storage tanks for leaks, or chalkboards.

Once the Office of Public School Construction approved a school district's list of projects it allocated funds accordingly. In cases of hardship, OPSC would visit the school prior to allocating funds. The district's governing board controlled and was responsible for all deferred maintenance funds. These funds were placed in a special escrow account.

The Year-Round Air Conditioning/Insulation Program

The Year-Round Air Conditioning/Insulation Program (ACI) began in 1986, as an incentive program for schools to operate during the summer.⁸⁹ In order to participate in the program, a school district was required to have a plan for Multi-Track Year-Round Education, or have 10 percent of its students enrolled in a Multi-Track Year-Round Education program. The ACI program assisted school districts by providing resources for air conditioning and insulation.

Year-Round Schools Air Conditioning/Insulation Application Process

The application process for the ACI program differed slightly for those school districts that had a year-round program from those that were planning a year-round program. However, regardless of their status, school districts were required to complete eleven stages in two phases to receive funding. If a school district had an air conditioning system that needed repair, it could not apply to this program, but could apply for funds under the deferred maintenance program.

A school district completed forms that included information on the buildings and spaces that would be affected, along with a report regarding the project's anticipated start-date. In addition, another application was required that provided information on whether the school site was experiencing enrollment growth, and whether some level of modernization was already in progress. Further, a school district that was not on a year-round schedule was required to show how its year-round calendar would be used. If the district was approved for funding, various allowances were provided to the district.⁹⁰ In addition to these allowances, the state would provide funds for gas and electric service, general site development, and air conditioning/insulation construction.

Items that were not covered by this program included costs for heating, window solar film, classroom doors and hardware, re-roofing, lighting, security, interior housing, fire alarm systems, unrelated repairs, installations, and painting.

The State Relocatable Classroom Program

The Relocatable Classroom program was designed to meet the needs of school districts that were impacted by excessive growth or unforeseen classroom emergencies. The State Allocation Board allocated funds for the acquisition, installation, and relocation of safe, portable classroom facilities. The State maintained a fleet of 5,000 furnished classrooms that could be leased to school districts for \$4,000 per year. Hardship cases could lease portables for \$2,000 per year. These portable units were available on a first-come, first-served basis. However, there was no maximum amount of time a school district could keep the portables, and districts were not required to return them. Thus, some school districts have kept the portables indefinitely.

Relocatable Classroom Application Process

In order to participate in either relocatable classroom program, a school district was responsible for site preparation costs including electrical hookup, plumbing connection, a State Architect approved plan, insurance and maintenance. After approval by the Board, the district would be reimbursed for the cost of architect fees, electrical hookup, furniture and equipment, and plumbing installation. However, reimbursements were capped at \$9,450 per classroom.

The Unused Site Program

The Unused Site Program was established in 1974 as part of the General Lease-Purchase umbrella. It required school districts and county superintendents of schools to pay a fee for district properties that were not used for "official" school purposes. "Official" school purpose was defined as being used for K-12 education, continuing or adult education, special education, childcare, or administration of any educational units.

This program did not provide funds directly to schools. However, resources generated from the fees that districts paid for unused facilities were used to cover deferred maintenance costs and to service the debt on the state's various school construction bonds. Since the Board simply administered the return of funds to the state, the funds could not be redirected to other programs administered by the Board. Proposition 1A¹⁰ eliminates their fee requirements.

The Office of Public School Construction Staff Review and The State Allocation Board's Appeals Process

The State Allocation Board meets roughly 11 times a year. At each meeting the Board reviews and approves about 200 applications for funding. Prior to the State Allocation Board's review, the Office of Public School Construction staff processes all applications. Before Proposition 1A, the approval processes for the programs, except for the growth and modernization programs, were straightforward. Either a school district's application fit a program's description for reimbursement, or it did not. Due to the complicated nature of the Growth and Modernization programs, "special considerations," or project applications that did not fit in the parameters of the program were placed in a different category. The State Allocation Board approved roughly 90 percent of all growth and modernization projects without special consideration. Issues requiring special consideration could include peculiarities of the proposed site, or the costs associated with a project. The applications were divided into special consents or "specials," and appeals. Both types permitted the Office of Public School Construction staff great latitude in the decision-making process, as they investigated and evaluated school district applications on a case-by-case basis.

A "special" occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined that an exception should be made. This agreement may have required several meetings between the school district's administration and the OPSC staff. With OPSC staff recommendation, which may have

been inconsistent with State Allocation Board policy, this application would be brought before the State Allocation Board for review. This category was normally granted approval in one action.

An appeal occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined an exception should not be made. If after several meetings an agreement could not be reached, the school district would bring its case before the State Allocation Board. An appeal was granted only on a case-by-case basis. At times, legislators have spoken on behalf of school districts at Board meetings.⁹¹ The difference in the two types of special considerations was that a school district or its representative would have to defend its actions in an appeal. However, as already noted, only those people who kept up with the process and policy changes were adept enough to tackle an appeal. Therefore, a school district seeking an appeal before the State Allocation Board might seek help from legislators that represented them, or hire consultants. For instance, in the May 1998 State Allocation Board meeting, a well-versed school finance consultant appeared on behalf of the Apple Valley Unified School District. Apple Valley hired both a construction manager and a general contractor to erect its new school, in the face of board policies allowing a school district to hire only one such position. On behalf of the school district, the consultant addressed the State Allocation Board, and pointed out that in five other cases the State Allocation Board had voted in favor of a school district that hired both a general contractor and a construction manager.⁹²

Less seasoned district representatives would not have known that the State Allocation Board had already set a precedent for funding projects that include both a construction manager and a general contractor.⁹³ The OPSC staff was not knowledgeable on this issue and therefore could not be a source of information.

PROPOSITION 1A—A POSSIBLE FIX TO SAB PROCESS PROBLEMS

Proposition 1A not only authorizes an additional \$6.7 billion to K-12 schools, but it also offers a fix to several of the process problems discussed above. It replaces the provisions of the previous Lease-Purchase Program. This section discusses (1) the resource allocation provisions of the legislation; (2) the programmatic components of the legislation; and (3) how the legislation improves the resource allocation process over that which existed under previous bond programs.

Total Resource Allocation Provisions of Proposition 1A

The resource allocation system in Proposition 1A is specific and detailed. Bond proceeds are to be allocated in 2 two-year cycles: \$3.35 billion available immediately; and \$3.35 billion available after July 2, 2000. Of the \$3.35 billion that is immediately available, \$1.35 billion is earmarked for new construction, \$800 million for modernization, \$500 million for hardship cases, and \$700 million for class-size reduction.

For the second \$3.35 billion distribution, \$1.55 billion will be available for new construction, \$1.3 billion for modernization, and \$500 million for hardship cases. There are no resources in the second allocation for class-size reduction.

School districts receive funding for their projects based on a per pupil formula. The formula is based on a statewide average cost for construction, adjusted each January for inflation. The figures are based on unhoused⁹⁴ average daily attendance (ADA). The per pupil ADA formula is as follows:

	Growth	Modernization
Elementary	\$5,200	\$2,496
Middle School	\$5,500	\$2,640
High School	\$7,200	\$3,456

It is anticipated that the initial \$1.35 billion available for new construction during the first round of allocations will be insufficient to meet the needs of those school districts that are facing substantial enrollment growth. Proposition 1A establishes a priority point system for new construction projects when State bond resources are exhausted.⁹⁵ The Office of Public School Construction will process applications on a first-come, first-served basis from subsequent bond offerings.

In addition to the provisions outlined above, school districts that receive bond proceeds are required to set aside three percent of their general funds each year for 20 years for the purpose of deferred maintenance.

Components of Proposition 1A

Proposition 1A establishes three categories for funding. The first is the Growth Program, in which the State finances half the cost of new construction and the school district the other half. The second is the Modernization Program, in which 80 percent of the cost of rehabilitation is provided by the state and 20 percent by the school district. The third category is "hardship," in which the State funds up to 100 percent of the cost for emergency needs, or an increased proportion of its share for new construction or modernization.⁹⁶

Proposition 1A holds harmless those school districts that received State Allocation Board approval for the construction phase of their projects (under the previous Priority 1 - able to provide a 50 percent match). They will receive growth and modernization funds, but under the rubric of the previous "Lease Purchase Program." This grant is supplemented by land costs, site development, and other adjustments.

Another new provision of the Proposition is that school districts can seek modernization resources after a facility is 25 years old, rather than 30 years under the previous program.

Schools districts that had received prior Board approval for Priority 2 projects (100 percent state funding) will have to either indicate their ability to finance 50 percent of their proposed projects or reapply under one of the new programs. If the school district cannot meet the provisions of the new programs, it can apply as a "hardship" case.

The California Supreme Court ruled in 1991 that cities and counties could limit housing development on the basis of the supply of classrooms.⁹⁷ Proposition 1A suspends, until 2006, the Court's ruling.⁹⁸ With the passage of Proposition 1A, school districts will not be able to limit new housing construction based on a rationale that school facilities do not exist. However, in 2006, if adequate bond funds for new construction are not available, cities and counties can once again deny development. Further, as discussed earlier, the Proposition permits the school board to increase developer fees to up to \$1.93 per square foot.⁹⁹ Proposition 1A sets up a system where fees can be levied of up to 50 percent and 100 percent of the costs associated with building a school by developers under certain circumstances.

Proposition 1A Improves the Resource Allocation System of the State Allocation Board

Proposition 1A makes several changes to the programs administered by the State Allocation Board. It attempts to simplify the process of applying for funds, consolidates the Board's previous six programs into two, and attempts to create a more equitable funding system. It also makes the State Allocation Board and the Office of Public School Construction staff more accountable for their actions. Table 2 presents the differences between the Board's previous Lease Purchase Program, and the new programs that are initiated by Proposition 1A.

Table 2 - Comparison of Lease Purchase Program to Proposition 1A Programs

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
FUNDING FACILITIES	<p>Priority 1 projects-growth and modernization-received 50 percent funding based on actual costs from the state.</p> <p>Priority 2 projects-growth and modernization-received 100 percent funding form the state.</p>	<p>Growth projects receive 50 percent funding based on a per pupil formula from the state.</p> <p>Modernization projects receive 80% funding from the state.</p> <p>Hardship projects can receive up to 100 percent of funding from the state based on three broad categories financial, physical and excessive costs.</p>
CONSTRUCTION EXCESSIVE COSTS & COST SAVINGS	<p>Some excessive costs (i.e., change orders) were reimbursed by the state. Cost savings were returned to the state.</p>	<p>Excessive costs are not reimbursed by the state and school districts keep costs savings.</p>
MODERNIZATION PROJECTS	<p>Buildings must be at least 30 years old.</p>	<p>Buildings must be at least 25 years old.</p>
PROJECT APPROVAL	<p>Projects were approved three times in conjunction with the planning, site acquisition and construction phases.</p>	<p>Projects receive one approval (except hardships that receive two approvals).</p>
FUND ALLOCATION	<p>Funds were allotted after each phase.</p>	<p>Funds are allotted only after DSA approves plans, unless there is a hardship.</p>
MAINTENANCE OF FACILITIES	<p>Required school districts to set aside two percent of their general fund for ongoing maintenance.</p>	<p>Requires school districts to set aside three percent of their general funds for 20 years for ongoing maintenance.</p>
PROPERTY LIENS	<p>State maintains a lien to properties it funds.</p>	<p>State does not hold liens, and existing liens are released.</p>
ARCHITECTURAL APPROVAL	<p>Division of State Architect approved all plans.</p>	<p>The Division of State Architect or a state approved private engineering firm may approve plans.</p>

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
DEVELOPER FEES	The cap on fees was \$1.93 per square foot; however, cities or counties could levy a higher fee and pass it to schools districts.	The cap on fees is \$1.93 per square foot, adjusted biannually. Fees may be assessed up to 50 percent of the costs of a project if a school district has accessed other forms of financing including Mello-Roos, G. O. bonds, and parcel taxes. In order to increase fees, school districts must meet two of four criteria, including MTYRE, local school bond positive votes of 50 + 1 percent, 20 percent of students are housed in portables, 15 percent of bond debt used.
WHEN STATE FUNDS RUN DRY	Projects were placed on a pending state-funding list or charged a city-based developer fee.	Modernization projects may be placed on a pending state-funding list. Growth projects may be placed on a priority points list, or the school district may collect 100 percent of financing from a developer.
CONTAINING DEVELOPMENT (MIRA, HART MURRIETA COURT CASES)	Cities and counties on behalf of school districts were able to contain residential development by suspending the building of new facilities.	School districts can not request cities or counties to prohibit residential development based on a lack of funds or school facilities until 2006.
ARCHITECT & CONSTRUCTION MANAGEMENT FEES	Percentage caps on fees based on size of projects	No caps.
MODERNIZATION PROGRAM	Provides funding to building over 30 years old, and portables over 25 years old. Calculations done on a district basis.	Provides funding for buildings over 25 years old and portables over 20 years old. Provides funding on a site-specific basis.
AIRCONDITIONING-ASBESTOS PROGRAM	Allotted funds specifically to install AC and remove asbestos.	These are now incorporated in the modernization program.

Simplification

To further simplify the process, the Proposition reduced the number of school facility financing phases from three to one.¹⁰⁰ This is now possible because school districts receive a flat grant from the State based on the number of students they enroll, rather than on the estimated cost of a project. Under the previous program, each phase of a project was evaluated independently; thus the cost to the State for any given project could change. Under the new program, a school district receives a single grant for a single project, and cannot request that the state fund additional need beyond the original request.¹⁰¹

The Proposition also explicitly requires that the State Allocation Board initiate a public hearing process that notices any policy changes considered by the Board. It requires that the Board make available to school districts written up-to-date documentation that clearly explains its policies, and specifically describes how its new programs work.

Consolidation

Until Proposition 1A, the State Allocation Board administered as many as 13 programs. The most current six are discussed above. With the enactment of Proposition 1A, the number of programs has been reduced to two, along with a special category for hardship cases. This consolidation of programs makes it easier for school districts to choose a program that best suits their needs. It precludes the type of creative tactics that school districts were forced to pursue to match their projects to the right program in order for them to receive funding.

A More Open Process

The Proposition causes a major shift in policy direction for the State Allocation Board. Under its previous programs, the Board funded both new construction and modernization on a 50/50 matching basis. Under Proposition 1A, the Board is required to fund modernization projects more generously than new construction projects, in that the State will fund 80 percent of the cost for modernization compared to 50 percent for new construction.

Another major outcome of Proposition 1A is that the State Allocation Board no longer has the authority to offer grants to school districts that may seek funds for special projects without any real statutory framework. Now school districts must demonstrate that they meet specific hardship criteria set out in the new law. The practical effect of this change will depend on how the Board interprets this provision.

Previous legislation implicitly required that the State Allocation Board follow guidelines set forth in the Administrative Procedures Act (APA); however, the Board did not do so. Proposition 1A explicitly requires the Board to follow APA guidelines. This means that any change in policy or regulation considered by the Board must be properly noticed to the public before the Board can act. This requirement, if the Board follows the full spirit, will allow school districts to be fully informed of Board policies and procedures, as well as its rules and regulations.

PITFALLS IN THE PROCESS PRIOR TO PROPOSITION 1A

This section discusses the State Allocation Board's attempts to improve its system and the pitfalls that existed under the previous programs.

Until recently, rules governing the application process were labor-intensive, both for school districts and the state agency personnel (including the Office of Public School Construction and the Division of the State Architect). In 1989, the Legislature received a report outlining the complex application.¹⁰² The report identified 54 steps school districts had to perform in order to receive application approval and eventual financing. In addition, the process required 24 separate forms.

Process Streamlined Recently

Since 1992, the OPSC has tried to be more efficient. Changes implemented by OPSC included: simplified and streamlined applications; improved response time for application review; improved policy information dissemination; and school districts were empowered to complete their own applications.

The most concrete indication that the Office of Public School Construction was becoming more efficient was in the application process. The application process for the Growth Program was reduced from 54 steps to nine. In addition, the number of forms that were needed to apply for funding was reduced from 24 to four.

School districts complained and begged for applications to be checked and approved for a State Allocation Board meeting agenda in an expeditious fashion. As part of the efficiency movement, the Office of Public School Construction set a goal to reduce the time from when a school district filed a completed application until it was placed on a State Allocation Board meeting agenda from over 400 days to 60 days.¹⁰³ Prior to Proposition 1A, applications on average still took longer than the 60 days to be reviewed. However, the office's efficiency achievement by reducing application review days is noteworthy.

In addition, the Office of Public School Construction worked more closely with school districts in the decision making process and provided greater leeway. In particular, school district personnel could self-certify certain information pertaining to a project rather than rely on state agency personnel. The self-certification process removed the time a school district would wait for a response from the Office of Public School Construction. It thereby shortened the application process.

Under its previous programs, it was difficult for school districts to get information pertaining to the funding process from the Office of Local Assistance (OLA) staff or from written materials. The Office of Public School Construction is now more service-oriented.¹⁰⁴ One can obtain information in person or from the office's Internet site.¹⁰⁵ In fact, the staff of the Office of Public School Construction is continually placing more information on the Internet. This information includes an automated project tracking system, Senate Bill 50 regulations, office contacts, and old board policy changes.

School Districts in Line Stand on Shifting Sands

Under the previous allocation system, school districts that completed their applications and were placed in queue were never guaranteed funding in the order their applications were received. The State Allocation Board dictated that school district applications were placed in an unfunded application list on a first-come/first-served basis. However, there were four general ways that school district applications could be "bumped" up or down in the queue.

Broad Classification Decisions

The first way a school district could get bumped was if the State Allocation Board decided to redirect its emphasis and fund a broad category of projects. For instance, the SAB could decide to fund all application projects from small school districts (no matter where they were in queue). If a school district was large, hundreds of proposed school projects could jump ahead in the funding queue.

The second way a school district could get bumped was if the State Allocation Board shifted the specific funding program allocations. Thus, for example, the State Allocation Board could decide to shift funds earmarked for the Growth Program to the State Portable Classroom Program.

Specific School District Decisions

The third way a school district could get bumped was if another school district application in queue with a later application filing date appealed to the State Allocation Board to change its application filing date to be ahead of other school districts. That school district application would be funded first.

The fourth way a school district could get bumped was if an emergency situation occurred and a school district requested critical hardship money from the State Allocation Board. The Board could provide these funds when available.

The application process requires equity and balance in order to ensure fair competition by school districts for State funds. The process needs to be flexible enough to handle emergency situations, yet firm enough to prohibit jockeying among school districts for better placement in the queue.

Proposition 1A halts the movement of funds from one program to another. However, the other examples are still feasible. Jockeying of school districts by consultants for better placement in line may continue to occur. This is especially true as Proposition 1A cannot handle the pent up demand for State funds. The next section discusses options that the Legislature may consider in order to improve this system.

OPTIONS FOR IMPROVING THE SCHOOL FACILITY FINANCING SYSTEM

A Separate List for Small and Rural School Districts

When the Proposition 1A funds are exhausted, new construction project applications will receive priority points for future funding. Small and rural school districts may require separate lists to ensure that they are placed near the front of a funding queue. This is necessary because there is no guarantee that the entire queue would receive future funding. Small and rural school districts, based on the current priority points system, may not receive enough priority points to approach the front of the queue. Larger school district applications, with greater per pupil need, may be able to position themselves high enough in the queue for funding by receiving favorable OPSC evaluations. Proposition 1A allows schools to skip to higher positions in the funding queue if they score higher priority points based on their number of unhoused students or if they can demonstrate a special hardship. *The Legislature may wish to create a separate list for small and rural school districts to create a more equitable system.*

Annual Report and Independent Accounting

In the early 1990s, many state agencies, boards, and commissions, because of budget cuts, postponed writing annual reports to the Legislature. These reports provided financial and policy information to the public. The State Allocation Board was one government entity that has not prepared regular audited reports of its programs' operations and expenditures for public review. The State Allocation Board will receive \$6.7 billion over the next four years to fund school construction projects. *The Legislature may wish to require the Board to prepare for the Governor and Legislature an annual report that details how and to whom bond funds were distributed. The Legislature may wish to require that an independent accounting firm or the State Auditor General prepare the Board's report.*

On-Line Technical Assistance

Although the application and funding process administered by the Office of Public School Construction has been streamlined and simplified in recent years, certain components of the process are still cumbersome. The process should be simple enough that school districts do not need to hire consultants or lobbyists to advise them or to shepherd their proposals. *The Legislature may wish to pass legislation that would require the OPSC to develop a technical assistance program to provide school districts with the necessary information and advice they need in order to qualify for and receive bond funds. Such a system could include an automated Internet help-line.*

A Special General Fund Appropriation for School Construction

The State's bond capacity may not be able to fund every State infrastructure need, including schools, transportation, prisons, and water during the next decade. School facility needs are estimated conservatively at roughly \$10 billion, while some estimates have put the figure at \$40 billion for the next decade alone. According to the Department of Finance, the State can afford to service approximately \$25 billion in additional debt. Thus, school facility financing alone could incur the entire debt capacity of the State. *The Legislature may wish to create a special appropriation fund for public school capital outlay as part of the State General Fund to augment the State's bond programs. In addition, the State may wish to design a school construction reserve fund, which is funded from budget surplus revenues.*

ENDNOTES

- ¹ Chapter 243, Statutes of 1947.
- ² If a school district wants state funding for construction or repair of a school, it must apply to the State Allocation Board for the money. There are school districts that repair and construct school buildings without the assistance of the State Allocation Board (i.e., San Diego Unified School District, San Luis Unified School District). However, this report will focus on a school district that requires state support.
- ³ Chapter 243, Statutes of 1947. Initially, the State Allocation Board administered a number of Public Works programs for the State ranging from housing and employment assistance to school facilities construction. Various programs include: the Postwar Planning and Acquisition, Construction and Employment Act, Veterans Temporary Housing, State School Building Construction Programs, Emergency Relief Programs, and Community Assistance Programs (State Allocation Annual Report 1983-1984, p. 1).
- ⁴ California Government Code 15502.
- ⁵ Government Code 15490.
- ⁶ While the State Allocation Board submitted policy changes to school districts, an up-to-date handbook was not made available. In addition, turnover of board members and school administrators may lead to ignorance of programs and the program changes.
- ⁷ Amendments to the Constitution, Proposition 1, November 8, 1949.
- ⁸ Amendments to the Constitution, Proposition 4, November 4, 1952.
- ⁹ Op.cit.
- ¹⁰ California School K-12 enrollment grew from 1.689 million students in 1950, to 4.633 million students in 1970 (State of California. Department of Education. Education Demographics Unit. CBEDS Data Collection. "Enrollment in California Public Schools 1950 through 1997").
- ¹¹ This is defined by California Education Code, Section 15102, as the legal limit of debt that a school district can incur based on the assessed value of property in that school district.
- ¹² Known as the State School Building Aid Program. The Legislature determined qualifications in order for school districts to participate in this program. They include the following provisions:
 1. To qualify for a loan from the State a school district must have voted local bonds to 95 percent of its bonding ability.
 2. Borrowing districts financially able to do so must repay the money to the State. Terms of 30 or 40 years of repayments are provided.
 3. No money can be borrowed by a school district unless the proposed loan is approved by two-thirds vote of the electors of the district.
 4. School construction, financed in any part by State loans will be subject to cost controls to be established by State Allocation Board (includes restrictions on the number of square feet of construction allowed per pupil).
- ¹³ Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for \$250 million.
- ¹⁴ Voters set the initiative process in motion in 1911 under reform-minded Governor Hiram Johnson. Los Angeles Times. "State's Voters Face Longest List of Issues in 66 Years; November 8 Ballot to Carry Maze of 29 Propositions." July 7, 1988, p. 1-1.
- ¹⁵ Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for \$250 million.
- ¹⁶ Amendments to the Constitution, Special Election, June 7, 1960, Proposition 2, Part II, Appendix. p. 2.
- ¹⁷ School Building Safety Fund, December 1971.
- ¹⁸ The Field Act, that mandates that school construction is able to withstand earthquakes, has yet to dictate how to build an indestructible building.
- ¹⁹ Propositions and Proposed Laws, Together with Arguments, Primary Election Tuesday, June 6, 1972, p. 1.
- ²⁰ Ibid.
- ²¹ State Allocation Board Report to the Legislature 1972-1973 Fiscal Year, p. 3.
- ²² Public school K-12 enrollment declined from 4.457 million students in 1970 to 3.942 million students in 1980. (State of California. Department of Finance. Demographic Research Unit. 1997 Series California Public K-12 Graded Enrollment).

²³ Op.cit., p. 2.

²⁴ Ibid.

²⁵ Property rich communities often have more poor people than property poor communities. The presence of commercial and industrial development can make an otherwise poor district "rich" in its tax base. Conversely, affluent communities often discourage industrial development that would make them property rich, but environmentally poorer. The lack of correlation between poor people and property poor districts is often overlooked in discussions of school finance issues. Even though the distinction has been known for a long time. Campbell, Colin D.; Fischel, William A. National Tax Journal "Preferences for School Finance Systems; Voters Versus Judges." Footnotes from Helen Ladd. "Statewide Taxation of Commercial and Industrial Property for Education." National Tax Journal (June 1976): 143-153.

²⁶ Goff, Tom. "Passage of Tax Reform School Financing Bill Urged by Riles." Los Angeles Times, July 19, 1972, p. I-1.

²⁷ Section 17700 et al., Education Code.

²⁸ Property values were increasing dramatically all over the State. This model stopped school districts from speculating on land that was financed by the State.

²⁹ Op.cit., p. 2.

³⁰ Proposition 1 of 1978 was defeated 65 percent to 35 percent. Propositions from 1976, 1978 and 1994.

³¹ Proposition 1 of 1976 would have provided \$250 million, and Proposition 1 of 1978 would have provided \$300 million.

³² Shultz, Jim. "Major Firms Gained Most With Prop. 13." Sacramento Bee, September 13, 1997, p. F-1.

³³ Ibid.

³⁴ Karmin, Bennett. California's Bankrupt Schools." New York Times, July 17, 1983, pp. 4-21. Linsey, Robert. "San Jose Schools Declare Insolvency in Wake of Tax Revolt." The New York Times, June 30, 1983, p. A-14. However, some school districts that were academically and fiscally well managed prior to Proposition 13 faced problems. In 1983, the San Jose Unified School District filed for bankruptcy. The National School Boards Association stated that it was the first insolvency of a large school district since the depression. The San Jose Unified School District, at the time, held a reputation for excellence in education. It ranked 14th in the state in the ratio of students to teachers, and its teachers' salaries ranked second highest in Santa Clara County. However, since Proposition 13, the school district set aside maintenance and construction projects, laid off teachers and non-teaching administration, until it could not make further reductions and still continue to pay its staff.

³⁵ Chapter 282, Statutes of 1979. State School Building Lease Purchase Bond Law of 1984—Voter Pamphlet Analysis.

³⁶ While the loan program was still on the books, the state made exceptions to aid school districts.

³⁷ California Education Code, Sections 17730.2, 17732. However, the Attorney General cited that 10 percent of local funds to cover the costs associated with facility development is not required. Coalition for Adequate School Housing. CASH Register, November 1984, p. 3.

³⁸ California Department of Education. CBEDS Data Collection. Education Demographics Unit. 1998.

³⁹ Coalition for Adequate School Housing. CASH Register, September 1982, p. 1.

⁴⁰ Ibid.

⁴¹ Coalition for Adequate School Housing. CASH Register, December 1982, p. 2., (in 1980-81 dollars).

⁴² This evaluation was amended annually. The State developed a formula that was based on standards that considered how a facility was used and how many pupils were unhoused. In some years, the State gave preference to unhoused pupils, while in other years, the state gave first consideration to how a facility was used. Facility use included childcare, before and after school programs, adult education, and traditional K-12 programming.

⁴³ Savage, David. "Resolution Brings Tax Cuts, Schools Told." Los Angeles Times, October 15, 1982, p. B1.

⁴⁴ Assembly Bill 62, Chapter 820, Statutes of 1982.

⁴⁵ California Department of Education. California Year-Round Education Directory 1997-98.

⁴⁶ For example, a school district that needed to build a new elementary school that cost \$4 million could receive \$400,000 from the state if it chose to redirect students to existing facilities that incorporated the MTYRE program.

- ⁴⁷ Chapter 886, Statutes of 1986, added provisions that capped the grant at \$125 per student.
- ⁴⁸ School districts that could not offer to cover any expenses (now referred to as a Priority 2) could conceivably wait years. MTYRE continues today, and has been a successful program. In 1997, more than 1.19 million or about 22 percent of California students attended schools with year-round calendars. The State Department of Education estimates that the MTYRE program has saved that State more than \$1.8 billion in construction costs since its inception. In 1997-98, \$66 million was allocated from the "mega item" of the state budget. About \$40 million was sent to Los Angeles Unified School District to cover the reported 40,872 excess students. However, once students are "excess," they can not be counted as students for the Office of Public School Construction in the erection of new facilities. Approximately 102,000 students are "excess." While the program has provided relief for school construction, it remains a controversy whether educationally the program is successful.
- ⁴⁹ Proposition 46 on the June 1986 Ballot.
- ⁵⁰ Greene-Hughes School Building Lease-Purchase Bond Law of 1986 Voter Pamphlet.
- ⁵¹ Proposition 46: Property Taxation, June 3, 1986.
- ⁵² DeWolfe, Evelyn. "Schools Get Low Marks for Asbestos." Los Angeles Times, January 8, 1989.
- ⁵³ School enrollment bottomed to 4.089 million students in 1983, the same population amount that occurred in 1964. By 1986, student population increased to 4.377 million. California Department of Education. Education Demographics Unit. CBEDS. 1998.
- ⁵⁴ Op.cit.
- ⁵⁵ Op.cit.
- ⁵⁶ State Allocation Board Report to the Legislature 1984-85, 1985-86, Fiscal Years.
- ⁵⁷ AB 2926, Statutes of 1986.
- ⁵⁸ These were referred to as the Mira, Hart, Murrieta court cases.
- ⁵⁹ Later that year, fees were capped by the Legislature at \$1.50 per square foot on residential units statewide.
- ⁶⁰ Fulton, William, "California Pulls Out the Stops; Cities Cope with Government Budget Deficit." American Planning Association, p. 24, October 1992. About one-third going to school districts.
- ⁶¹ Cummings, Judith. "CA Turns to Developer Fees." The New York Times, January 16, 1987, p. A-15.
- ⁶² Chapter 1261, Statutes of 1990.
- ⁶³ Legislative Analyst's Office, p. 23. "Building Schools in California: What Role Should the State Take in Local Capital Development?" Linda Herbert. Jesse Marvin Unruh Assembly Fellowship Journal, Volume II, 1991, pp. 1-4.
- ⁶⁴ Op.cit.
- ⁶⁵ Substantial enrollments are defined as at least 30 percent of the district's enrollment in kindergarten or any of the grades one to six, inclusive, or 40 percent of the students in the high school attendance area, see Education Code, Section 17717.7g.
- ⁶⁶ Conversation with Mike Vail, on January 21, 1999. Mr. Vail is the Assistant Superintendent of Facilities and Governmental Relations at the Santa Ana Unified School District.
- ⁶⁷ The class size reduction program reduced the ratio of students to teachers in kindergarten to third grades. It exacerbated the obstacles for school districts that were growing in size, but lacked facilities to house the new students. School districts that were not growing had to provide additional classroom space to account for smaller ratios of teachers to students in kindergarten to third grades. The State Allocation Board provided portable classrooms to cover the smaller-sized classes. The State Allocation Board estimates that thousands more classrooms are needed.
- ⁶⁸ Department of Finance, School Populations Projections. 1998.
- ⁶⁹ Jacobs, Paul. "Backers of Education Cite Jobs, Overcrowding." Los Angeles Times, May 27, 1992.
- ⁷⁰ Auditor General of California. "Some School Construction Funds are Improperly Used and not Maximized." January 1991.
- ⁷¹ County of Sacramento Superior/Municipal Court, Court #97F05608, CJIS XREF #250593.
- ⁷² Vrana, Deborah. "Assembly Rejects Plan in California to Ease Passage of School Bonds." The Bond Buyer, January 27, 1992.
- ⁷³ The passage required a two-thirds vote by the legislature.
- ⁷⁴ November 1993, Proposition 170 failed by 70 percent.

⁷⁵ Colvin, Richard Lee. "Bond Victory Heartening to Educators." Los Angeles Times, March 28, 1996, p. A1. Anderluh, Deborah, Sacramento Bee, March 31, 1996, p. A1. Of the \$7 billion, \$1.6 billion was estimated for overhauls of buildings over 30 years old, and \$5.6 billion for new construction and classroom additions.

⁷⁶ Colvin, Richard Lee. "The California Vote (a Series)." Los Angeles Times, March 19, 1996, p. A3.

⁷⁷ If a school district has an application with the SAB to repair its roof and the roof is not fixed in a reasonable period of time, further structural damage may occur. This new or additional damage could bump the project to the top of the list.

⁷⁸ See the sub-section entitled "School Districts in Line Stand on Shifting Sands."

⁷⁹ Bazar, Emily and Jane Ferris. "Money for Portable Classrooms." Sacramento Bee, September 26, 1996.

⁸⁰ State bonds were proposed biannually in 1988, 1990, and 1992.

⁸¹ In 1976 and 1978 bond measures were defeated by the electorate.

⁸² "Lawmakers Scrap Over Billions in School Bonds." California Public Finance, May 5, 1997, p. 1.

⁸³ "Huge School Bond Mullied" California Public Finance, September 8, 1997, p. 1.

⁸⁴ This included the type of facility and the number of teaching stations (classrooms).

⁸⁵ The Department of Education, School Facilities Planning Division is responsible for site review and site plan review and is required to recommend all school locations for new schools and additions to schools site regardless of the funding source.

⁸⁶ For example, in 1988, the Los Angeles Unified School District wanted to rehabilitate a hotel into a school. The State Allocation Board paid \$48 million to an escrow account in an attempt to hold the price to acquire the Ambassador Hotel. When the school district and State Allocation Board realized that the site was not acceptable and decided to back out of the contract, they found that the developer had removed the money placed in the escrow account. In addition, when the district attempted to backpedal out of the contract, the owner sued for a breach of contract. Currently, there are negotiations between the school district and the owner of the property, Donald Trump.

⁸⁷ A school district was responsible for developing detailed cost estimates for the proposed school or addition. Site support costs provided funds for the preparation of environmental impact documents, development of relocation reports, determination of relocation claims, and negotiation of site purchases. The state reimburses up to 85 percent of the amount expended for eligible sites.

⁸⁸ This list was limited to those school facility components that have approached or exceeded their normal life expectancy.

⁸⁹ Applications for projects and appeals with correspondence from Carol A. Fisher, Apple Valley Unified School District, Author.

⁹⁰ Reimbursable fees and costs related to plans include architect fees, Division of State Architect/ORS Plan Check fee, CDE Plan Check Fee, Preliminary Tests (like soil, foundation, and exploratory borings) and other fees, for instance, advertising construction bids, and printing of plans.

⁹¹ Pascual, Psyche. "Funding to Build High School Finally Approved By State." Los Angeles Times, June 17, 1993.

⁹² Understanding the board's other five opinions would be difficult to track if not impossible to uncover.

⁹³ To evaluate the State Allocation Board's policies and procedures, it was necessary to obtain the State Allocation Board Handbook. The Handbook contains procedures and policies for reviewing and criteria for approving applications from school districts for bond funds to build new schools. When this report was initiated, the Handbook that the State Allocation Board provided was dated 1995, but contained policies adopted in 1993. Further, the State Allocation Board changes its policies and procedures often, and has no administrative process by which it updates its Handbook. An up-to-date, comprehensive list of policies and procedures was not available in any other format. A new handbook for the Lease Purchase Program was available on line - however, it also suffered from a lack of regular updating. The State Allocation Board meets every month and, hypothetically, policy changes can occur each month. Prior to Proposition 1A, despite being subject to the Administrative Procedures Act, the State Allocation Board had no public notice or participation requirements for the procedures by which it changes its policies. Only long-term policies are published in the California Regulatory Notice Register. Such policies included contracting and affirmative action requirements. Furthermore, staff reported that policies change so frequently, that it would be impossible to include relevant policies in the reporter or any other document.

⁹⁴ The number of students above the maximum number set by CDE to be in a classroom.

⁹⁵ The priority points ranking mechanism is based on, among other things, the percentage of currently and projected unhoused students relative to the total population of the applicant district or attendance area.

⁹⁶ In hardship cases, the State will fund more than 50 percent of new construction if a school district is unable to come up with its 50 percent match and had gone through a reasonable effort. Similarly, districts that are unable to offer a 20 percent match for modernization can seek relief from the State. Financial hardship is defined for those school districts that cannot afford to build, repair, or replace facilities because of fiscal restrictions (for example, an inability to match state funding because of an inability to pass local bonds or a lack of bonding capacity). Facility hardship can also apply to school districts that lack adequate housing for their pupils due to a lack of health and public safety conditions; or because of a natural disaster, traffic safety, or the remote geographic location of pupils (i.e., rural). Excessive costs may be attributed to geographic location, size of project, the cost associated with a new project in urban locations that may require high security or toxic cleanup, and sites that may require seismic retrofitting.

⁹⁷ The State Supreme Court ruled that school districts that were unable to accommodate enrollment growth could ask their city and county councils to limit real estate developers from building additional housing. Some developers found it necessary to offer additional resources (land or money) to get support from school districts and city councils for their projects.

⁹⁸ In three legal challenges, the courts have ruled that cities were not precluded from making zoning or other land-use decisions, because of the availability of classroom space, see *Mira Development Corporation v. City of San Diego*, *William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles*, *Murietta Valley Unified School District v. County of Riverside*. The practical effect of the rulings was that cities could limit development on the basis of the supply of classrooms. Some developers found it necessary to offer additional resources, land or money, to get support from school districts and city councils for their projects.

⁹⁹ If the State expends all of its Proposition 1A resources prior to 2006, school districts can ask developers to pay 100 percent of site acquisition and school construction costs. In order to receive developer support under these conditions, school districts must participate in the Multi-Track Year-Round Education program. The Proposition includes language that the State may reimburse developers for up to 50 percent of their costs if subsequent bond funds become available.

¹⁰⁰ Under the old program, school districts had three application phases for each of their projects – planning, site, and construction. Under the new program, there is only one application phase for the entire project proposal, except under hardship provisions.

¹⁰¹ However, once the funds are distributed to the school district, the school district keeps the interest accrued on the funds.

¹⁰² Price Waterhouse. Joint Legislative Budget Committee Office of the Legislative Analyst. Final Report of the Study of the School Facilities Application Process. January 10, 1988.

¹⁰³ One streamlined step is the self-certification process in the Lease Purchase Program.

¹⁰⁴ However, in light of the office's accomplishments, the author had to request information routinely more than once.

¹⁰⁵ www.dgs.ca.gov/opsc.

¹⁰⁶ School Services of California.

APPENDIX A

School District Financing Mechanisms

In addition to state bond funds, school districts have a variety of other alternatives for funding school construction. These include developer fees, certificate of participation, general obligation bonds, and Mello-Roos taxes. Also, a developer may simply build a school rather than consider other financing alternatives.

Local General Obligation Bonds

In 1986, after an eight-year hiatus, school districts could once again use general obligation bonds to finance school facilities. Bonds are a favorable method of financing, even though they require a two-thirds vote and proceeds cannot be used for items such as buses and furnishings. In 1986, 14 school districts offered bond initiatives. In 1987 and 1988, this number grew to 51 and 54 school districts, respectively. In November 1998, 36 school districts held bond elections.¹⁰⁶

Developer Fees

In 1978, the Wilsona School District was the first to use developer fees. These fees added about \$2,000 to the cost of a typical home in the Lancaster area. While school districts were exacting developer fees, there was no statute that explicitly permitted this activity. The Legislature standardized the authority by giving school districts direct authority to charge developer fees. School districts welcomed developer fees especially because they did not require an election, and the funds associated with the fees could be used for a wide variety of facilities that were associated with enrollment growth. In response to a growing number of complaints from developers, the Legislature capped the amount that could be collected in 1986. Proposition 1A prohibited local agencies from using the inadequacy of school facilities as a reason for not approving housing development projects. The authority to raise developer fees was placed with the State Allocation Board. However, developer fees generally are not enough to cover the full costs of constructing a school.

Certificates of Participation

Certificates of Participation (COPs) are another, though complicated, tool for districts to raise money without voter consent. The most common arrangement is that the district leases a new school owned by another government agency or a nonprofit agency, which in turn raises the capital to build the school by selling shares (certificates of participation). In the long run, lien revenues COPs are remarkably like bonds. One disadvantage of the COP arrangement is that it does not provide a new revenue source for the lease payments. Funds usually come from the school district's general fund.

Mello-Roos

The Mello-Roos Community Facilities Act, established in 1982, authorized school districts and local governments to form "community facilities districts." Subject to the approval of two-thirds of the voters, these special districts could sell bonds to raise revenues for the purpose of financing new buildings, or to rehabilitate existing school facilities. A majority of Mello-Roos districts are created in inhabitable areas that are proposed for development where voting is by the landowners. The district sets a specific tax per house.

EXHIBIT D

Westlaw Attached Printing Summary Report
for

KOYASAKO, STEVEN 1281271 Monday, October 27, 2003 17:56:43 Central

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H

KATHLEEN CONNELL, as Controller, etc., et al.,
Petitioners,

v.

THE SUPERIOR COURT OF SACRAMENTO
COUNTY, Respondent; SANTA MARGARITA
WATER

DISTRICT et al., Real Parties in Interest.

No. C024295.

Court of Appeal, Third District, California.

Nov. 20, 1997.

SUMMARY

Several Water districts brought mandamus proceedings against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. The trial court entered a judgment that the state mandate was a program for which reimbursement was due, and it directed the Controller to determine the amounts of reimbursement. (Superior Court of Sacramento County, Nos. CV347181, CV357155, CV357156 and CV357950, James Timothy Ford, Judge.)

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to vacate its judgment and enter a new judgment denying the petitions for a writ of mandate. The court held that because the judgment plainly left matters undecided, the judgment was interlocutory and therefore was not appealable; however, the court treated the appeal as a writ petition. On the merits, the court held that the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. The court further held that even if the amendment constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470). Rev. & Tax.

Code, former § 2253.2 (now Gov. Code, § 17556), provides that the board shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances. The court also held that the public *383 interest exception to the doctrine of administrative collateral estoppel permitted the Controller to raise that issue in the trial court. (Opinion by Sims, J., with Puglia, P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Appellate Review § 17--Decisions Appealable--Final Judgment-- Necessity For Further Orders.

A judgment entered in litigation to determine whether a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, was not a final judgment and thus was not appealable. The challenging parties' petition sought an order directing the State Controller to issue a warrant and the State Treasurer to pay a warrant, but the judgment merely ordered the Controller to determine amounts without disposing of those matters. The record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget, but the necessary evidentiary hearing on that issue was not held. Because the judgment plainly left matters undecided, the judgment was interlocutory and therefore not appealable.

(2) Appellate Review § 10--Jurisdiction--Appealable Judgment.

An appealable judgment or order is a jurisdictional prerequisite to an appeal.

[See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § § 13-14.]

(3) Appellate Review § 17--Decisions Appealable--

Interlocutory Judgment.

An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties.

(4) Mandamus and Prohibition § 44--Mandamus--To Courts--Appeal--Scope of Review.

In reviewing a trial court's ruling on a petition for a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. However, where the facts are undisputed and the issues present questions of law, the appellate court *384 is not bound by the trial court's decision but may make its own determination.

(5) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception-- Board of Control Decision.

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the board's decision was wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts.

[See 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 339.]

(6a, 6b) State of California § 11--Fiscal Matters--Reimbursement for State-mandated Costs--Standards for Reclaimed Wastewater--Authority of Water Districts to Levy Fees.

Even if a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470), Rev. & Tax.

Code, former § 2253.2 (now Gov. Code, § 17556), provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances.

(7) Statutes § 29--Construction--Language--Legislative Intent.

In construing statutes, a court's primary task is to determine the lawmakers' intent. To determine intent, the court looks first to the words themselves. If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature. *385

(8) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception-- Legal Issue.

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel permitted defendant to raise the purely legal issue that Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), precluded reimbursement. The statute provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program, and plaintiffs have such authority. The board's finding to the contrary was thus not binding.

COUNSEL

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Susan R. Oie, Deputy Attorneys General, for Petitioners.

No appearance for Respondent.

James A. Curtis for Real Parties in Interest.

SIMS, J.

This case involves a dispute as to whether a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. (Cal. Const., art. XIII B, § 6 (hereafter, section 6); [FN1] Gov. Code, § 17500 et seq.; former Rev. & Tax. Code, § 2201 et seq.) The State Controller and State Treasurer appeal from a trial court judgment granting *386 petitions for writ of mandate brought by Santa Margarita Water District (SMWD), Marin Municipal Water District, Irvine Ranch Water District and Santa Clara Valley Water District (the Districts), seeking to enforce a State Board of Control (the Board) decision which found the regulatory amendment constituted a reimbursable state mandate. [FN2] Appellants contend the trial court erred because (1) the amendment did not constitute a new program or higher level of service in an existing program; (2) the Districts' claim was abolished when the statutory basis for their claim-former Revenue and Taxation Code section 2207- was repealed before their rights were reduced to final judgment, and (3) the Districts' authority to levy fees to pay for the increased costs defeats their claim of a reimbursable mandate. Appellants also challenge the trial court's determination that they were collaterally estopped from challenging the Board's decision (finding a reimbursable state mandate) by their failure timely to seek judicial review of the administrative decision. We shall conclude the Districts' authority to levy fees defeats their claim of a reimbursable mandate, and appellants are not collaterally estopped from raising this matter. We therefore need not address the other contentions. Treating this appeal from a nonappealable judgment as an extraordinary writ petition, we shall direct the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions.

FN1 Section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency

affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

FN2 The trial court first held proceedings in the matter of the petition filed by the SMWD. The other three water districts had filed petitions, which were consolidated and awaiting hearing. The parties to the consolidated case filed a stipulation indicating they did not wish to relitigate the entitlement issues already decided by Judge Ford in the SMWD case, and they stipulated to assignment of their cases to Judge Ford pursuant to California Rules of Court, rule 213 (assignment to one judge for all or limited purposes), for determination of amounts as to each district. The judgment expressly covers the petitions of all four districts.

Factual and Procedural Background

In 1975, the State Department of Health Services (DHS) adopted regulations (Cal. Code Regs., tit. 22, § § 60301-60357) implementing Water Code section 13521, which provides: "The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health." Section 60313 [FN3] of title 22 of the California Code of Regulations prescribed the level of purity required for reclaimed water to be used for landscape irrigation. *387

FN3 California Code of Regulations, title 22, section 60313, initially provided: "Landscape Irrigation. Reclaimed water used for the irrigation of golf courses, cemeteries, lawns, parks, playgrounds, freeway landscapes, and landscapes in other areas where the public has access shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if at some location in the treatment process the median number of coliform organisms does not exceed 23 per 100 milliliters, as determined

from the bacteriological results of the last 7 days for which analyses have been completed." (Former § 60313, Cal. Code Regs., tit. 22, Register 75. No. 14 (Apr. 5, 1975).)

In May 1976, SMWD adopted a plan to develop a wastewater reclamation system. In August 1976, SMWD filed an application with the responsible regional water quality control board (Water Control Board) for a permit to discharge wastewater from the proposed reclamation system. SMWD also planned to provide reclaimed water for irrigation, potentially to 2,173 acres of land.

In February 1977, the Water Control Board issued SMWD a permit for operation of a reclamation system—the Oso Creek facility. The permit required SMWD to comply with all applicable wastewater reclamation regulations then in effect.

In late 1977, SMWD learned DHS might be considering modifications to the California Code of Regulations, title 22 regulations.

In August 1978, SMWD completed construction of the Oso Creek facility, at a cost of \$17 million.

In September 1978, DHS amended the regulations. The amendment to California Code of Regulations, title 22, section 60313 [FN4] increased the level of purity required before reclaimed wastewater could be used for the irrigation of parks, playgrounds and school yards. It is this amendment which allegedly constituted a state-mandated cost. SMWD modified its facility to comply with the amended regulations, completing the modifications in 1983. *388

FN4 Section 60313 of California Code of Regulations, title 22, as amended, provides:

"(a) Reclaimed water used for the irrigation of golf courses, cemeteries, freeway landscapes, and landscapes in other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not

exceed 240 per 100 milliliters in any two consecutive samples.

"(b) Reclaimed water used for the irrigation of parks, playgrounds, schoolyards, and other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized, coagulated, clarified, filtered wastewater or a wastewater treated by a sequence of unit processes that will assure an equivalent degree of treatment and reliability. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 2.2 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 23 per 100 milliliters in any sample."

On October 1, 1982, SMWD filed a "test claim" [FN5] with the Board, alleging the regulatory amendment relating to the use of reclaimed wastewater constituted a new program or higher level of service. The test claim was made pursuant to former Revenue and Taxation Code section 2231, [FN6] which required reimbursement to local agencies for costs mandated by the state (see now Gov. Code, § 17561 [FN7]), and former Revenue and Taxation Code section 2207, subdivisions (a) and (b) [FN8] defining "costs mandated by the state." (See now Gov. Code, § 17514. [FN9]) The test claim also cited section 6 (fn. 1, *ante*). *389

FN5 At the time in question, "test claim" meant "the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district." (Former Rev. & Tax. Code, § 2218; Stats. 1980, ch. 1256, § 7, p. 4249.) "Estimated claims" and "reimbursement claims" were used to make specific demand against an appropriation made for the purpose of paying such claims. (*Ibid.*) A similar structure, distinguishing between "test claims" and various "reimbursement claims" or "entitlement claims" continues presently in Government Code sections 17521-17522.

At the time in question, the statutory procedure provided that if the Board found a mandate, it did not determine the amount to

be reimbursed to the test claimant; rather, the Board then adopted a statewide cost estimate which was reported to the Legislature. (Stats. 1980, ch. 1256, p. 4246 et seq.; Stats. 1982, ch. 734, p. 2911 et seq.) It was the State Controller who determined specific amounts to be reimbursed, after the Legislature appropriated funds for that purpose. (*Ibid.*)

FN6 Former Revenue and Taxation Code section 2231 provided in part: "(a) The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207...." (Stats. 1982, ch. 1586, § 3, p. 6264.)

FN7 Government Code section 17561 provides in part: "(a) The state shall reimburse each local agency and school district for all 'costs mandated by the state,' as defined in Section 17514...."

FN8 Former Revenue and Taxation Code section 2207 provided in part: "'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program" (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.)

The test claim did *not* invoke other subdivisions of former Revenue and Taxation Code section 2207, concerning "(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. [¶] ... [¶] ... (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program." (Stats. 1980, ch. 1256, § 4, pp.

4247- 4248.) Since these subdivisions were not invoked, we have no need to consider them.

FN9 Government Code section 17514 provides: "'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6"

On July 28, 1983, the Board determined the amended regulations imposed state mandated costs. In so doing, the Board rejected the position of state agencies seeking denial of the claim on the ground that local agencies are not mandated to use reclaimed water and because, if local agencies do choose to use it, they can recover the cost in charges made to purchasers of the water.

On January 19, 1984, the Board adopted "Parameters and Guidelines" establishing criteria for payment of claims to water districts pursuant to this mandate. (Former Rev. & Tax. Code, § 2253.2; Stats. 1982, ch. 734, § 10, pp. 2916-2917; Gov. Code, § 17557.)

On May 31, 1984, the Board amended its Parameters and Guidelines to provide for reimbursement of SMWD's cost of preparing and presenting the test claim.

In June 1984, the Board, pursuant to former Revenue and Taxation Code section 2255, [FN10] submitted to the Legislature a statewide cost estimate of \$14 million for this mandate. The Legislature did not appropriate any funds for the mandate in 1984.

FN10 Former Revenue and Taxation Code section 2255 provided: "At least twice each calendar year the Board of Control shall report to the Legislature on the number of mandates it has found and the estimated statewide costs of such mandates. Such report shall identify the statewide costs estimated for each such mandate and the reasons for recommending reimbursement.... Immediately on receipt of such report a local

governmental claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of such mandates, pursuant to the provisions of this article." (Stats. 1980, ch. 1256, § 20, p. 4255.)

The current provision is contained in Government Code section 17600, which provides: "At least twice each calendar year the commission shall report to the Legislature on the number of mandates it has found pursuant to Article 1 (commencing with Section 17550) and the estimated statewide costs of these mandates. This report shall identify the statewide costs estimated for each mandate and the reasons for recommending reimbursement."

In 1985, the Legislature included an appropriation of almost \$14 million for this state-mandated cost in the budget, but the Governor vetoed the appropriation.

In 1986, a bill including \$945,000 for the subject mandate was introduced, but the bill was not enacted.

On January 27, 1987, SMWD filed in the trial court a petition for writ of mandate pursuant to Code of Civil Procedure section 1085. The petition sought an order directing (1) the State Controller to issue a warrant "to pay the State's obligation to SMWD for its 'costs mandated by the state' " and (2) the State Treasurer to pay the Controller's warrant. *390

At a hearing, the trial court upheld the Board's decision that the amended regulations required a higher level of service and held the doctrines of waiver and collateral estoppel applied to that decision, such that the state, by failing to challenge the Board's decision within the three-year statute of limitations, was barred from challenging it now. However, the trial court did allow the state to argue that the amended regulations did not come within the definition of "program," as that word had recently been defined in County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].

The trial court recognized that, since there was no appropriation for this mandate in the state budget, the court could not grant the relief sought by SMWD (an order directing the Controller to issue a warrant and the Treasurer to pay it) unless the court found the existence of funds reasonably available in the state

budget which could be tapped for this purpose. The trial court stated it was not prepared to find the existence of funds reasonably available without a full evidentiary hearing. Rather than use the Board's statewide estimate, the court believed it needed to know the amount to which each water district would be entitled before it could determine whether there were funds reasonably available in the budget. The trial court ruled the exact amount of money to be reimbursed to the Districts had never been determined and referred the matter to a referee to make that determination.

In February 1989, a court-appointed referee began evidentiary hearings to determine the amount of reimbursement for each water district.

In 1989, the Legislature repealed former Revenue and Taxation Code section 2207 (fn. 8, *ante*), defining "costs mandated by the state." (Stats. 1989, ch. 589, § 7, p. 1978.)

On July 29, 1994, appellants filed in the trial court a motion for judgment on the pleadings/motion to dismiss, arguing repeal of former Revenue and Taxation Code section 2207 destroyed any right to reimbursement and divested the court of jurisdiction to proceed. The motion also revisited the issue presented to and rejected by the Board, that the water districts' authority to levy fees defeated a finding that the costs were reimbursable.

In February 1995, the trial court issued its ruling denying appellants' motion for judgment on the pleadings and for dismissal. The court in its minute order determined repeal of former Revenue and Taxation Code section 2207 in 1989 had not destroyed the Districts' right to reimbursement pursuant to the Board's decision, because the Board's decision was reduced to "final judgment" before the statutory repeal. The court said the Board's *391 decision on July 28, 1983, became final in July 1986, when the applicable three-year statute of limitations for seeking judicial review lapsed. The Board's decision therefore conclusively established the Districts' right to reimbursement, and appellants were collaterally estopped from challenging the Board's decision. The court further said no discernible injustice or public interest precluded this application of collateral estoppel; rather, justice would be furthered by allowing the Districts to enforce their right to reimbursement as established by the Board.

The trial court further said the statutory authority of the Districts to levy service charges and assessments

(Former Rev. & Tax. Code, § 2253.2, subd. (b)(4); [FN11] Stats. 1982, ch. 734, § 10, p. 2916; Gov. Code, § 17556 [FN12]) did not bar reimbursement for state-mandated costs. "When the Board determined that the 1978 amendment of the regulations establishing reclamation criteria imposed reimbursable state-mandated costs, it rejected the argument of the State Departments of Health Services and Finance that the costs were not reimbursable pursuant to former Revenue and Taxation Code section 2253(b)(4) and implicitly determined, in accordance with the presentation of [Santa Margarita Water District] that [the Districts] did not have sufficient authority to levy service charges and assessments to pay for the increased level of service mandated by the 1978 regulatory amendment. This implicit determination, resolving a mixture of legal and factual issues, became final and binding on respondents under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

FN11 At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part: "(b) The Board of Control shall not find a reimbursable mandate ... in any claim submitted by a local agency ... if, after a hearing, the board finds that: [¶] ... [¶] (4) The local agency ... has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." (Stats. 1982, ch. 734, § 10, p. 2916.)

FN12 Government Code section 17556 provides in part: "The [Commission on State Mandates (formerly the Board of Control)] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

At a further hearing concerning the amount owed to each water district, the trial court stated it had erred in referring the matter to a referee and should have

rendered a judgment directing the Controller to determine the amounts owed.

On June 3, 1996, the trial court entered a judgment stating (1) the Board's decision was final at the time the petitions were filed in the trial court; (2) *392 the state mandate is a program for which reimbursement is due under County of Los Angeles v. State of California, supra, 43 Cal.3d 46; (3) the court having concluded it was inappropriate for the court to determine amounts of reimbursement, the Controller was directed to make that determination. The court directed issuance of a writ commanding the Controller to determine the amounts due to the Districts.

Appellants appeal from the judgment.

The Districts filed a cross-appeal, but we dismissed the cross-appeal pursuant to stipulation of the parties.

Discussion I. Appealability

(1a) Because the petition sought an order directing the Controller to issue a warrant and the Treasurer to pay a warrant but the judgment merely ordered the Controller to determine amounts without disposing of those matters, and because the record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget [FN13], (Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d 521, 538-541 [234 Cal.Rptr. 795])—a determination requiring an evidentiary hearing which was not held—we requested supplemental briefing on the question whether the judgment was a final appealable judgment, as opposed to an interlocutory judgment.

FN13 The petition for writ of mandate alleged there was a continuously appropriated State Mandates Claims Fund upon which the Legislature had placed restrictions which on their face made the fund inapplicable to the mandate at issue in this case. The petition further alleged these restrictions were unconstitutional, such that upon a judicial declaration of their unconstitutionality, there would exist funds reasonably available to pay SMWD. The trial court made no ruling on these matters. In this appeal, we need not and do not

decide the propriety of the remedy sought by the Districts.

(2) An appealable judgment or order is a jurisdictional prerequisite to an appeal. (Code Civ. Proc., § 904.1; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § § 13-14, pp. 72-73.)

(3) An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties. (Lyon v. Goss (1942) 19 Cal.2d 659, 669-670 [123 P.2d 11].)

(1b) In their supplemental briefs, both sides maintain the judgment is a final appealable judgment but for different reasons. Both sides are wrong. *393

Appellants assert the judgment is final because nothing further remains to be done by the trial court. According to appellants, the Controller, after determining what amounts are due, is supposed to submit that amount to the Legislature to appropriate the funds (though the judgment contains no such direction). Appellants assert that, if the Legislature does not appropriate the funds, the Districts' remedy would be to file a new action in the superior court to enforce the court's prior order, and to compel payment out of funds already appropriated and reasonably available for the expenditures. Appellants assert it is thus premature to consider whether appropriated funds are reasonably available to pay any reimbursement due.

The Districts' supplemental brief, while agreeing the judgment is a final appealable judgment, disputes appellants' view of what happens after the Controller determines the amounts. The Districts maintain the trial court intended for appellants to pay the amounts determined by the Controller, despite the judgment's failure so to state. The Districts claim the unresolved factual question of the existence of available appropriated funds in the budget is merely "an administrative detail" which need not be addressed by the court except in a proceeding to enforce the judgment in the event appellants refuse to pay.

Both sides are wrong. Nothing in the judgment requires the Controller to submit an appropriations bill to the Legislature, and appellants cite no authority that would require such a procedure—which would duplicate steps previously undertaken in this case without success. Nor does anything in the

judgment call for issuance or payment of warrants. Carmel Valley Fire Protection Dist. v. State of California, *supra*, 190 Cal.App.3d 521—a case discussed in the trial court and on appeal—recognized that a court violates the separation of powers doctrine if it purports to compel the Legislature to appropriate funds, but no such violation occurs if the court orders payment from an existing appropriation. (*Id.* at pp. 538-539.) Thus, the Districts' view of this matter as an administrative detail for a later postjudgment enforcement proceeding is unsupported.

We recognize this litigation arises from a "test claim," which merely determines whether a state-mandated cost exists. (See fn. 5, *ante.*) Perhaps no issue of payment should arise at all at the test claim stage, though neither side so argues.

In any event, the judgment plainly leaves matters undecided.

We conclude the judgment is interlocutory and therefore not appealable.

Nevertheless, on our own motion, we shall exercise our discretion to treat the appeal as a writ petition and shall grant review on that basis. (Morehart *394 v. County of Santa Barbara (1994) 7 Cal.4th 725, 743-744 [29 Cal.Rptr.2d 804, 872 P.2d 143] [treating appeal as writ petition is authorized means for obtaining review of interlocutory judgments].) We shall exercise our discretion to treat the appeal as a writ petition in the interest of justice and judicial economy, because the merits of the dispositive issues have been fully briefed, both sides urge review, and the judgment compels the Controller to engage in complex factfinding determinations which may be moot if the trial court erred on the merits of the mandate issues. Given the difficulties in discerning how the former statutory process of test claims was supposed to work in practice, we believe the interests of justice and judicial economy are best served by reviewing the judgment rather than dismissing the appeal.

We stress, however, that our review is limited to contentions raised in the briefs—which do not raise issues of the propriety of the remedy sought by the Districts. We express no view on whether the remedy sought by the Districts was an available or appropriate remedy.

II. Standard of Review

(4) In reviewing the trial court's ruling on a writ of

mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407 [216 Cal.Rptr. 782, 703 P.2d 122].) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)

III. Collateral Estoppel

We first address the trial court's determination that appellants were collaterally estopped from challenging the Board's determination of state-mandated cost (except for the ability to address the effect of a new Supreme Court case defining "program"). The trial court stated the Board's decision became final for collateral estoppel purposes in July 1986, when the statute of limitations for judicial review expired.

Appellants contend the trial court erred in applying collateral estoppel, because there was no "final judgment" for collateral estoppel purposes, since the amount of reimbursement had yet to be determined.

(5) We conclude it is not necessary to decide the parties' dispute as to whether the requirements of administrative collateral estoppel are met, because even assuming the elements are met, the doctrine of collateral estoppel should be disregarded pursuant to the public interest exception. *395

Thus, our Supreme Court declined to apply collateral estoppel in a state-mandated costs case in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64-65 [266 Cal.Rptr. 139, 785 P.2d 522] (*Sacramento II*). There, a city and a county filed claims with the Board seeking subvention of costs imposed by a statute (Stats. 1978, ch. 2, p. 6 et seq., referred to in *Sacramento II* as "chapter 2/78") which extended mandatory coverage under the state unemployment insurance law to include state and local governments. The Board found there was no state-mandated program and denied the claims. On mandamus, the trial court overruled the Board and found the costs reimbursable. We affirmed the trial court in a published opinion. (*City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258] (*Sacramento I*)). On remand, the Board determined the amounts due on the claims, but the Legislature refused to appropriate the necessary funds. The city filed a class action seeking among other things payment of the state-mandated costs.

The trial court granted summary judgment for the state on the grounds the statute did not impose state-mandated costs. The Supreme Court upheld the trial court's decision.

The Supreme Court in *Sacramento II* rejected the local agencies' argument that the state was collaterally estopped from relitigating the issue whether a state-mandated cost existed, because *Sacramento I* "finally" decided the matter. (*Sacramento II, supra*, 50 Cal.3d at p. 64.) The Supreme Court said: "Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. [Citation.] '... But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed....' [Citation.]

"Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable under article XIII B and parallel statutes constitutes a pure question of law. The *state* was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

"Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies...." (*Sacramento II, supra*, 50 Cal.3d at p. 64, original italics.) *396

The Supreme Court also rejected the argument that *res judicata* applied. "Of course, *res judicata* and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. [Citations.] However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations *in general* under chapter 2/78." (*Sacramento II, supra*, 50 Cal.3d at p. 65, original italics.)

If this court's opinion finding a reimbursable mandate in *Sacramento I* did not constitute a final adjudication precluding further consideration of the matter, a fortiori the Board's decision in the instant case does not constitute a final adjudication precluding further consideration. Thus, here, as in *Sacramento II*, the issues presented are not limited to the validity of any finally adjudicated individual claim, but encompass the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the Board's decision is wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts. We reject the Districts' argument that no public interest exists in this case because only a few local entities are involved.

The Districts suggest application of the public interest exception to collateral estoppel would nullify the legislative intent to avoid multiple proceedings by creating a comprehensive and exclusive procedure for handling state mandated costs issues in the administrative forum. (E.g., Gov. Code, § 17500. [FN14]) However, we are bound by Supreme Court authority applying the public interest exception in a state-mandated costs case. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 [*39720 Cal.Rptr. 321, 369 P.2d 937].) Moreover, contrary to the Districts' implication, the administrative decision is not the final word; the statutory scheme authorizes judicial review of the administrative decision. (Gov. Code, § 17559; former Rev. & Tax. Code, § 2253.5; Stats. 1977, ch. 1135, § 12, p. 3650.) Additionally, the instant judicial proceeding was initiated by the Districts, not by appellants. Thus, in this case application of the public interest exception to collateral estoppel is not creating multiple proceedings.

FN14 Government Code section 17500 provides in part: "The Legislature finds and declares that the existing system for reimbursing local agencies ... for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in

order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. [¶] It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 ... and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6"

In light of the Supreme Court's decision in *Sacramento II*, we disregard earlier authority of an intermediate appellate court which applied administrative collateral estoppel to a question of law in a state-mandated costs case without express discussion of the public interest exception. (*Carmel Valley Fire Protection Dist. v. State of California*, *supra*, 190 Cal.App.3d at p. 536.)

We conclude that, insofar as appellants' contentions present questions of law, the public interest exception to administrative collateral estoppel governs, and we shall therefore address the legal arguments raised in appellants' brief.

IV. Authority to Levy Fees

(6a) Appellants contend that, even if the regulatory amendment is a new program for state mandated costs purposes, the Districts' authority to levy fees defeats a determination that the costs are reimbursable. We agree.

At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part:

"(b) The Board of Control shall not find a reimbursable mandate, pursuant to either Section 2250 of this code or to Section 905.2 of the Government Code, in any claim submitted by a local agency or school district, pursuant to subdivision (a) of Section 2218, if, after a hearing, the board finds that:

.....

"(4) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." [FN15] (Stats. 1982, ch. 734, § 10, p. 2917; Stats. 1980, ch. 1256, § 15, pp. 4253-4254.) *398

FN15 This case presents no issue concerning any distinction between "service charges, fees or assessment," as used in the statute. The parties on appeal frame the issue in terms of the authority to levy "fees." We adopt their usage for the sake of simplicity.

The same provision is currently contained in Government Code section 17556. [FN16]

FN16 Government Code section 17556 provides in part: "The commission [formerly the Board] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service...."

The facial constitutionality of this provision was upheld in County of Fresno v. State of California (1991) 53 Cal.3d 482 [280 Cal.Rptr. 92, 808 P.2d 235]. The *Fresno* court rejected an argument that the statute was facially unconstitutional as conflicting with section 6 (fn. 1, *ante*), which contains no exclusion of reimbursement where the local agency has authority to levy fees. Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues. (53 Cal.3d at p. 487.) Government Code section 17556, subdivision (d), "effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound." (County of Fresno v. State of California, *supra*, 53 Cal.3d at p. 487.)

Here, appellants contend that, at all pertinent times, the water districts have had *authority* to levy fees to cover the costs at issue in this case. They cite provisions such as Water Code section 35470, which

provides: "Any district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose."

We agree this statute on its face authorizes the Districts to levy fees sufficient to pay the costs involved with the regulatory amendment. We thus shall conclude the Board erred in finding a right to reimbursement despite this authority to levy fees, and we shall conclude appellants are not collaterally estopped from pressing this point.

The Districts do not dispute they have authority to levy fees for the costs involved in this case. Instead they argue the real issue is whether they had *399 "sufficient" authority. They claim this issue was a mixed question of law and fact, and appellants should be collaterally estopped from raising it. [FN17]

FN17 The Districts assert appellants are relying on evidence that was not before the Board. However, they do not explain what they mean or give us any reference to appellants' brief. We therefore disregard the assertion.

We agree with appellants that the public interest exception to collateral estoppel should be applied here, because the issue presents a pure question of law. The Districts tried to make it a factual issue, but we shall explain why the facts presented by the District were immaterial.

Thus, in proceedings before the Board (where Water Code section 35470 was cited to the Board by state agencies), SMWD did not argue it lacked "authority" to levy fees for this purpose. Instead, SMWD argued and presented evidence that it would not be economically desirable to do so. SMWD submitted declarations stating that rates necessary to cover the increased costs would render the reclaimed water

unmarketable and would encourage users to switch to potable water. SMWD maintained that imposition of higher fees on users would contravene the legislative policy expressed in Water Code section 13512, which directs the state to undertake all possible steps to encourage development of wastewater reclamation facilities.

The Board made no express finding concerning this issue. The record contains only the Board minutes, which reflect a motion was made "To find a mandate and continue the issue regarding the claimant's ability to levy a service charge, to the parameters and guidelines process." There was no second to the motion. A motion was then made to find the regulatory amendment contained a reimbursable mandate. The motion carried. The minutes then state: "Discussion: Chairperson Yost disagreed with the motion as she felt the claimant could recover their costs by levying a service charge" The Board's Parameters and Guidelines stated in part: "If service charges or assessments were levied to defray the cost of the new criteria, the claim must be reduced by the amount received from such charges or assessment."

In proceedings before the trial court, SMWD admitted the district had the authority to levy fees but argued existence of authority was not enough, and the real question was whether it was economically feasible to levy fees sufficient to pay the mandated costs. Thus, SMWD's counsel stated at the hearing in the trial court: "The state keeps focusing on the question of whether the authority to issue, to assess fees and charges exists, and we have never contested that it didn't.

"But the statute which says that the Board cannot find the existence of a mandate if there's authority to assess fees and charges, and then the critical *400 phrase, 'sufficient to pay for the mandated costs,' that's the condition with [sic] which they cannot satisfy.

"We proved that, the Board of Control hearing, through economic evidence. We proved it through testimony that the market was absolutely inelastic in terms of reclaimed water and potable water, that if you raise the price of reclaimed water over the potable water, that people would then buy the potable water, and that's all in the record.

"And so we showed that even though we have the authority, it was not sufficient to pay"

We note the record also reflects comments by

SMWD's counsel to the trial court, that its customers were paying the increased costs as an "advance" against the state's obligation. The court pointed out users' payment of increased costs disproved the economic evidence SMWD had presented to the Board, that it could not raise its prices without losing its customers. The record also contains indications that the Districts funded the increased costs by diverting money from other sources. As will appear, we need not address this evidence, because it is not relevant to the question of authority to levy fees sufficient to fund the increased costs imposed by the regulatory amendment, which is a question of law in this case.

The trial court's minute order stated the districts' authority to levy fees did not bar reimbursement for state-mandated costs, because the Board "implicitly determined" the districts did not have "sufficient" authority to levy fees to pay for the increased service mandated by the 1978 regulatory amendment, and this "implicit determination, resolving a mixture of legal and factual issues, became final and binding on [appellants] under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

On appeal, appellants argue the sole inquiry is whether the local agency has "authority" to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. Appellants argue this presents a question of law, such that the public interest exception to collateral estoppel would apply (assuming the requirements of collateral estoppel are otherwise met).

We agree with appellants. (7) In construing statutes, our primary task is to determine the lawmakers' intent. (Brown v. Kelly Broadcasting Co. (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) To determine intent, we look first to the words themselves. (*Ibid.*) "If the language is clear *401 and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature" (Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].)

(6b) Here, the statute is clear and unambiguous. On its face the statute precludes reimbursement where the local agency has "authority" to levy fees sufficient to pay for the mandated program or level of service. The legal meaning of "authority" includes the "Right to exercise powers; ..." (Black's Law Dict.

(6th ed. 1990) p. 133, col. 1.) The lay meaning of "authority" includes "the power or right to give commands [or] take action" (Webster's New World Dict. (3d college ed. 1988) p. 92.) Thus, when we commonly ask whether a police officer has the "authority" to arrest a suspect, we want to know whether the officer has the legal sanction to effect the arrest, not whether the arrest can be effected as a practical matter.

Thus, the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program.

The Districts in effect ask us to construe "authority," as used in the statute, as a practical ability in light of surrounding economic circumstances. However, this construction cannot be reconciled with the plain language of the statute and would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by the Districts, it would have used "reasonable ability" in the statute rather than "authority."

The question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs. The Districts clearly have authority to levy fees sufficient to cover the costs at issue in this case. Water Code section 35470 authorizes the levy of fees to "correspond to the cost and value of the service," and the fees may be used "to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose." The Districts do not demonstrate that anything in Water Code section 35470 limits the authority of the Districts to levy fees "sufficient" to cover their costs.

Thus, the economic evidence presented by SMWD to the Board was irrelevant and injected improper factual questions into the inquiry.

On appeal, the Districts briefly argue economic undesirability of levying fees constitutes a lack of authority to levy fees sufficient to cover costs. They claim the evidence before the Board showed SMWD "could not" *402 increase its fees because it was already charging as much for reclaimed as it was for potable water. However, the cited portion of the record does not show SMWD "could not" increase its fees but only that an increase would render reclaimed water unmarketable and encourage users to switch to potable water. The Districts cite no authority supporting their construction of former Revenue and

Taxation Code section 2253.2 (now Gov. Code, § 17556) that *authority* to levy fees sufficient to cover costs turns on economic feasibility. We have seen the plain language of the statute defeats the Districts' position.

(8) Since the issue in this case presented a question of law, we conclude the public interest exception to collateral estoppel applies. (Sacramento II, supra, 50 Cal.3d at p. 64.)

The Districts argue application of the public interest exception in this case raises policy concerns about the finality of administrative decisions on state-mandated costs, because if collateral estoppel does not apply in this case, it will never apply. However, we merely hold, in accordance with Supreme Court pronouncement, that the public interest exception to collateral estoppel applies under the circumstances of this case to this state-mandated cost issue which presents solely a question of law.

The Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.

The Districts cite evidence presented to the referee in the aborted hearing to determine amounts owed to each District, that SMWD's director of finance testified SMWD has other sources of revenue from other services it provides (such as sewer service), maintains separate accounts, and borrowed funds internally from other accounts to cover costs incurred as a result of the subject mandate. The Districts assert this testimony reflects that SMWD "recognized the legal limitations on its authority to impose fees for the services that it provides." However, nothing in this evidence demonstrates any legal limitations on the authority to levy the necessary fees.

The Districts say appellants appear to believe the Districts should require users of other services to subsidize the Districts' cost of reclaiming and selling wastewater, through excessive user fees. However, we do not read appellants' brief as presenting any such argument and in any event do not base our decision on that ground. *403

In a footnote, the Districts make the passing comment: "In light of the adoption of Proposition 218, which added Articles XIII C and XIII D to the California Constitution this past November [1996],

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the authority of local agencies to recover costs for many services will be impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees. See Section 6, Article XIII D." The Districts do not contend that the services at issue in this appeal are among the "many services" impacted by Proposition 218. We therefore have no need to consider what effect, if any, Proposition 218 might have on the issues in this case.

We conclude the Districts were not entitled to reimbursement of state-mandated costs, because they had authority to levy fees sufficient to pay for the level of service mandated by the 1978 regulatory amendment. Appellants were not collaterally estopped from raising this issue in the trial court. We thus conclude the Districts' mandamus petitions should have been denied. We therefore need not address appellants' contentions that (1) the regulatory amendment did not constitute a new program or higher level of service, or (2) any right to reimbursement was abolished upon repeal of former Revenue and Taxation Code section 2207.

Disposition

Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

Puglia, P. J., and Nicholson, J., concurred.

The petition of real parties in interest for review by the Supreme Court was denied February 25, 1998.

*404

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1 PROOF OF SERVICE

2 I am a resident of the State of California, over the age of eighteen years, and not
3 a party to the within action. My business address is 1001 I Street, 23rd Floor,
4 Sacramento, California 95814. On October 28, 2003, I served the within document(s):

- 5 1. Department of Toxic Substances Control's Opposition to Clovis Unified
6 School District's Test Claim No. 92-tc-43

7

BY HAND: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

8

BY MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.

10

BY OVERNIGHT MAIL: by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

12

BY PERSONAL DELIVERY: by causing personal delivery by capitol Couriers of the document(s) listed above to the person(s) at the address(es) set forth below.

14
15 See attached Service List

16 I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice it would be deposited with the U.S.
18 Postal Service on that same day with postage thereon fully prepaid in the ordinary
19 course of business. I am aware that on motion of the party served, service is presumed
20 invalid if postal cancellation date or postage meter date is more than one day after date
21 of deposit for mailing in affidavit.

22 I declare under penalty of perjury under the laws of the State of California
23 that the above is true and correct. Executed on October 28, 2003, at Sacramento,
24 California.

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Sandra Monger

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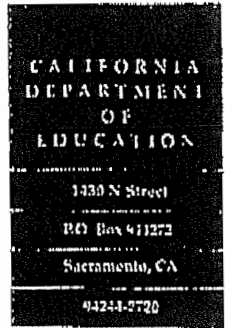
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Exhibit 2



JACK O'CONNELL
State Superintendent of Public Instruction



August 11, 2003

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Post-It™ brand fax transmittal memo 7671		# of pages ▶
To	Vivian Maria	
From	Susan Sanchez	
Co.		
Dept.	Phone # 322-3074	
Fax # 175-599-3382	Fax #	

Dear Ms. Higashi:

Correspondence from the Commission on State Mandates (CSM) requests comments from interested parties on a number of test claims submitted by the Clovis Unified School District. The test claims are: School Facilities Funding Requirements (02-TC-30), Design Build Contracts (02-TC-45), Developer Fees (02-TC-42), and Deferred Maintenance Programs (02-TC-44). Due to the fact that the comments for these test claims are generally due at the same time and the test claims generally deal with facilities or related issues, we have consolidated our comments into one piece of correspondence. Our comments for each test claim are as follows.

School Facilities Funding Requirements (02-TC-30)

This is not a mandated program. It is one of various capital funding mechanisms available to school districts for the funding of facilities. School districts elect to participate in this program and any requirements regarding this program are applicable only after districts elect to participate in this program.

Design Build Contracts (02-TC-45)

This is not a mandated program. It is one of several delivery options that school districts can choose to pursue, if school districts elect to enter into design build contracts. Other factual inaccuracies in this claim include:

Page 13, line 10 of the claim states: Education Code Section 17250.35, subdivision (a), requires the school district governing board to retain the services of an architect or structural engineer to monitor compliance with the established performance criteria and design standards.

This is incorrect. The Education Code states that the governing board *may*, and is *strongly encouraged* to, retain the services of an architect or structural engineer throughout the course of the project.

Page 14, line 6 of the claim states: Subdivision (d) assigns all liability for the facility to the design-build entity.

This is incorrect. The Education Code states that the design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

Page 15, line 5 of the claim states: To the extent that these guidelines are adopted, districts would be required to comply.

This is incorrect. The Education Code only states that the governing board shall review the guidelines. The Education Code does not require compliance with the guidelines. It should be noted that the claimant correctly interpreted this provision on page 5, line 4 of the test claim.

Developer Fees (02-TC-42)

This is not a mandated program. This is a funding option available to local school boards, whereby they can elect to establish developer fees to pay for the construction or re-construction of facilities. Any requirements that apply to the establishment and collection of developer fees are applicable only after districts elect to levy development fees, charges, and/or dedications.

Deferred Maintenance Programs (02-TC-44)

This is not a mandated program. School district elect to participate in this program in order to receive funding for deferred maintenance and for the removal and containment of asbestos or lead. Any requirements regarding this program are applicable only after districts elect to participate in the program.

As required by CSM regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list that accompanied your letter have been provided copies of this letter via either the United States Mail or, in the case of State agencies, Interagency Mail Service.

Should you have questions, please contact Juan Sanchez at (916) 322-3074.

Sincerely,



Gerald C. Shelton, Director
Fiscal and Administrative Services Division

JS:db

PROOF OF SERVICE

CALIFORNIA DEPARTMENT OF EDUCATION

Test Claim Name: School Facilities Funding Requirements, Design Build Contracts, Developer Fees, and Deferred Maintenance Programs

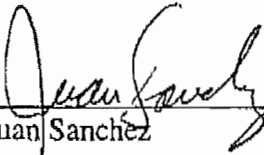
Claim Number: (02-TC-30), (02-TC-45), (02-TC-42), (02-TC-44)

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1430 Street, Suite 2213, Sacramento, CA 95814.

On August 11, 2003 I served the attached comment of the California Department of Education in said cause, by facsimile to the Commission on State Mandates and by placing a true copy Therefore: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1430 Street, Suite 2213, Sacramento, CA 95814, for Interagency Mail Service, to the parties listed on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the fore going is true and correct, and that this declaration was executed on August 11, 2003, at Sacramento, California.



Juan Sanchez

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Exhibit 3

October 14, 1999

SCHOOLS WHITE PAPER – PREPARED BY THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

DTSC introduction to the contaminated schools issue

In July 1995, staff from the Department of Toxic Substances Control (DTSC) discovered that a new school (Jefferson New Middle School) was under construction across the street from a State Superfund site. The Jefferson School is located in south central Los Angeles, just east of the 110 Freeway at Slauson Boulevard. Subsequent investigations conducted by the Los Angeles Unified School District (LAUSD), under DTSC oversight, determined that the site had never been properly characterized for contamination prior to acquisition or construction, and that many questions remained unanswered regarding cleanup activities that had been performed at the site prior to construction of the school.

This DTSC discovery was the first in a series of events that prompted several legislative hearings and two reports from the Joint Legislative Audit Committee (JLAC), chaired by Assemblymember Wildman, on LAUSD school site acquisition activities. Senator Hayden, Chair of the Senate Natural Resources Committee (SNRC), also conducted several hearings on LAUSD's environmental due diligence and site acquisition practices, focusing primarily on the Belmont Learning Center school complex which is undergoing construction in downtown Los Angeles.

In March 1999, the chairs of the JLAC, SNRC, and the Assembly Committee on Environmental Safety and Toxic Materials (Chair, Hannah-Beth Jackson) convened an investigative hearing on Jefferson Middle School and the Belmont school complex. Senators Polanco and Alarcón and Assemblymember Washington also participated in this hearing. As a result of these inquiries, Senator Hayden, Assemblymember Wildman, and several other legislative members concluded that some school districts, particularly LAUSD, have not exercised an appropriate level of environmental review in selecting sites for new schools.

The hearings and reports documented inadequacies in Education Code requirements that prescribe procedures for acquiring and constructing new schools, especially if the construction is proposed for contaminated properties. The JLAC found that the Department of Education consistently signed off on the acceptability of properties for acquisition before a complete site

characterization had been conducted. JLAC also found that, under then-current law (which has been revised by recently signed legislation), a school district has the responsibility and authority to report on school site contamination and plans for its remediation and to certify to the Department of Education that remediation had been completed. At the various hearings, the Department of Education was criticized for failure to have trained professionals, knowledgeable in hazardous substances, review the environmental documentation submitted with applications for State funding.

The JLAC reports raised questions about several other school site acquisitions in LAUSD. At Assemblymember Wildman's request, DTSC completed review of previous environmental documentation for seven additional sites. Based on this review, DTSC identified deficiencies in each of their site characterizations. At least two of the sites are heavily contaminated, and there has been no coordinated investigation or remediation program in place at the sites (yet construction is already underway at the Belmont Learning Center). Overall, through these various hearings and reports, questions have been raised about school sites in the greater Los Angeles area, existing school sites, and about how prevalent these problems are statewide.

DTSC Accomplishments at Contaminated Schools

In response to the schools contamination issue, DTSC formed a dedicated Schools Unit to identify existing LAUSD schools that have known remediation systems on-site, or possible contamination on or off site (that can affect the school). The Schools Unit is actively working on a number of sites. Another priority is working with LAUSD to develop a boilerplate Preliminary Endangerment Assessment (PEA) work plan. A draft Voluntary Cleanup Agreement (VCA) that includes 47 proposed and existing LAUSD schools is also being finalized. Some highlights of significant accomplishments to date are provided below.

- **Suva Elementary and Intermediate Schools - Montebello, California**

In response to public concern over the possibility of adverse health effects being experienced at a school due to contamination from an adjacent chrome plating facility, DTSC coordinated an expedited multi-agency/multi-media environmental investigation. Within six months, DTSC held public meetings to listen to parent and community concerns, conducted a thorough investigation of the school, oversaw the removal of contaminated soil from the school grounds, and ordered the chrome plating facility to undertake measures to prevent the potential for contaminant exposure of children attending the Suva Schools. DTSC also identified problems with lead paint, and, as a result, the school district conducted a large-scale lead abatement program.

- **Belmont Learning Center – Los Angeles, California**

To address an inquiry by the Joint Legislative Audit Committee, DTSC took the lead role in overseeing environmental and public health issues with respect to this large high school construction project. DTSC has been instrumental in investigating the potential risks at the Belmont site due to the presence of methane gas and other contaminants of concern that are related to an oil field. The Belmont project is currently in the remedial

investigation/feasibility study stage. DTSC will continue to provide assistance and project oversight to LAUSD until a remedy (if one is possible), which is protective of public health, is developed and implemented.

- **Jefferson Middle School – Los Angeles, California**

As noted in the introduction, DTSC staff discovered that a new school (Jefferson Middle School) had been built across the street from a State Superfund site. DTSC's investigation revealed that the Jefferson Middle School was constructed on a former industrial property, and had a poorly designed and malfunctioning soil vapor extraction system. DTSC responded immediately by investigating and determining that there was not an immediate health threat at the school. However, further investigation of the subsurface was required. DTSC is working with LAUSD to complete a remedial investigation/feasibility study for the school property.

- **Pacifico High School – Oxnard, California**

Oxnard Union High School District officials approached DTSC with a time-critical need to evaluate a site on which they propose to build the new Pacifico High School. Plans to build the much-needed school were in jeopardy if the district were to fail to obtain Department of Education approval. This approval hinged on conducting a Preliminary Endangerment Assessment (PEA), with DTSC approval, to demonstrate that the proposed site was safe. DTSC responded by working closely with the District and their consultant to conduct an expedited (approximately 75 days), yet thorough PEA. The site was investigated, a human health risk screening analysis was conducted, and the District received a letter from DTSC confirming that the site is safe.

- **Francis Polytechnic High School (Los Angeles), Towne Avenue Elementary School (Carson), and Third Street Elementary School (Los Angeles) – California**

These three LAUSD schools were the subject of an investigation to determine if an imminent public health threat existed as a result of their proximity to landfills. DTSC worked hand in hand with LAUSD's consultant to develop and implement site-specific investigation workplans for each of these existing schools. While the data collected does not indicate that there is an imminent threat, a thorough investigation will be conducted to evaluate the school sites more closely.

- **Monroe Primary Center – Panorama City**

In April 1999 DTSC agreed to oversee a Phase I and Phase II investigation conducted on LAUSD property upon which a primary center (school for grades K-3) was scheduled to be constructed. The property was a vacant lot, which at one time contained residences. The investigation showed unacceptably high levels of lead and pesticides in the surface soil. The surface soil was excavated and taken to a permitted disposal facility. The top seven feet of soil was then graded to prepare the site for the construction of the school. During the grading operations, three septic tanks and two cesspool areas were discovered and removed. DTSC recommended further sampling be conducted in those areas. LAUSD conducted the sampling, which showed that the site did not pose a risk to human health or the environment. DTSC subsequently issued a "No Further Action" (NFA) letter on June 9, 1999 and school construction proceeded immediately.

- **Valerio Primary Center – Van Nuys**
LAUSD requested DTSC oversight of a Preliminary Endangerment Assessment being conducted on land formerly used as a horticultural area for a junior high school. LAUSD planned to construct another primary center on this property during the summer and to open the school for its first students in the fall. Site soil was tested for metals and pesticides. Soil contaminated with lead from old lead-based painted buildings was removed along with 2,500 cubic yards of soil containing high levels of arsenic. The investigation and soil removal was conducted concurrently with the construction of the primary center so as not to delay the opening of the school. DTSC issued an NFA on October 12, 1999. The NFA was contingent upon DTSC concurrence that any soil brought to the site to replace the 2,500 cubic yards must be certified as clean. The primary center is scheduled to open to students the week of October 25, 1999.

How the DTSC Site Mitigation Process Works for School Sites

(Please note that a Glossary of terms is included as **Attachment A** to this white paper.) The process utilized by DTSC in reviewing school sites is described below and is also portrayed in an attached flow chart (**Attachment B**).

Phase I Environmental Site Assessments/Preliminary Endangerment Assessments

Two recently signed bills (which are described in detail in a later section of this paper) now prescribe the process for DTSC review and approval of school site environmental safety. These bills take effect as law on January 1, 2000. Before their enactment, there was no requirement in state law that DTSC review and approve environmental due diligence documents prior to school property acquisition.

In June 1999, CDE requested that DTSC review all Phase I Environmental Site Assessments (Phase I Assessments) and also work with them in an expedited fashion to reduce their backlog of Phase I Assessments. The agencies agreed to work together on an interim basis to review the Phase I Assessments while an Interagency Agreement (IAG) was under development. Under the IAG and the interim agreement in principal, CDE forwards all Phase I Assessments to DTSC for review. Through January 1, 2000, all DTSC costs for review of the Phase I Assessments are borne by the Department of Education. After January 1, 2000, CDE will be the payor to DTSC, but the affected school districts will be charged an application processing fee by CDE which will include DTSC's costs for review of the Phase I Environmental Site Assessments. (DTSC uses the American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments as guidance for the Phase I Assessments.)

Following review of the Phase I Assessment, DTSC advises CDE of any deficiencies and will determine that either: (a) no action is required at the property; or (b) a Preliminary Endangerment Assessment (PEA) is required. A "No Action" determination by DTSC means that the property is suitable for school site development, and ends DTSC involvement with the

site. DTSC will make the “PEA Required” determination if the Phase I Assessment indicates that there may be contamination on the property. Once a “PEA Required” determination is rendered, the School District enters into an Enforceable Agreement with DTSC to govern the next phases of the review process. Alternatively, the District may withdraw its interest in the property.

DTSC/School District Enforceable Agreements

Enforceable Agreements (under DTSC’s Voluntary Cleanup Program) require that the District prepare and submit for DTSC approval, a PEA consistent with DTSC’s PEA Guidance Manual. DTSC assists the District in scoping the PEA. The PEA process requires environmental sampling sufficient for the Department to determine whether or not health or environmental risks exist on the property. A risk analysis is performed as part of the PEA. If the PEA demonstrates that no health or environmental risks exist, DTSC will issue a letter to the District indicating that no further action is required.

If the PEA finds that risks from hazardous substances exist at the site, a much more thorough study of the site, and potentially cleanup actions, will be required if the District still wishes to pursue development of the property. A new agreement or an amendment to the existing agreement would be entered into between DTSC and the School District to address the additional work. For existing schools where contamination was suspected, or remediation systems require evaluation, the School District would enter into an enforceable agreement with DTSC to oversee the environmental work. In all cases, the enforceable agreement could include the legal requirements, the scope of work, a schedule of activities, an estimate of DTSC costs and provisions for payment of DTSC costs for work conducted pursuant to the agreement.

A Remedial Investigation which may involve extensive sampling of soil, ground and surface water, and air, must be conducted to determine the full nature and extent of contamination. Based on this information, a Human Health Risk Assessment must be prepared to establish residential cleanup objectives for the property. The residential cleanup level is used conservatively and considers children as the exposed population. Using information developed in the Remedial Investigation and Health Risk Assessment, a Feasibility Study is conducted to identify a range of remedies for the site that will meet cleanup objectives.

Following approval of the Remedial Investigation, Health Risk Assessment, and Feasibility Study by DTSC, a preferred remedy is identified. Before this remedy can be implemented, it must be formally adopted by DTSC through approval of either a Removal Action Workplan (RAW) or a Remedial Action Plan (RAP). The RAW or the RAP must also meet the requirements of the California Environment Quality Act (CEQA). The Removal Action Workplan is reserved for cleanup activities that cost less than \$1,000,000 and are relatively straightforward (such as a soil excavation with offsite disposal) and are unlikely to generate significant public concern. In some instances, especially for small soil removals, it may be possible to expedite the process by going directly from the PEA to the RAW. The process for approval of the RAW includes providing a public fact sheet and, if appropriate additional public participation activities. The RAW usually contains a detailed cleanup workplan, so that after it is approved, cleanup activities can be implemented expeditiously.

The Remedial Action Plan requires the evaluation of remedial alternatives by several prescribed criteria. A 30-day public comment period and at least one public meeting are also required. After approval of the Remedial Action Plan, an engineering Design is submitted to DTSC for approval before the cleanup is implemented.

Following Cleanup/O&M Agreements

After cleanup activities identified in the Removal Action Workplan or Remedial Action Plan are completed, DTSC provides a Certification that all remedial activities have been properly implemented at the site and the property is suitable for use as a school site.

Some cleanup actions may require long-term Operation & Maintenance (O&M). These include groundwater or soil vapor extraction and treatment systems. In these situations, DTSC will continue to oversee ongoing activities through an O&M agreement with the District. DTSC must carefully evaluate and determine if it is appropriate to allow school use while O&M activities are being conducted, to ensure that children's health is not impacted.

Brownfields issues

Brownfields are sometimes characterized or defined as properties that are abandoned or underutilized due to actual or perceived contamination, and that have redevelopment or reuse potential. In addition to being found throughout urban areas, in California, brownfields are found in rural areas (e.g., agricultural lands, abandoned mine lands, burn dumps, abandoned lumber mills). Schools should be located in close proximity to the school children served, and because the availability of land in more densely populated urban areas is limited, it may be necessary to reuse brownfields in urban areas (and in some rural areas) as school properties. There are pros and cons to using brownfields properties for school construction. Recycling brownfields can curb urban sprawl and its associated problems (increased traffic load and degradation of air quality, increase in infrastructure needs and taxes, loss of open space). It can also facilitate placement of schools in close proximity to the community served by the school, while limiting the need to "take" residential properties for new school construction. Placing a school in an urban area can initiate revitalization of the area overall. Brownfields can have low to high levels of contamination, depending upon the prior use of the property.

Should schools be located on properties with significant contamination? While most properties can ultimately be cleaned up if time or costs are not a factor, DTSC recommends that significantly contaminated sites be dropped from further consideration after the Preliminary Endangerment Assessment is completed. In these instances, DTSC recommends that other properties be evaluated for the school location. Additionally, DTSC recommends that school sites not be located in areas with brownfields surrounding the proposed location. The proposed school site location could be "clean", yet there may be significant unknown contamination in close proximity which may impact the school site and children's health.

While reuse of brownfields as school properties can be a viable option which may offer positive benefits to the community, these properties (and their surroundings) must be carefully

scrutinized (and some should be dropped from consideration completely) to ensure that their selection represents a truly safe environment for school children. DTSC cleanup standards for schools are very stringent to ensure cleanup is protective of children's health, and all properties must be cleaned to these standards, regardless of their status as a brownfield.

School Funding Issues (Prop IA)

Proposition 1A provided state funding for schools construction in California. Two provisions in the proposition pertain to contaminated schools cleanup. One provision addresses class size reduction needs. Districts operating at levels above the required 20 to 1 students/teacher ratio could apply for funds. (LAUSD has been operating at levels higher than this ratio under waivers granted for this purpose.) Only LAUSD and the Santa Ana School District applied for this funding. LAUSD received an apportionment of \$278 million (construction dollars) which they must "match" using local resources (either local bonds or other sources of funding). To obtain these Prop 1A funds, LAUSD had to develop a specific plan for 48 new schools (primary and elementary schools) to address classroom reduction needs.

It is DTSC's understanding that the recently signed legislation (SB 162 and AB 387) does not affect the schools funded by Prop 1A class size reduction monies in that the legislation does not mandate DTSC review/approval of environmental documents for these schools. However, the State Allocation Board (SAB) recently negotiated an agreement between the California Department of Education (CDE) and LAUSD, whereby these Prop 1A funded schools will follow the same process as other proposed state funded schools. Under the terms of the agreement signed in mid-September 1999 between CDE and LAUSD, all environmental documents and work is to be overseen by DTSC; DTSC certification that sites are safe for school occupancy will be required prior to the State Allocation Board allocating 1A funds for construction.

The second relevant provision in Prop 1A addresses schools construction needs based on growth estimates. In order to obtain the funding, the school project must be "ready to go" (property must have been acquired, and all other transactions must have been completed so construction can start immediately). LAUSD's "Growth Master Plan" includes 50 additional schools. The total numbers of schools to be constructed over the next decade may change due to estimates of growth in LAUSD student populations. The estimated cost for these 50 schools is \$1.8 billion, \$900 million to be provided by Prop 1A funds and the LAUSD "match" of \$900 million provided by Prop BB (local Bond funds).

SB 50, the legislation which established the "rules" for Prop 1A funding, required that school districts not purchase properties at a discounted rate (e.g. to purchase a contaminated property, the school district would have to force the owner to cleanup the property at their cost, once completed, the district would then pay full value for the property). This SB 50 provision could have significantly hampered LAUSD's ability to obtain state funds and begin school construction. However, among other things, AB 387 addressed this problem by providing that school districts can assess value to properties based on their condition (e.g., a contaminated property can be purchased at a discounted rate to address costs necessary to cleanup a property).

Using the new AB 387 provision, acquisition and cleanup can now be achieved more quickly, therefore the school district could seek 1A funds much sooner than under SB 50.

Prop 1A funds can be used to pay for cleanup costs and DTSC costs. Based on DTSC's current understanding of both categories of Prop 1A funds, allocation of funds to LAUSD would occur after DTSC has certified that the property has been remediated. (A more thorough explanation of school funding issues can be provided by LAUSD.)

DTSC Role in School Cleanup as Defined by Recent Legislation

SB 162 (Escutia, Chapter 1002, Statutes of 1999) and AB 387 (Wildman, Chapter 992, Statutes of 1999)

These two bills codify a number of the current voluntary processes by mandating the involvement of DTSC in the selection of properties where new school construction is planned, to ensure that new schools are not built on properties contaminated with hazardous materials, including naturally occurring hazardous materials. School districts are required to reimburse DTSC's costs associated with these new requirements. The new process (which mirrors many aspects of the process that was put in place on a voluntary basis under the interagency agreement) will work as follows:

- School districts which intend to use state school bond funds to build new schools must hire a qualified private consultant to conduct a Phase I Environmental Assessment of the proposed school site property. The Phase I Assessment reports, together with all other required submittals are sent to the California Department of Education (CDE) for coordination and approval. CDE is required to forward all Phase I Assessments to DTSC for review and approval. If DTSC finds that the Phase I investigation was conducted in an adequate and complete manner, and that there is no basis for believing that the proposed property is or may be contaminated, then the school district is authorized to purchase the property in question provided that they have met all the other requirements of existing laws, regulations and policies.
- If the Phase I report and/or DTSC determine that a property may be contaminated, then the school district must conduct a Preliminary Endangerment Assessment (PEA) under DTSC oversight. The school district would hire a private consultant to conduct the PEA and contract with DTSC to approve the PEA workplan, oversee the PEA work, and review and approve the final report. If the Preliminary Endangerment Assessment approved by DTSC determines that the property is suitable for school construction without any additional investigation or work, the school district may purchase the property provided that they have met all other procedural requirements.
- If the Preliminary Endangerment Assessment determines that the proposed property has a significant hazardous materials contamination problem, then the school district must make a decision to either find a more suitable property, or fund cleanup of the contaminated property to a level (which must meet residential cleanup standards) approved by DTSC.

- If the school district chooses to remediate a contaminated property, it must contract with DTSC to oversee the cleanup to a level that meets applicable state standards. If additional contamination is found at the site during cleanup, the school district may determine that it will not be cost effective to complete the cleanup and may decide to look for a more suitable property.
- Although unlikely, it is possible that during school construction, contamination may be found on a property that had earlier been determined by DTSC to be free of contamination. It is also possible, but unlikely, that additional contamination may be found at a site during school construction where a cleanup had been performed earlier under DTSC oversight. In these situations, school districts are required to bring the information to DTSC's attention and to stop construction until DTSC determines it is safe to proceed. Finally, these two new laws provide that no new school constructed on previously contaminated property shall be opened for use until DTSC has determined that it is safe to do so.

DTSC Plans for Schools Program Implementation

Staffing plans and issues

DTSC has prepared Budget Change Proposals (BCPs) for FY 2000-2001, which request a significant number of new positions within DTSC to expand its capabilities with regard to toxic school issues/activities. Given the public's and schools districts' concerns, these activities would have been ongoing (in DTSC's opinion) whether or not the recent legislation was enacted into law. New DTSC resources will be used to provide reviews of Phase I Assessments and Preliminary Endangerment Assessments as well as for oversight of any necessary cleanups needed at existing schools or at properties proposed for new school construction. These additional resources will also provide the necessary geotechnical, toxicology and public participation support to such projects.

DTSC's working model for the schools program

DTSC has established a group within its Site Mitigation Program to provide services to schools. This enables staff and management within the group to focus on schools issues and to become sensitized to the unique issues associated with contamination at existing schools and at school sites. For example, school projects often entail a higher level of public interest (particularly existing schools) than do other projects of comparable size and complexity. School projects also tend to operate on a shorter time line than do other Voluntary Cleanup Program projects, due to the need for existing schools to be deemed habitable and to allow local school districts to proceed with new school construction as quickly as possible.

DTSC recently established a Schools Unit in its Glendale office that will service schools in the LAUSD area. As more personnel are needed for the schools program, additional unit(s) will be added in Southern California and in other regions of the state, as needed, to meet the needs of school districts statewide. All staff for the schools programs will be managed in a consistent

manner within the Site Mitigation Program to ensure program consistency as the program grows. A multi-disciplinary team of DTSC experts works collaboratively with the schools unit to ensure that all issues are addressed (such as geologists, engineers, toxicologists, and public participation specialists).

A Top DTSC Management Priority

The schools program is among DTSC's highest priorities. As such, the Department is fully committed to the program's success. To make that happen, DTSC will be administratively establishing new positions and filling vacancies in the current fiscal year to deal with the already greatly increased demand generated by various school districts (particularly LAUSD). DTSC is also currently handling a significant volume of Phase I Environmental Assessments that began being routed to DTSC by the Department of Education for review and approval beginning in July of this year. Finally, DTSC plans to begin now to aggressively implement the provisions of the two bills which were recently signed into law (SB 162 and AB 387), instead of waiting until FY 2000-2001 Budget BCPs come on line next July.

What Does DTSC Need From LAUSD for Program Success?

In order to have a successful working relationship with LAUSD, DTSC needs:

- A single point of contact with LAUSD;
- Prioritization by LAUSD of all school projects; and,
- PEA project schedules for each site in Microsoft Project format

Single Point of Contact

It is important that LAUSD consolidate responsibility for all environmental projects that will be brought to DTSC for review. It has been difficult for DTSC to determine who directs policy, sets priorities, and is ultimately responsible for determining which projects LAUSD wants to work on first. A single point of contact with the above responsibilities would be of great assistance. DTSC anticipates that the new LAUSD Director for the Environmental Health and Safety Branch will fill this gap.

Prioritization of School Projects

In order to work on projects LAUSD considers to be top priority, DTSC needs LAUSD to provide a list of all its school sites, along with the proposed order in which they would like DTSC to work on them. With such a prioritization, DTSC can better meet LAUSD's needs. DTSC will also be better prepared to adjust its staffing levels to provide the necessary service that LAUSD requires at the time that it is most needed.

PEA Project Schedules for Each Site in Microsoft Project Format

Microsoft Project schedules are also necessary to help both LAUSD and DTSC plan for conducting PEAs at the multitude of schools planned for construction over the next several

years. These schedules can also be used as an effective tool to adjust staffing levels and to eliminate unrealistic expectations.

Impediments to Successful Program Implementation

Lack of any of the items noted in the preceding section will significantly slow DTSC program progress. In addition, it is critical that LAUSC use PEA and CERCLA knowledgeable consultants and contractors. This will reduce the amount of time necessary for DTSC to educate consultants and contractors, minimize DTSC comments, and reduce delays due to poor quality and incomplete documents.

Glossary

California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) was enacted in 1970 (Public Resources Code 21000 et. seq., 14 California Code of Regulations, 1500 et. seq.) to ensure that public agency decision-makers document and consider the environmental implications of their actions. The CEQA process serves as a means by which the public interacts with the decision-makers in developing policies affecting the environment. CEQA requires public agencies to prepare an environmental impact report (EIR) whenever the approval of a proposed project may cause significant effects on the environment. An EIR is a detailed statement designed to identify the significant effects of a project, to identify alternatives to the project, and to indicate ways to mitigate the significant effects. CEQA requires that appropriate measures be taken to prevent avoidable damage to the environment.

The Department of Toxic Substances Control (DTSC) is often responsible for carrying out CEQA procedures for various projects. These projects include hazardous waste facility permits, permit renewals and expansions, site mitigation, facility closures, and other hazardous waste activities. In all of these activities, CEQA serves to identify the potential environmental impacts and mitigation measures, and to provide a vehicle for the public to review and comment on project impacts.

Certification

A formal determination by DTSC that the remedial actions and requirements of an approved Remedial Action Plan (RAP) or Removal Action Workplan (RAW) have been met and, therefore, the site is safe for school use.

Design

Document approved by DTSC which includes detailed engineering plans, schedules, and cost estimates for remedial actions selected in a Remedial Action Plan.

Enforceable Agreement

An agreement between the School District and DTSC that addresses the scope of work, schedule for conducting site investigation and cleanup activities, and an estimate of DTSC oversight costs.

Exposure Pathway

Existing or hypothetical route by which chemicals in soil, groundwater or other media can come into contact with humans, animals, or plants.

Extraction/Treatment System

The equipment, including the wells, pumps, piping, and treatment plant necessary to pump and

remove contaminants from groundwater, and transfer treated water to an appropriate disposal point, e.g. sewer or storm drain.

Health Risk Assessment

A health risk assessment is a document that describes the possible health risks that may result from exposure to contaminants at a site. This is part of the Remedial Investigation/Feasibility Study (RI/FS) process.

Implementation

This activity involves construction of remedial or removal actions specified in a RAP or RAW. Implementation also includes performance testing, start-up and shake down procedures necessary to insure the remedial measure is performing as designed. Completion of this phase requires final inspection and approval by DTSC.

Operation & Maintenance

Operation & Maintenance (O&M) includes all actions necessary to ensure the proper performance of facilities over the lifetime of remedial actions implemented pursuant to a RAW or a RAP. Scheduled O&M activities are identified in an O&M plan which is subject to DTSC approval.

Phase I Environmental Site Assessment

A preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A Phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, database searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the Phase I environmental assessment.

Preliminary Endangerment Assessment (PEA)

An activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health, or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site may pose to children's health, public health, or the environment.

Remedial Action Plan (RAP)

A plan, approved by DTSC, that outlines a specific program of remedial actions to cleanup a contaminated site. Once the Draft Remedial Action Plan is prepared, a public meeting is held and comments from the public are solicited for a period of not less than 30 days. After the public

comment period has ended and public comments have been considered and responded to in writing, DTSC approves the final remedy for the site (the Final RAP).

Remedial Investigation/Feasibility Study (RI/FS)

A series of investigations and studies to identify the types and extent of chemicals of concern in the environment (Remedial Investigation) and provide an evaluation of the alternatives for remediating any identified soil or groundwater problems (Feasibility Study).

Removal or Remedial Action

Includes the cleanup or removal of released hazardous substances from the environment or taking of other actions as may be necessary to prevent, minimize, or mitigate damage which may otherwise result from the release or threatened release of hazardous substances.

Removal Action Workplan

A document subject to approval by DTSC that provides site history, summarizes remedial investigation activities, evaluates remedial alternatives, selects and provides the plan and design criteria for the selected removal action.

Soil Vapor Extraction

A process in which chemical vapors are extracted from the soil by applying a vacuum to wells.

Exhibit 4



School Facility Program **Guidebook**

January 2003

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Gray Davis, Governor

State and Consumer Services Agency
Aileen Adams, Secretary

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Deborah Hysen, Acting Chief Deputy Director
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Preface

In this preface. . .

- ▶ Introduction
- ▶ Things to Know
- ▶ Where to Begin

INTRODUCTION

This guidebook was developed by the Office of Public School Construction (OPSC) to assist school districts in applying for and obtaining “grant” funds for the new construction and modernization of schools under the provisions of the Leroy F. Greene School Facilities Act of 1998 (Senate Bill 50). It is intended to be an overview of the program for use by school districts, parents, architects, the Legislature, and other interested parties on how a district or county superintendent of schools becomes eligible and applies for State funding. This guidebook provides direction on accessing the processes leading to project approvals, insight to the various features of the School Facility Program (SFP), and includes suggestions on how to make the funding system as efficient as possible. However, it is not meant to be a step-by-step discussion of every conceivable application process or project type. For complete project specific information be sure to review the SFP Regulations located on the OPSC Web site at www.opsc.dgs.ca.gov and, most importantly, contact your OPSC project manager. The OPSC project managers are assigned by county, and a complete listing of project manager assignments, including telephone numbers and E-mail addresses, are also included on our Web site.

THINGS TO KNOW

Included in this edition are the changes to the SFP as a result of Assembly Bill (AB) 14 (Goldberg), AB 1506 (Wesson), AB 401 (Cardenas), the AB 16 (Hertzberg) change that was not included in the December 2002 edition (urban adjustment factor) and the clarification of types of parking structures that are eligible for additional grants for site development costs.

AB 14 included a pilot program to fund charter school facilities construction (Chapter 6), changed how students enrolled in charter schools are reported for eligibility in the SFP, increased the cap on site acquisition and response action costs, and allows the California Schools for the Deaf and Blind to apply for SFP modernization funding. AB 1506 requires that the State Allocation Board (SAB) receive a written finding from the local school board that a labor compliance program (LCP) has been initiated and enforced prior to the release of funds for SFP a project. AB 401 allows a district, under certain circumstances, to receive funding representing one half the appraised value of a district-owned site when that site will be used for school construction. The last change to the SFP as a result of AB 16 impacts a project's eligibility for increased costs that may be uniquely associated with “urban construction”.

Some program changes are in the regulation process and not yet effective. These changes include modifying the three year SFP new construction eligibility lock-in for small school districts to allow for the capture of increases to the district's enrollment while preserving their protection against a loss of eligibility due to enrollment decreases (AB 16); and, the substantial progress measures for separate site apportionments has been expanded to include other evidence satisfactory to the SAB.

As this edition of the School Facility Program Guidebook is being written, the OPSC and the SAB Implementation Committee are proposing amendments to the regulations regarding requests for pupil grants that exceed the capacity of the project and to use grant eligibility at a grade level other than the proposed project (Use of Grants). At the January 22, 2003, SAB meeting emergency regulations were approved that modify the existing regulations.

Existing regulations with the listed modifications will apply for applications with plans submitted to the Division of the State Architect on or before January 22, 2003. Applications are restricted to pupil grant requests that do not exceed 135 percent of the project capacity and do not include a multi-track year round enrollment (MTYRE) housing plan. For more information contact the district's OPSC project manager.

WHERE TO BEGIN

Chapter 1, School Facility Program Overview and Chapter 2, The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies will provide general information. After reviewing these chapters, the reader may want to review Chapter 4, Application for Eligibility, because establishing eligibility is the first step in filing an application for either new construction or modernization funding. The remaining chapters can be reviewed as the topics arise.

Chapter 1

School Facility Program Overview

In this chapter...

- ▶ Introduction
- ▶ Funding for the School Facility Program
- ▶ Implementation of the School Facility Program

INTRODUCTION

The School Facility Program (SFP) began in late 1998 and is a significant change over previous State facilities programs. The State funding is provided in the form of per pupil grants, with supplemental grants for site development, site acquisition, and other project specific costs when warranted. This process makes the calculation of the State participation quicker and less complicated. In most cases, the application can be reviewed, the appropriate grants calculated, and SAB approval received in 60–90 days regardless of project size.

In addition to a less complicated application process, the SFP provides greater independence and flexibility to the school district to determine the scope of the new construction or modernization project. There is considerably less project oversight by State agencies than in previous State programs. In return, the program requires the school district to accept more responsibility for the outcome of the project, while allowing the district to receive the rewards of a well managed project. All State grants are considered to be the full and final apportionment by the SAB. Cost overruns, legal disputes, and other unanticipated costs are the responsibility of the district. On the other hand, all savings resulting from the district's efficient management of the project accrue to the district alone. Interest earned on the funds, both State and local, also belongs to the district. Savings and interest may be used by the district for any other capital outlay project in the district. See Chapter 13, Additional SFP Requirements and Features for more information on project savings.

The SFP provides a funding source in the form of grants for school districts to acquire school sites, construct new school facilities, or modernize existing school facilities. The two major funding types available are “new construction” and “modernization”.¹ The new construction grant provides funding on a 50/50 State and local match basis. The modernization grant provides funding on a 60/40 basis. Districts that are unable to provide some or all of the local match requirement and are able to meet the financial hardship provisions may be eligible for additional State funding (see Chapter 10, Financial Hardship).

IMPLEMENTATION AND EVOLUTION OF THE SCHOOL FACILITY PROGRAM

Senate Bill 50 (Greene) was chaptered into law on August 27, 1998, establishing the SFP. The legislation required that regulations be approved and in place for accepting and processing applications as soon as Proposition 1A was approved by the voters the following November. The School Facility Program continues to evolve through legislative changes. Assembly Bill (AB) 16 and AB 14 provided for significant changes requiring regulations be approved and in place for accepting and processing applications as soon as Proposition 47 was approved by the voters in November 2002. These changes included funding for Charter school facilities, Critically Overcrowded Schools, Joint Use Projects. Some of the changes that impacted new construction funding include the suspension of Priority Points, an additional grant for energy efficiency, and several changes that impact the determination of eligibility. Some of the changes that impacted modernization funding include the change of the funding ratio between the State and the school district from 80 percent State and 20 percent District to 60 percent State and 40 school district, and additional grants for energy efficiency and the modernization of buildings 50 years old or older.

¹ Education Code Sections 17072.10 and 17074.10 establishes the new construction grant and modernization grant respectively.

Information on each category of funding can be found in the following chapters:

SFP Component	Chapter	Page
New Construction	5	19
Modernization	9	49
Financial Hardship	10	57

Helpful Hint:

A listing of school districts who have received SFP funding is available on the OPSC Web site at www.opsc.dgs.ca.gov.

FUNDING FOR THE SCHOOL FACILITY PROGRAM

Funding for projects approved in the SFP comes exclusively from statewide general obligation bonds approved by the voters of California. The first funding for the program was from Proposition 1A, approved in November 1998. That bond for \$ 9.2 billion contained \$6.7 billion for K-12 public school facilities. The second funding for the program is from Proposition 47, approved in November 2002. It is a \$13.2 billion bond, the largest school bond in the history of the State. It contains \$11.4 billion for K-12 public school facilities.

A future bond is currently proposed for March 2004.

Chapter 2

The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies

In this chapter...

- ▶ State Allocation Board
- ▶ Office of Public School Construction
- ▶ Other Agencies Involved

STATE ALLOCATION BOARD

Created in 1947 by the State Legislature, the State Allocation Board (SAB) is responsible for determining the allocation of State resources including proceeds from General Obligation Bond Issues and other designated State funds used for the new construction and modernization of public school facilities. The SAB is also charged with the responsibility for the administration of the State Relocatable Classroom Program, the Deferred Maintenance Program, and many other facilities related programs. Handbooks on these programs may be found on the OPSC Web site at www.opsc.dgs.ca.gov. Printed copies may be obtained by contacting the OPSC directly.

The SAB meets monthly typically at the State Capitol. At each meeting the SAB reviews and approves applications for eligibility and funding, acts on appeals, and adopts policies and regulations as they pertain to the programs that the SAB administers.

Members

The SAB is comprised of ten members:

- ▶ The Director of the Department of Finance or designee (Traditional SAB Chair)
- ▶ The Director of the Department of General Services or designee
- ▶ The Superintendent of Public Instruction or designee
- ▶ One person appointed by the Governor
- ▶ Three State Senators; appointed by the Senate Rules Committee (two from the majority party and one from the minority party)
- ▶ Three State Assembly Members; appointed by the Speaker of the Assembly (two from the majority party and one from the minority party)

The current SAB members are:

- ▶ Steve Peace, Director, Department of Finance
- ▶ Clothilde Hewlett, Interim Director, Department of General Services
- ▶ Jack O'Connell, Superintendent of Public Instruction
- ▶ David Sickler, Governor Appointee
- ▶ Dede Alpert, Senator
- ▶ Bob Margett, Senator
- ▶ Tom Torlakson, Senator
- ▶ John Dutra, Assembly Member
- ▶ Marco Firebaugh, Assembly Member
- ▶ Tony Strickland, Assembly Member

The current SAB officers are:

- ▶ Luisa M. Park, Executive Officer
- ▶ Bruce B. Hancock, Assistant Executive Officer
- ▶ Karen McGagin, Deputy Executive Officer

SAB Implementation Committee

The SAB Implementation Committee is an informal advisory body established by the SAB to assist the SAB and the OPSC with policy and legislation implementation. The committee membership is comprised of organizations representing the school facilities community which meets approximately once a month depending upon the workload. The SAB Assistant Executive Officer is the chair of the committee. Committee membership as well as the time and location of future meetings can be found on the OPSC Web site at www.opsc.dgs.ca.gov.

OPSC Mission:

"As Staff to the State Allocation Board, the Office of Public School Construction facilitates the processing of school applications and makes funding available to qualifying school districts. These actions enable school districts to build safe and adequate school facilities for their children in an expeditious and cost-effective manner."

Helpful Hint:

The Directory of Services provides information regarding project manager county assignments, including telephone numbers, and other contact information.

OFFICE OF PUBLIC SCHOOL CONSTRUCTION

The OPSC serves the 1,000 plus K–12 public school districts in California. As staff to the SAB, the OPSC is responsible for allocating State funding for eligible new construction and modernization projects to provide safe and adequate facilities for California public school children. The OPSC is also responsible for the management of these funds and the expenditures made with them. It is also incumbent on the OPSC to prepare regulations, policies, and procedures for approval by the SAB that carry out the mandates of the law.

OPSC Responsibilities

The OPSC is charged with the responsibility of verifying that all applicant school districts meet specific criteria based on the type of eligibility or funding which is being requested and to work with school districts to assist them throughout the application process. The OPSC ensures that funds are allocated properly and in accordance with the law and decisions made by the SAB. Since November of 1988, the OPSC has processed over \$26.2 billion dollars in State apportionments to the SAB. The programs, funding, and approvals over that period are shown in Appendix 5, Summary of Bond and Deferred Maintenance Allocations.

The OPSC prepares agendas for the SAB meetings. These agendas keep the SAB members, districts, staff, and other interested parties apprised of all actions taken by the SAB. The agenda serves as the underlying source document used by the State Controller's Office for the appropriate release of funds. The agenda further provides a historical record of all SAB decisions, and is used by school districts, facilities planners, architects, consultants, and others wishing to track the progress of specific projects, the availability of funds, and SAB regulations.

Management of the Office of Public School Construction

The OPSC is directed by an Executive Officer who is appointed by the Governor. The appointee also serves as the Executive Officer to the SAB. A Deputy Executive Officer is selected by the Executive Officer subject to the approval of the Director of General Services. The Deputy oversees the daily operation of the office. An Assistant Executive Officer is appointed by the SAB. Although not technically a member of the OPSC management, the Assistant Executive Officer works directly with the OPSC management team and acts as liaison between the SAB and the OPSC.

OTHER AGENCIES INVOLVED

School districts planning to construct or modernize existing schools require the assistance of several local, State, and federal agencies. It is essential that those dealing with the school construction process have an understanding of the role each agency plays. The three primary State agencies that will be referred to in this guidebook, in addition to the SAB and the OPSC, are the Division of the State Architect (DSA), the California Department of Education (CDE) School Facilities Planning Division (SFPD), and the Department of Toxic Substances Control (DTSC). District representatives may also come into contact with many other agencies. A listing of some of the agencies that might be involved in a school project and their role is provided in Appendix 2, Potential State Agency Involvement.

The agency information provided in this chapter is meant as a tool for school district representatives to become familiar with the primary State agencies involved in the school construction process. The OPSC encourages district representatives to contact each agency to obtain more information about their procedures and processes. To contact the agencies listed below, please see Appendix 1, State Agency Contact Information.

Department of General Services, Division of the State Architect

The primary role of the DSA in the school construction process is to review plans and specifications to ensure that they comply with California's building codes with an emphasis on structural and seismic safety. The review commences when the school district's architect submits working drawings to the DSA. The DSA reviews the working drawings to assure that the proposed structures meet codes and requirements for structure (seismic), fire and life safety, and universal design compliance.

California Department of Education, School Facilities Planning Division

The role of the SFPD is to review and approve school district sites and construction plans. The SFPD review begins when a school district plans to acquire a new school construction site. Prior to approving a site for school purposes, the SFPD reviews many factors, including, but not limited to, environmental hazards, proximity to airports, freeways, and power transmission lines. The review of construction plans by the SFPD focuses mainly on the educational adequacy of the proposed facility and whether the needs of students and faculty will be met. See Chapter 3, Project Development Activities.

Department of Toxic Substances Control

The role of the DTSC in the school construction process begins with the SFPD's site approval process. The DTSC will assist the district with an assessment of any possible contamination, and, if necessary, with the development and implementation of a mitigation plan.

Department of Industrial Relations

The Department of Industrial Relations (DIR) was established to improve working conditions for California's wage earners, and to advance opportunities for profitable employment in California. The role of DIR in the school construction process is to enforce labor laws relating to contractors and employers.

The Labor Code¹ now requires, prior to receiving a SFP fund release, a district to make a certification that a labor compliance program (LCP), that has been approved by the DIR, for the project apportioned under the SFP has been initiated and enforced if both of the following conditions exist:

- ▶ The district has a project which received an apportionment from the funding provided in Proposition 47² or from the potential 2004 State bonds³; and,
- ▶ The construction phase of the project commences on or after April 1, 2003, as signified by the date of the Notice to Proceed.

¹ Refer to the Labor Code Section 1771.7

² Kindergarten-University Public Education Facilities Bond Act of 2002

³ Kindergarten-University Public Education Facilities Bond Act of 2004

The DIR provides a guidebook to assist districts in developing a LCP and has model LCP's available for view on its Web site at www.dir.ca.gov. The DIR also provides public works contract information regarding:

- ▶ LCP's and the Labor Code
- ▶ Classification and Scope of Work
- ▶ Prevailing Wage Determination and Special Determination for a Specific Project
- ▶ Verification of the Status of an Individual Apprentice or an Apprenticeship Program

Questions regarding these matters and LCP approval may be directed to DIR at 415.703.4810.

Chapter 3

Project Development Activities

In this chapter...

- ▶ Introduction
- ▶ Establishing Eligibility
- ▶ Selecting Professional Services
- ▶ Project Responsibilities
- ▶ Cost Reduction
- ▶ Joint Use Projects
- ▶ Reusable Plans
- ▶ Project Financing
- ▶ Site Selection

INTRODUCTION

The School Facility Program (SFP) provides funding to projects that are essentially through the design phase and are ready to begin construction. With the exception of certain advanced planning and site applications for financial or environmental hardship situations, applications for funding require plans approved by the Division of the State Architect (DSA) and by the California Department of Education (CDE). Applications for new construction funding may also require CDE approval of the project site. In most cases, a great deal of time, money, and effort has already been expended before the project ever reaches the Office of Public School Construction (OPSC). Most of the tasks involved in this chapter are not a part of the SFP and are not under the jurisdiction of the State Allocation Board (SAB). However, it is important that the district representative is aware of the options and requirements that may affect the district's project.

ESTABLISHING ELIGIBILITY

One of the first steps a district should consider in the school construction process is establishing eligibility for SFP funding on either a district-wide or high school attendance area basis. This will provide the district with the information needed to determine the possibility and scope of State funding assistance, the types of facilities needed, and the appropriate project site size. See Chapter 4, Application for Eligibility for more information about establishing eligibility.

SELECTING PROFESSIONAL SERVICES

The SFP grants include funding for many professional services related to the development of the school project. Some of the most obvious and commonly used services are provided by architects, civil and structural engineers, and construction managers. Under law, these professional services are different than the services provided by general contractors, painters, site grading subcontractors, and similar construction related work. Unlike construction contracts, professional service contracts are obtained through a qualifications based selection process rather than a competitive bid process.

Because the design professional or other service provider will be engaged long before the application for project funding is submitted to the OPSC, it is critical district representatives are aware that professional services used on projects funded through the SFP must be obtained by a competitive selection process. Failure to do so can jeopardize the project funding.

The Competitive Selection Process

The SFP requires that applicant districts certify that contracts for the services of any architect, structural engineer, or other design professional that were entered into, on or after November 4, 1998 for work on the project were obtained through a competitive process. The term competitive does not mean that the selection has been bid, but rather that a formal qualifications based selection process has occurred that lead to the professional services contract¹.

¹ Chapter 11, commencing with Section 4525 of Division 5 of Title 1 of the Government Code.

Neither the SAB nor the OPSC is qualified to interpret the Government Code requirements pertaining to the selection of professional services. The district is advised to seek legal counsel assistance to ensure that the process used fully complies with this requirement as well as other legal requirements² such as Disabled Veterans Business Enterprise requirements, and the Public Contract Codes.

Eventually, the district will be required to certify that professional design services on the project were selected using a competitive process. This certification is made on the Application for Funding (Form SAB 50-04).

Compliance

The competitive selection requirement applies to a new construction or modernization project if:

- ▶ It is funded under the SFP, and
- ▶ professional services of an architect, structural engineer, or other design professional were used to complete the work in the project, and
- ▶ contracts for those services were signed on or after November 4, 1998.

Compliance with this requirement is very important. The law specifically mandates that the SAB shall not apportion funds to a district unless the competitive process for professional services has been used. If, during an audit at the project completion, it is determined that the competitive process was not used, the entire project grant could be found to have been made illegally.

Districts who are unfamiliar with the process of hiring an architect should be aware that the American Institute of Architects (AIA) California Council has sample contracts available to assist districts. For more information, please contact the AIA at 916.448.9082.

PROJECT RESPONSIBILITIES

During the planning, design, and construction of a school facilities project, many individuals and firms come together to contribute to the project in specific ways. Unless responsibility is assigned by law, the decision about who should perform a given task generally rests with the district as owner. Frequently, however, the district may not be aware of the difference between the types of responsibilities, or even of the need to assign responsibilities and tasks related to the project. This lack of clarity may lead to a situation where a task is assigned to more than one individual or firm, creating a duplication of effort which can be wasteful and counterproductive.

As a result of this situation, a small working group was formed by the Joint Committee on School Facilities to address the issue. The Services Matrix is the result of the group's discussions (see Appendix 4, Services Matrix). District representatives may wish to consult the matrix to determine the responsibilities assigned to a project and to avoid duplication of effort.

COST REDUCTION

The SAB has developed cost reduction guidelines to assist school districts in reducing project construction costs. In April 2000, the SAB made available the Cost Reduction Guidelines. The guidelines are a compilation of hundreds of ideas introduced and discussed at a series of statewide meetings. The input into these guidelines comes from various sources, such as school district representatives, State agencies, architects, building industry representatives, construction managers, and consultants. The guidelines provide districts with ideas and new methods to contain and reduce costs and to maximize the return on expenditures. Along with cost reduction guidelines, other incentives within the program, such as the retention of savings, exist to promote efficiency in design and construction of school facility projects. (See Chapter 13, Additional SFP Requirements and Features for more information on project savings.)

² CEQA and Planning per Public Resources Code Section 21151.2.

Helpful Hint:

The SAB publication on cost reduction is available on the OPSC Web site.

JOINT USE PROJECTS

The language in the law which creates the SFP requires that the applicant school district consider the joint use of core facilities. The SAB's Cost Reduction Guidelines contains a number of suggestions as to how a district might investigate such joint use possibilities. Grants received under the new construction program may be used to fund school facilities related joint use projects. Typical joint use projects include multipurpose rooms, libraries, gymnasium, or any other type of facility that can be used by both the district and the community.

Proposition 47 provides funding for Joint Use projects, specific criteria to access this funding was included in AB16 (Hertzberg) (see Chapter 8, Joint Use Projects for more information).

REUSABLE PLANS

The SFP requires the SAB to develop recommendations regarding the use of cost-effective, efficient, and reusable facility plans. Many districts have found that reusing some part or all of a school plan previously constructed in the district or in another district can lead to efficiencies in both the time required to prepare construction plans and the cost of constructing the facility. Such plan reuse is not always feasible, and, even when possible, may require considerable redesign work for the new site; however, in many circumstances the advantages can be significant.

To assist districts with exploring the feasibility of plan reuse for their new construction project, the SAB and the OPSC have developed an Internet-based "catalog" of plans that can be searched and browsed by anyone. The link on the OPSC Web site "Prototype School," contains floor plans, renderings, and vital statistics for a number of projects ranging from complete schools to single classrooms and support buildings. Districts are encouraged to download information on any of the projects on the OPSC Web site without charge. Districts may then contact the architects responsible for the original projects to pursue adaptation of the facilities to their individual needs. Arrangements for use of the plans are made by the district with the design professional. Of course, all plans on the OPSC Web site are copyrighted by the designers or firms that submitted them. The SAB and OPSC do not participate in anyway except as a clearinghouse for plans of school facilities.

PROJECT FINANCING

A district has several different options available to meet its 50 percent funding requirement for new construction and 40 percent funding requirement for modernization projects. Some financing mechanisms the district may consider are:

- ▶ General obligation bond funds
- ▶ Mello-Roos
- ▶ Developer fees
- ▶ Proceeds from the sale of surplus property
- ▶ Federal grants

Once a district has received a SFP apportionment and is ready for funds to be released on a project, they will need to certify on the Fund Release Authorization (Form SAB 50-05) that their contribution to the project has already been expended, is on deposit, or will be expended prior to the notice of completion for the project. (See Chapter 13, Additional SFP Requirements and Features for more information on the fund release process.)

SITE SELECTION

The SFP provides that in addition to the basic grant for a new construction project, the district may also receive up to 50 percent of the cost of site acquisition (see Chapter 5, New Construction Funding or Chapter 10, Financial Hardship). In most cases, the district must have completed the process of identifying the site and must have approval of the site by the CDE prior to applying for site acquisition funding. Some separate site applications for financial or environmental hardships do not need this approval at the time of application. See further discussion under those topics in Chapter 5, New Construction Funding. The identification and approval process falls under the jurisdiction and responsibility of agencies other than the SAB and the OPSC, and is therefore outside the scope of this guidebook. However, because the processes required can be a major factor in a timely application submittal for project funding, district representatives should be aware of some of the basic requirements for site selection as follows:

Identifying a Site

Selecting a site for a new construction project to be funded under the SFP is primarily a local process. The SAB has guidelines and regulations relating only to the funding limits related to site acquisition³. The CDE is given the authority in law to develop standards for school site acquisition related to the educational merit and the health and safety issues of the site. The CDE uses these standards to review a site and to determine if the site is an appropriate location for a school facility. The CDE approval is a requirement before the application for funding can be submitted to the OPSC and subsequently to the SAB for funding.

Site Approval

There are many components that make up the review and approval of a proposed school site. The CDE publication, *School Site Selection and Approval Guide*, addresses these components more completely than this guidebook can. Therefore, the district representative considering an application for a site under the SFP should consult the CDE or their publications. Contact information can be found in Appendix 1, State Agency Contact Information.

³ SFP Regulations Sections 1859.74 through 1859.76.

Chapter 4

Application for Eligibility

In this chapter...

- ▶ Introduction
- ▶ New Construction Eligibility
- ▶ Modernization Eligibility

Helpful Hint:
Applications for eligibility may be filed in advance of applications for funding.

INTRODUCTION

The School Facility Program (SFP) provides State funding assistance for two major types of facilities construction projects: new construction and modernization. The process for accessing the State assistance for this funding is divided into two steps: an application for eligibility and an application for funding. Applications for eligibility are approved by the State Allocation Board (SAB) and this approval establishes that a school district or county office of education meets the criteria under law to receive assistance for new construction or modernization. Eligibility applications do not result in State funding. In order to receive the funding for an eligible project, the district representative must file a funding application with the Office of Public School Construction (OPSC) for approval by the SAB. See Chapter 5, New Construction Funding and Chapter 9, Modernization Funding for information on submitting applications for funding.

Applications for eligibility may be filed in advance of an application for funding, or the eligibility and funding requests may be filed concurrently at the preference of the district. In either case, an application for eligibility is the first step toward funding assistance through the SFP. The process must be done only once. Thereafter, the district need only update the eligibility information if additional new construction and modernization funding applications are submitted.

After the application for eligibility is reviewed by the OPSC, it is presented to the SAB for approval. The SAB's action establishes that the district has met the criteria set forth in law and regulation to receive State funding assistance for the construction of new facilities or the modernization of existing facilities. Throughout this chapter, references to the district also include a county office of education unless otherwise noted.

The discussions in this chapter are intended to describe the basic processes a district will encounter and use for establishing eligibility. Every possible situation cannot be dealt with in this overview. When preparing an application, the district representative should always contact the OPSC project manager to be sure that the district's approach is correct and will result in the most eligibility possible for State assistance. To learn more about the SFP program, visit the OPSC Web site at www.opsc.dgs.ca.gov.

NEW CONSTRUCTION ELIGIBILITY

The underlying concept behind eligibility for new construction is straightforward. A district must demonstrate that existing seating capacity is insufficient to house the pupils existing and anticipated in the district using a five-year projection of enrollment. Once the new construction eligibility is determined, a "baseline" is created that remains in place as the basis of all future applications. The baseline is adjusted for changes in enrollment and for facilities added, and may be adjusted for other factors such as errors and omissions or amendments to the Regulations. For a complete list of adjustments, refer to SFP Regulation Section 1859.51. Except for these updates, the establishment of the eligibility baseline is a one-time process.

Establishing Eligibility on a District-Wide or High School Attendance Area

Districts generally establish eligibility for new construction funding on a district-wide basis. For most districts this is the most beneficial method, and the vast majority of applications are filed in this manner. However, under certain circumstances, the district may have more eligibility if the applications are made on a High School Attendance Area

(HSAA) basis using one or several attendance areas. This circumstance occurs when the building capacity in one HSAA prevents another from receiving maximum eligibility. For example, one attendance area may have surplus classroom capacity while another does not have the needed seats to meet the current and projected student enrollment. If the district were to file on a district-wide basis, there might be little or no overall eligibility, even though the students in one attendance area are “unhoused” by the definitions established in the SFP. In this case, by filing on a HSAA, the eligibility would increase to allow construction of adequate facilities for the unhoused students.

The district may file using one high school attendance area, or at the district’s option, it may combine two or more adjacent HSAAs, commonly called a “Super Attendance Area.” In either case, the attendance areas must serve an existing, operating high school, and the district must demonstrate that at least one HSAA has negative eligibility at any grade level. Continuation or proposed high schools may not be used for this purpose. Once a district receives funding using a high school attendance area as the basis of its eligibility, it must continue to file future new construction applications on that basis for five years.

Eligibility Process

The SAB has adopted three forms to assist districts in collecting the information needed to establish eligibility. The following outlines the three-step process a district uses to establish new construction eligibility:

► Process for Establishing New Construction Eligibility

Step	Documentation	Purpose
1	Enrollment Certification/Projection (Form SAB 50-01)	Used to collect information about the district’s current and historical enrollment and to project that data five years into the future.
2	Existing School Building Capacity (Form SAB 50-02)	Used to record all the teaching stations in the district that are adequate to house students.
3	Eligibility Determination (Form SAB 50-03)	Used to compare the information from the first two forms and to determine if the district is eligible for new construction or modernization grants.

The forms referred to in the table can be downloaded from the OPSC Web site at www.opsc.dgs.ca.gov in a format that allows them to be printed as blank forms or completed on the computer and printed for submission to the OPSC. A replica of the forms can be viewed in Appendix 3, SFP Required Forms. An Excel spreadsheet titled SAB 50-01, 02, 30 Excel Combined Worksheets is also available on the OPSC Web site that will perform all the required calculations.

Step One – Enrollment Projections

It may take several years to take a new construction project from the initial determination of need to final completion of construction and occupancy. Because of this, the SFP provides a projection of enrollment five years into the future to determine eligibility for funding. The Enrollment Certification/Projection (Form SAB 50-01) is used to make this projection. This form assists the district with determining future needs, planning, arranging State and local funding, and constructing the project before the children to be served arrive. The method of projecting enrollment into the future involves using current and historical California Basic Educational Data System (CBEDS) enrollment data for the district. The data collected is then projected into the future for five years using a method known as a Cohort Survival Projection. A district can obtain CBEDS data from the California Department of Education (CDE).

A district may file on a HSAA basis utilizing one or more HSAA. If the district chooses to file an application on this basis the current and three previous years enrollment data in the HSAA or HSAAs (see section on High School Attendance Areas in this chapter) will be needed to be included on the Form SAB 50-01.

Once the district enters the required current and historical enrollment figures, the projection is done automatically on the Excel version of this form. In addition to the five-year projection used in the SFP, the form will also produce a one-year projection for the State Relocatable Classroom Program.

Supplemental Enrollment Figures. A district may supplement the current and historical enrollment figures by the pupils that will occupy dwelling units included in approved subdivision maps or valid tentative subdivision maps for developments to be located in the district or HSAA. The enrollment projection form factors these additional students into the enrollment projection. If the district requests this supplement, the district representative will need the following:

- ▶ Approval dates of the maps by the city or county planning commission.
- ▶ The number of units to be built in the subdivision.
- ▶ A yield factor from the various types of housing in the subdivision. As an alternative, the district may accept a state-wide average yield factor for calculation purposes. This factor is specified in the instructions on the Form SAB 50-01.

A supplement to the enrollment projection for proposed housing units is not available for county superintendent applications.

Small districts with current enrollment of less than 300 should be aware that they have an option for reporting their enrollment differently if it has decreased by more than 50 percent from the previous year enrollment. (For more information on using this option please refer to the Form SAB 50-01, Part A.)

Step Two – Existing School Building Capacity

The second part in determining the district's eligibility for new construction assistance is to document the capacity of the school district at the time the first application for eligibility is filed under the SFP. This capacity calculation is done only once. Districts may file capacity information on a district-wide basis or using a HSAA.

The Calculation of Capacity. The Existing School Building Capacity (Form SAB 50-02) is used to capture the information needed for the calculations, and the accompanying instructions give a detailed guide of how to complete the form. The Form SAB 50-02 is essentially a record of all the district's facilities. The SFP Regulations provide instructions on what spaces are to be included or excluded in the calculation of the district capacity¹. It is important to understand that any project funded with local sources must be counted as existing capacity if the contract for construction of the project is signed before the original application for eligibility determination is made. There is an exception provided for projects if the contracts were signed between August 27, 1998 and November 18, 1998, and if the project did not have eligibility under the Lease-Purchase Program (LPP).

The process of calculating the districts' existing school building capacity is as follows:

1. The district completes a gross inventory of all spaces constructed or reconstructed to serve as an area to provide pupil instruction. The grade level of each classroom is also identified.
2. The gross inventory is adjusted by excluding certain spaces that are not considered available teaching stations under law or regulation. The classrooms remaining in the inventory are multiplied by a loading factor of 25 for elementary and 27 for middle and high school classrooms to determine the pupil capacity.
3. A final calculation is done to increase the capacity by a specified amount if the district does not have a substantial number of students enrolled in year round education. High school districts are not subject to this adjustment. The district may request a waiver from this adjustment from the CDE, School Facilities Planning Division.
4. A last adjustment occurs for those districts that receive Multi-Track Year Round Education Operational Grants from the CDE. This increases the district capacity and reduces the final eligibility for the district in a number equivalent to the operational grants the district has most recently received from the CDE.

¹ SFP Regulations, Section 1859.30, "Gross Classroom Inventory".

On-Site Reviews. The district must submit records of the teaching stations existing in the district or HSAA as part of the inventory process. These records generally consist of the following:

- ▶ Diagrams of the facilities at each site in the district. These diagrams need not be highly detailed, but must include all permanent and relocatable classrooms at the site. Many districts use simple “fire-drill” maps for this purpose. The diagrams must be submitted with the application.
- ▶ Documentation supporting any exclusion claimed from the gross inventory. For instance, if the district claims that a portable is excluded because it has been leased for less than five years, a copy of the lease must be in the district’s possession as supporting documentation.

The district may wish to use an OPSC Site Analysis Worksheet to assist with recording all the classrooms in the gross inventory as well as recording the reasons for exclusions, if any. This document is not mandatory but may make the inventory process easier. It also streamlines the OPSC review of the eligibility application.

Helpful Hint:
All of the OPSC worksheets are available on the OPSC Web site at www.opsc.dgs.ca.gov.

Step Three – Determining Eligibility

The last part in the new construction eligibility determination process is done on the Eligibility Determination (Form SAB 50-03). The existing school building capacity calculated in part two is subtracted from the enrollment projection in the first part. The number of pupils left, if any, are considered “unhoused” for the purposes of the SFP. They represent the district’s eligibility for new construction grant entitlement.

Eligibility Application Approval. Once the district has completed steps one through three, they are ready to submit the eligibility application package. The OPSC will conduct a preliminary review of the package to ensure that it is complete prior to adding the application to the workload list. A more detailed review will be completed prior to presentation to the SAB that may include an on-site visit to review the information included in the site diagrams. When the review is complete and the OPSC has validated the eligibility calculations, an item is presented to the SAB for consideration of approval.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available.

Districts should review the SFP Application Submittal Requirements worksheet, located on the OPSC Web site, to ensure all required information is included with their application.

MODERNIZATION ELIGIBILITY

Establishing eligibility for modernization in the SFP is more simplified than new construction. Applications are submitted on a site by site basis, rather than district-wide or HSAA, as is the case for new construction. To be eligible, a permanent building must be at least 25 years old and a relocatable building must be at least 20 years old. In either case, the facility must not have been previously modernized with State funding. The district must also show that there are pupils assigned to the site who will use the facilities to be modernized. If the facility is currently unused, such as a closed school, it may also be eligible for modernization funding if the district intends to reopen it and assign students immediately.

Application Process

The SAB has adopted a single form to calculate modernization eligibility, the Form SAB 50-03. This is the same form used for new construction applications. It may be downloaded from the OPSC Web site in a format that allows it to be printed as a blank form or completed on a computer and printed for submission to the OPSC. A replica of the form can be viewed in Appendix 3, SFP Required Forms.

In order to complete the Form SAB 50-03, the district representative will need a completed site diagram for the applicable school which contains the following information:

- ▶ The number of permanent classrooms.
- ▶ The number of portable classrooms.
- ▶ The ages of all permanent and portable classrooms.

The instructions on the Form SAB 50-03 will guide the district through the process of calculating the eligibility at that site for modernization. If all the buildings are over 25/20 years old for permanent/relocatable buildings respectively and eligible for modernization, the grant eligibility is simply the number of children that are or can be housed at a site, whichever is less. However, for cases where there is a mixture of classrooms that are under and over the modernization age limits, two optional calculation methods are provided. One option is to count those facilities that are over the age requirement and the children that can be housed in them. The second option is to develop a ratio based on either the square footage or the number of classrooms by comparing the square footage of overage to underage buildings or the number of overage to underage classrooms on the site. The ratio is then applied to the number of children enrolled at the site. If the district selects the option using a ratio of square footage, it will be necessary to provide the square footage information on the site diagrams as well.

Eligibility Application Approval

Once the district has completed part three of the Form SAB 50-03, they are ready to submit the modernization eligibility application package. The OPSC will conduct a preliminary review of the package to ensure that it is complete before adding it to the workload list. A more detailed review will then be completed that may include an on-site visit to review the information included on the site diagrams. When the review is complete and the OPSC has validated the eligibility calculations, an item is presented to the SAB for consideration of approval.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available. When the application is resubmitted it will be added to the workload list with the new receipt date.

Districts should review the SFP Application Submittal Requirements worksheet, located on the OPSC Web site, to ensure all required information is included with their application.

Helpful Hint:

Did you know that the OPSC provides the current workload list on its Web site?

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SixTen and Associates

Mandate Reimbursement Services

Exhibit L

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February 20, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED
FEB 23 2004
COMMISSION ON
STATE MANDATES

Re: Test Claim 02-TC-43
Clovis Unified School District
Hazardous Material Assessments

Dear Ms. Higashi:

I have received the opposition and comments of the Department of Finance ("DOF") dated February 3, 2004, to which I now respond on behalf of the test claimant.

A. The Opposition and Comments of the DOF are Incompetent and Should be Excluded

Test claimant objects to the Opposition and Comments of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DOF opposition and comments do not comply with this essential requirement. Since the Commission cannot use comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments of the DOF not be included in the Staff's Analysis.

B. The Conclusions of DOF are Incorrect

Since the Commission may weigh the evidence accordingly, test claimant replies to the comments of the DOF as follows:

1. DOF Admits Mandated Activities

DOF concurs "that the statute does require certain hazardous materials removal activity." (DOF Comments, page 1)

2. Participation in the Program is not Voluntary

Although DOF acknowledges that the test claim legislation requires new activities, it notes that Education Code Section 17072.13 is part of the Leroy F. Greene School Facilities Act of 1998 and argues that a school district's participation is strictly voluntary.¹

a. Funding is Contingent Upon Need

The Leroy F. Green School Facilities Act of 1998 (Education Code Sections 17070.10 et seq.) is a necessary source of school building funds. Each school district that participates in the Act is required to submit to the State Allocation Board a report of existing school building capacity. Education Code Section 17071.10(b) The report includes a comprehensive analysis of existing school capacity which calculates the number of pupils housed by grade level in the existing school building capacity of the applicant school district. Education Code Section 17071.25(a)(4) The calculation includes consideration of both owned and leased portable classrooms. Education Code Section 17071.30 Only after consideration of the submitted report does the Board make a determination of the district's ongoing eligibility for new construction funding.²

¹ DOF does not refer to or mention the 10 other Education Code Sections or the 2 Health & Safety Code Sections cited in the test claim. Test claimant must assume, therefore, that DOF has no objection to the mandated activities set forth in these sections.

² This answers DOF's argument that school districts have the discretion to house their student populations by electing year round multi-track schools, two kindergarten sessions per day, portable classrooms or by transporting students to under-used schools. These "options" are already factored in by the Board when determining a district's eligibility for state funding.

The Board then determines the district's maximum total new construction grant eligibility. Education Code 17072.10 In addition to the maximum grant eligibility for new construction, and subject to additional conditions, the Board may provide funding for assistance in site development and acquisition. Education Code Section 17071.12

Then, in addition to the amounts provided pursuant to Sections 17071.10 and 17072.12, the Board may provide site acquisition and hazardous materials evaluation and response action funding subject to the conditions set forth in the test claim legislation.

So, it can be seen, that school districts receive hazardous materials evaluations and response actions only **after** the Board has determined that the district has demonstrated a **need** for the new facility and that the **need** is mathematically greater than other districts. The test claim legislation is based upon **need** and is not "voluntary".

3. Public Education is an Obligation of the State

Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all. The Constitution in 1849 directed the Legislature to "provide for a system of common schools, by which a school shall be kept up and supported in each district." That constitutional command, with the additional proviso that the school maintained by each district be "free" has persisted to the present day. Butt v. State of California (1992) 4 Cal.4th 668, 680³ In Butt the court explained:

"Accordingly, California courts have adhered to the following principles: Public education is an obligation which the State assumed by the adoption of the Constitution. (Citations) The system of public schools, although administered through local districts created by the Legislature, is 'one system...applicable to all the common schools...' (Citation) In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. (Citation) 'Management and control of the public schools [is] a matter of state[, not local,] care and supervision...' (citations) The Legislature's 'plenary' power over public education is subject only to constitutional restrictions. (Citations) Local districts are the

³ Pursuant to Title 2, California Code of Regulations, Section 1183.03(2), a copy of Butt v. California is attached hereto as Exhibit "A".

State's agents for local operation of the common school system (Citations), and the State's ultimate responsibility for public education cannot be delegated to any other entity. (citation)" (Opinion, at pages 680-681)

Then after the court reminded us that, in *Serrano II*⁴, the court had struck down the then existing State public school financing scheme, which caused the amount of basic revenues per pupil to vary substantially among the respective districts depending on their taxable property values (Opinion, at page 683), the Supreme Court concluded:

"It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity. (¶)...Whatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State." (Opinion, at page 685)

DOF's argument that school districts need not participate in the Leroy F. Greene School Facilities Act of 1998 is tantamount to saying that each school district is "on its own" when it comes to needed school construction. Since the quality of school facilities would then depend on the wealth of each individual district, DOF's argument violates the equal protection laws of the State constitution. (Article I, §7, subdivisions (a),(b); Article IV, §16, subdivision (a))

4. School Districts, By Necessity, are Required to use State Funding And There is no "Practical Alternative" to State Funding

The controlling case law on the subject of non-legal compulsion is still *City of Sacramento v. State of California* (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II*).

a. Sacramento II Facts:

⁴ *Serrano v. Priest* (1971) 5 Cal.3d 584

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

b. Sacramento / Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, inter alia, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "mandate of the federal government" under Section 9(b).⁵

In other words, *Sacramento I* concluded, inter alia, that the loss of federal funds and tax credits did not amount to "compulsion".

⁵ Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

c. Sacramento II Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the “program” and “service” standards for mandatory subvention because it imposed no “unique” obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court also overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to “compulsion”.

d. Sacramento II “Compulsion” Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California’s failure to comply with the federal “carrot and stick” scheme were so substantial that the state had no realistic “discretion” to refuse.

In disapproving *Sacramento I*, the court explained:

“If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments.” (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state’s employers faced only with the federal tax. The court replied to this suggestion:

“However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards.” (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically “without discretion”.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of “mandatory” versus “optional”:

“Given the variety of cooperative federal-state-local programs, we here attempt no final test for ‘mandatory’ versus ‘optional’ compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.” (Opinion, at page 76)

e. Statutory Compulsion is not Required

In *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, cited by DOF, the supreme court first made it clear that the decision did not hold that legal compulsion is always necessary in order to find a reimbursable mandate:

“For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate.” (Opinion, at page 736, emphasis in the original, underlining added)

After concluding that the facts in *Kern* did not rise to the standard of non-legal compulsion, the court affirmed that either double taxation or other draconian consequences could result in non-legal compulsion:

“In sum, the circumstances presented in the case before us do not constitute the type of non-legal compulsion that reasonably could constitute, in claimants’ phrasing, a ‘de facto’ reimbursable state mandate. Contrary to the situation that we described in (*Sacramento II*), a claimant that elects to discontinue participation in one of the programs here at issue does not face ‘certain and severe...penalties’ such as ‘double...taxation’ or other ‘draconian’ consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations.” (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

Therefore, "carrot and stick" situations must still be determined on a case by case basis.

f. Districts' Ability to Borrow is Strictly Limited

The authority to issue local school bonds is found in Chapter 1 of Part 10 in Division 1 of Title 1 of the Education Code, commencing at Section 15100. This authority is strictly limited.

Education Code Section 15100 allows a district, when in its judgment it is advisable, and requires it, upon a petition of the majority of its qualified electors, to order an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the purchase of school lots, the building or purchasing of school buildings and the making of alterations or additions to school buildings. Section 15102 provides that such bonded indebtedness shall not exceed 1.25 percent of the taxable property of the district. Section 15106 provides that unified school districts or community college districts may not exceed 2.5 percent of the taxable property of the district.

Chapter 1.5 of Part 10 sets forth the Strict Accountability in Local School Construction Bonds Act of 2000, commencing with Section 15264. ("Proposition 39 bonds") Here again, bonded indebtedness is strictly limited.

Section 15266 provides that the Act is an alternative to authorizing and issuing bonds pursuant to Chapter 1 or Chapter 2 (commencing with Section 15300) when the governing board of a school district or community college district decides, pursuant to a two-thirds vote, to pursue the authorization and issuance of bonds for school facilities. Section 15268 provides that such bonded indebtedness shall not exceed 1.25 percent of the taxable property of the district and may only be issued if the tax rate levied would not exceed thirty dollars (\$30) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution. Section 15270 provides that a unified school district may not authorize or issue bonds that exceed 2.5 percent of the taxable property of the district and may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars (\$60) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

Chapter 2 of Part 10 sets forth the Bonds of School Facilities Improvement Districts Act, commencing with Education Code Section 15300. Here again, bonded indebtedness is strictly limited.

Section 15300 provides that the chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district and for the issuance of general obligation bonds by the school facilities improvement district. Section 15330 provides that the total amount of bonds issued shall not exceed 1.25 percent of the taxable property of the school facilities improvement district. Section 15334.5 further provides that no bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106.

Attached hereto as Exhibit "B", is an article found in the California State Library, by the California Research Bureau. (Cohen, Joel, "School Facility Financing - A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds", February 1999) The plight of school districts is described therein as follows:

"With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority..." (Ibid, at page 7, emphasis supplied)

To the extent school districts and community college districts already have bonded indebtedness at or near these limits, the argument of DOF that these districts need not apply for state funding is specious reasoning.

- g. The Legislative History of School Finance Legislation Shows an Intent of the Legislature that the State Should Provide the Financing For Schools

A review of the legislative history of school finance shows that the Legislature knows that the State must bear the major burden of financing the construction of new school facilities.

Chapter 4 of Part 10 of Division 1 of Title 1 of the Education Code sets forth the State

School Building Aid Law of 1949, commencing with Education Code Section 15700. Section 15700 provides:

“The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid school districts of the state in providing necessary and adequate school sites and buildings for the pupils of the public school system, the system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.”

In adopting this act, the Legislature considers that the great need in school construction is for adequate classrooms for the education of the pupils of the public school system...To the end that school classrooms may be made available at once and to all school districts in need of such classrooms...” (emphasis supplied)

Section 15704 requires the State Allocation Board to adopt rules which give:

“...priority in allocating funds to districts to those districts where the children will benefit most from additional schoolhouse facilities...based on acuteness of overcrowding, on sudden growth in attendance, on amount of local tax funds expended for housing of a character within the purposes of this chapter, and on the time the district's application has been ready for allotment...”

Chapter 6 contains the State School Building Aid Law of 1952, commencing with Education Code Section 16000. Section 16001 provides:

“The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid school districts of the state in providing necessary schoolsites and buildings for the pupils of the public school system, this system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.”

In adopting this chapter, the Legislature considers that the great need in school construction is for classrooms for the education of the pupils of the public school system...To the end that school classrooms may be made available at once and to all school districts in need of such classrooms...” (emphasis supplied)

Section 16007 requires the State Allocation Board to adopt rules which would:

“...give priority in allocating funds to districts to those districts where the children will benefit most from additional schoolhouse facilities...based on

acuteness of overcrowding, on rapidity of growth in attendance, and on the time the district's application has been ready for allotment..."

Article 3 of Chapter 6, contains provisions for School Housing Aid for Exceptional Children, commencing with Education Code Section 16190. Section 16190 provides:

"The board may make apportionments...from any state bonds heretofore or hereafter authorized by the electorate for state school building aid...for assistance to school districts in providing necessary housing and equipment for the education of exceptional children."⁶

Section 16196 provides that:

"...Except as otherwise provided in this section, not more than 50 percent of the amount of any apportionment made pursuant to this section shall be repaid..."

Article 4 of Chapter 6, commencing with Section 16210, is entitled School Housing Aid For Compensatory Education Purposes. Section 16210 sets aside \$35 million dollars of the proceeds of the sale of bonds authorized by the State School Building Aid Bond Law of 1966 to assist school districts. Section 16210 provides:

"...The Director of Compensatory Education may establish priorities for purposes of allocations and grants under this article based upon comparative needs of school districts and the urgency thereof. No interest shall be charged to a school district for an allocation or grant made under this article to the school district."

Section 16211 provides that grants may be made to:

"...districts maintaining schools for kindergarten, or any of grades 1 to 6, inclusive...which have reduced the number of pupils to full-time equivalent classroom teachers in kindergarten and any of grades 1 to 6, inclusive, in those schools to a ratio of 25 to 1, or better. The grants shall be made

⁶ Education Code Section 16191 defines "exceptional children" to mean "physically handicapped pupils, mentally retarded pupils, educationally handicapped pupils, multihandicapped pupils, or pupils enrolled in development centers for the handicapped required or allowed to be educated pursuant to Part 30 (commencing with Section 56000)."

for...¶...any of the following:

- (a) Acquisition, by purchase or lease, and the installation and equipping of portable classrooms for classroom instructional purposes.
- (b) Acquisition of land for schoolsites.
- (c) Construction and equipping of permanent school buildings and facilities.
- (d) Reconstruction, renovation or remodeling of existing school buildings and facilities.
- (e) Any combination of the above."

Section 16212 allows:

"In lieu of grants to districts pursuant to subdivision (a) of Section 16211...the board may expend moneys available for grants under this article for the acquisition of portable buildings and facilities and equipment by the state, and thereafter convey the same to the eligible districts...(in) the form of sale, lease, outright grant, or other suitable form of conveyance, as determined by the board."

Section 16214 provides:

"For each school district which receives a grant or allocation pursuant to this article...the Controller shall compute an amount equal to one cent (\$0.01) on each one hundred dollars (\$100) of the assessed valuation of property within the district...¶)...The Controller shall make the computations and deductions required by this section for 30 fiscal years or until the time as the total of the amounts so deducted equal 50 percent of the amount of the grant or allocation which was made to the school district, whichever first occurs...¶)...the maximum rate of school district tax for the school district for which the computation is made shall be increased by one cent (\$0.01) per each one hundred dollars (\$100) of the assessed value of property within the district..."

Article 5 of Chapter 6, commencing with Education Code Section 16230, sets forth the provisions for School Housing Aid For Districts Impacted by Seasonal Agricultural Employment. Section 16230 sets aside \$1,500,000 of the proceeds of bonds issued under the State School Building Aid Bond Law of 1966:

"...for the acquisition of...¶... portable school and classroom buildings (and) may be made available by the board, upon the recommendation of the Director of Compensatory Education, to any school district which,

because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, experiences emergency increases in school enrollments of such magnitude as to make it impossible or impractical to accommodate the additional pupils in existing school buildings and facilities available to the district.”

Section 16231 provides:

“...The use of the portable school and classroom buildings may be made available to a school district by letting the same to the district free of charge, or by lease, or by conveying the same to the district under lease-purchase agreement, sale, or outright grant, as determined by the State Allocation Board upon consultation with, and the advice of, the Director of Compensatory Education...”

Article 7 of Chapter 6, commencing with Education Code Section 16260, provides for the Children’s Center Construction Law of 1968.

Section 16261 states:

“The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to provide assistance to school districts and to county superintendents of schools for the construction of children’s center facilities. Children’s centers are of general concern and interest to all the people of the state, and the education and care of children of working parents are a joint obligation of both the state and local agencies operating children’s centers...” (emphasis supplied)

Section 16263 requires:

“...The board shall adopt any rules and regulations... (which) shall establish a system of priorities... (and) give special consideration to school districts...containing substantial numbers of families who are recipients of aid to families with dependent children or who are former or potential recipients of the aid...”

Section 16272 provides for matching funds:

“For each one dollar (\$1) of money allocated to a local agency which is expended for a project, the local agency shall expend local funds for the project in an amount which bears the same percentage to the one dollar

(\$1) as the modified assessed valuation per unit of the average daily attendance of the local agency bears to the statewide modified assessed valuation per average daily attendance of all local agencies..."

Article 9 of Chapter 6, commencing with Education Code Section 16310, is entitled School Housing Aid For Rehabilitation and Replacement of Structurally Inadequate School Facilities. Section 16312 states:

"The Legislature hereby declares that it is in the interest of the state and the people thereof to provide assistance to school districts in rehabilitating or replacing structurally unsafe school facilities inasmuch as the education of children is an obligation of the state, and the obligation carries with it a corresponding responsibility for the physical safety of children while attending school." (emphasis supplied)

Section 16313 states:

"It is the intent of the Legislature in enacting this article to provide a means through repayable state loans for school districts...to house their pupils in facilities that are structurally safe."

Section 16317 requires the State Allocation Board to adopt rules which:

"...shall give priority in allocating funds to districts which will benefit most from the reconstruction or replacement of schoolhouse facilities...based on the age and structural safety of existing buildings at the school or schools where the construction or reconstruction will occur, acuteness of overcrowding and density of population in the attendance areas affected, or any other factors that will insure that the greatest need will be served in allocating funds under this article."

Chapter 8 of Part 10 contains the Urban School Construction Aid Law of 1968, commencing with Education Code Section 16700. Section 16701 provides:

"The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid urban school districts of the state in reconstructing, modernizing, or replacing schoolsites and buildings for pupils of the public school system who are now housed in substandard schools..."

Section 16705 requires the State Allocation Board to adopt rules which:

"...shall give priority in allocating funds to urban districts to those districts where the children will benefit most from schoolhouse facilities...based upon the age of existing buildings and the acuteness of overcrowding at the school or schools where the construction or reconstruction will occur, the density of population in the attendance areas affected, or any other factors that will insure that the greatest need will be served."

Section 16720 provides for repayment:

"Each district to which an apportionment or apportionments has been made under this chapter shall repay a portion or all of the principal amount of such apportionment or apportionments and the accrued interest thereon in 30 equal annual payments, as shall be determined by the Controller pursuant to this section...(¶)...In any year, beginning with the 1981-82 fiscal year, in which the annual repayment exceeds the amount which may be raised by a levy of 0.0075 percent of the full value in the district,...the Controller shall grant a deferment of the annual repayment which is in excess of the amount that would be produced by a tax of 0.0075 percent of the full value of the district..."

Chapter 12 of Part 10 establishes the "Leroy F. Greene State School Building Lease-Purchase Law of 1976", commencing with Section 17000. Section 17001 states:

"(a) The Legislature hereby declares that it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements, and to acquire new schoolsites and buildings for the purpose of making them available to local school districts for the pupils of the public school system, that system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state." (Emphasis supplied)

Article 11 of the Leroy F. Greene School Facilities Act of 1998, commencing with Education Code Section 17078.10, provides for:

" (c) ..."preliminary apportionment"... for eligible applicants with critically overcrowded schools in advance of full compliance with all of the application requirements otherwise required for an apportionment pursuant to this chapter..."

Chapter 14 of Part 10, commencing with Education Code Section 17085 is entitled the "Emergency School Classroom Law of 1979" and is cited as the State Relocatable Classroom Law of 1979. Section 17086 states:

"...the Legislature recognizes that the ad valorem tax is no longer available as a source of revenue for the construction of necessary school facilities. The Legislature considers that the greatest need in school construction is for classrooms for the education of public school pupils. It is the intent of the Legislature to satisfy this primary need to the greatest extent possible before providing any additional educational facilities, regardless of how desirable such additional facilities may be." (Emphasis supplied)

Chapter 15 of Part 10, commencing with Section 17100, established the School District Revenue Bond Act. This Act is based on the finding of the legislature that:

"The Legislature hereby finds and declares that the State School Building Lease-Purchase Fund, pursuant to Section 17008, and the proceeds from the sale or lease of surplus school property are the two sources available to school districts to finance the construction of school facilities to relieve overcrowding. However, these sources are still insufficient to meet the construction needs statewide of school districts." (emphasis supplied)

In the article attached hereto as Exhibit "B" (Cohen, Joel, "School Facility Financing - A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds", February 1999) the author writes:

"As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand." (Ibid, at page 1)

The article goes on to say:

"Proposition 1A⁷ forges a partnership between the State and school

⁷ Proposition 1A was a \$9.2 billion school bond initiative passed by the California voters on November 3, 1998 and, at the time, was the largest of its kind passed in our

districts for financing the construction and repair of their schools.” (Ibid, at page 2)

The test claim alleges costs required in order to join this partnership. This comprehensive history of the financing of school facilities in California further proves Test Claimant’s position: i.e., school districts are unable to finance needed school construction and modernization projects by themselves and are required to use state funds for these purposes.

In summary, the last 60 years of legislative history shows repeated and consistent recognition that school districts are unable to meet the school construction needs of their pupils. The history repeatedly reveals an admission that the education of school children is the primary responsibility of the state. The history of the inability of school districts and the obligation of the state to educate children results in the above recited litany of state money for school construction at low or no interest rates, repayment requirements of less than the amounts apportioned, and repayment terms unavailable anywhere else. Education of children is an obligation and function of the state. Classrooms are required to provide that education. Therefore, building classrooms is primarily a state obligation.

Given the fact that there is a tremendous need for new school construction, most schools are unable to create alternative financing, and the fact that the legislature recognizes this inability by providing construction and improvement funds, for DOF to suggest that schools do not need to participate in state financing programs is so far beyond the realm of practical reality that the draconian results of “electing” no new or modernized schools is not an acceptable alternative. City of Sacramento II (supra, at page 74)

5. Districts do not Have Authority to Levy Fees, Assessments and Taxes to Fully Fund the Costs of New Construction or Modernization

(a) Government Code Section 17556(d) Does Not Apply to Construction Funding

DOF offers Government Code Section 17556, subdivision (d), for the proposition that districts are precluded from recovery since districts have the authority to levy fees, assessments and taxes under Education Code section 17620. Developer fees are not

nations’s history. (Ibid, at page 3) It prompted Senator Quentin Kopp to request the California Research Bureau to provide research on the included topics.

service charges, fees or assessments to the consumer of public services. Government Code section 17556(d) refers to "service charges, fees or assessments". Education Code section 17620 refers to a "fee, charge, dedication or other requirement". They are not the same.

In addition, Section 17556 presupposes the existence of a mandate which is contrary to DOF's position. Also, subdivision (d) refers to the levy of service charges, fees and assessments against students. The levy of service charges, fees and assessments against students for any aspect of public education would be constitutionally prohibited by Article 9, Section 5, of the California constitution which requires the state to provide free schools.

The California Department of Education has issued Fiscal Management Advisory 97-02⁸ which makes it quite clear that tuition, fees, deposits and other charges may only be made when specifically authorized by law. The examples set forth in the advisory clearly demonstrate that the tuition, fees, deposits and other charges referred to in Government Code Section 17556, subdivision (d), clearly do not encompass sources for the construction of school facilities.

Test claimant directs the attention of the Commission to the fact that there is another test claim pending on developer fees. (CSM 02-TC-42) That test claim notes the various restrictions and limitations on the use of developer fees to finance public school construction. For example (and not by way of limitation), Education Code Section 17620(a)(1) limits any fee, charge, dedication, or other requirement to only certain development projects. Likewise, Government Code Section 65995 limits the amount that can be levied (e.g. \$1.93 per square foot for residential construction and \$0.31 per square foot for commercial or industrial construction). In fact, there is no guaranty that any development projects will be undertaken which may be subject to developer fees.

It is the regulations, limitations and fee restrictions of developer fees that distinguishes this case from that which faced the court in *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, relied upon by DOF. In *Connell*, the amount or availability of the fees⁹ were not restricted, and the water district could charge fees in any amount it chose to

⁸ A copy of Fiscal Management Advisory 97-02 and its cover letter dated October 30, 1997 is attached hereto as Exhibit "C" and is incorporated herein by reference.

⁹ Note: In *Connell*, the court limited its opinion to the authority to levy "fees" and did not discuss "service charges, fees or assessments", the language of the statute. (*Id.*, at page 398, fn. 15)

levy. Here, school districts are limited as to what properties are subject to fees, they are limited as to the amount of the fees they can charge, and they may not charge any fees whatsoever if no developer projects are undertaken. The reason Government Code Section 17556(d) does not bar a finding of costs here is that DOF has made no legal or factual showing that the authorized service charges, fees, or assessments are either authorized or "sufficient to pay for" the mandated program or increased cost of service, nor were they adopted at the time, or in the same statute, as the test claim legislation.


6. Economic Hardship Provisions do not Prevent a Finding of a State Mandate

DOF next argues that the state School Facilities Program routinely funds half of the hazard assessment requirements, and may fund them wholly in cases of economic hardship. (Education Code Sections 17072.12, 17072.13 and 17072.18) Those districts who receive total funding for assessment and administrative costs will not need to file a claim; those who do not receive total funding, will.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

Commission on State Mandates

Original List Date: 7/8/2003 Mailing Information: Other
Last Updated:
List Print Date: 08/27/2003 Mailing List
Claim Number: 02-TC-43
Issue: Hazardous Materials Assessments

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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EXHIBIT A

Copy: Butt v. State of California

[No. S020835. Dec. 31, 1992.]

THOMAS K. BUTT et al., Plaintiffs and Respondents, v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.

SUMMARY

Parents of school children enrolled in a unified school district filed a class action for injunctive relief against the state and the district's board of education, seeking to prevent the district from closing its schools six weeks before the official end of the school year due to a projected revenue shortfall. After granting plaintiffs' motion to amend the complaint to include the state Superintendent of Public Instruction and the state Controller as defendants, the trial court granted plaintiffs' motion for a preliminary injunction, ordering the state and the superintendent to ensure that the schools remained open until the end of the school year or to provide the students with a substantially equivalent educational opportunity. The court subsequently issued another order, pursuant to the superintendent's plan, authorizing the Controller to disburse an emergency loan to the district from unspent portions of appropriations for the Greater Avenues for Independence (GAIN) program and another unified school district, and authorizing the superintendent to relieve the present board, and to develop recovery and repayment plans. The state's appeal from the trial court's orders was transferred from the Court of Appeal to the Supreme Court. (Superior Court of Contra Costa County, No. C91-01645, Ellen Sickles James, Judge.)

The Supreme Court reversed the trial court's second order insofar as it approved funding of an emergency loan from appropriations for the GAIN program and the other school district; in all other respects, the court affirmed the orders, and directed the Court of Appeal to remand the matter to the trial court for further proceedings. The court held that the trial court, in deciding the propriety of a preliminary injunction, did not abuse its discretion in finding that there was a reasonable probability that plaintiffs would succeed on the merits of their case, since the early closure of the district's schools would have deprived the students of their fundamental right to basic equality in public education, and the state was required to intervene to prevent a deprivation of that right. The court also held that the trial court properly found that denial of the preliminary injunction would have caused students and their parents substantial and irreparable harm greater than that which defendants would suffer if the injunction were granted. The court held that

the trial court acted within its equitable powers in ordering the superintendent to displace the board, operate the district, and impose a plan for the district's permanent financial recovery, but that it was improper for the trial court to order the state to extend the loan by using unspent funds from appropriations for the GAIN program and the other school district, since those funds were not "reasonably available" for that purpose. (Opinion by Baxter, J., with Panelli, Arabian and George, JJ., concurring. Separate concurring and dissenting opinions by Lucas, C. J., Mosk and Kennard, JJ.)

HEADNOTES

Classified to California Digest of Official Reports

- (1) **Appellate Review § 119—Dismissal—Grounds—Mootness—Exception for Matters of Public Interest—Issues Concerning Injunction Requiring Emergency State Loan to Fund School District.**—On the state's appeal from a preliminary injunction requiring it to extend an emergency loan to a school district so that it could keep its schools open until the end of the school year despite revenue shortfalls, and to implement a recovery plan for the district, some issues were moot due to the fact that a plan had already been implemented and the state did not seek rescission of the loan. Nevertheless, the Supreme Court had discretion to decide the issues, which included whether the state was responsible to ensure the students' fundamental right to basic educational equality and whether the trial court had authority to order a loan from funds the Legislature had appropriated for other purposes, since those issues involved potentially recurring questions of public importance. As to the appropriations issue, there was a substantial possibility that similar crises would produce similar emergency orders in the future, thus favoring review. Moreover, the state had fully litigated the issue, and any mootness stemmed from the Supreme Court's denial of the state's request for a stay pending appeal.
- (2) **Injunctions § 21—Preliminary Injunctions—Appeal—Scope of Review.**—Appellate review of a trial court's decision as to whether to issue a preliminary injunction is limited to whether the decision was an abuse of discretion. In deciding whether to issue a preliminary injunction, the trial court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits, and (2) the relative interim harm to the parties resulting from the issuance or nonissuance of the injunction. The trial court's determination must be guided by a "mix" of the two factors, and the greater the

plaintiff's showing on one, the less must be shown on the other to support an injunction. The scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at a trial on the merits, and the trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. Thus, unless the potential merit of the claim is conceded, the appellate court must address that issue when reviewing an order granting a preliminary injunction.

- (3a-3c) Schools § 4—School Districts; Financing; Funds—Shortening School Year on Emergency Basis Due to Budget Shortfall—State's Obligation.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district, seeking to prevent the district from ending the school year six weeks early due to a budget shortfall, the trial court, in granting plaintiffs a preliminary injunction, did not abuse its discretion in finding that there was a reasonable probability that plaintiffs would succeed on the merits of their case. Basic equality in public education for all students, regardless of the district in which they reside, is a fundamental right under the California Constitution, and denials of that right are subject to strict scrutiny. The state has the ultimate responsibility for assuring equal operation of the public school system, and is obliged to intervene when a local district's fiscal problems prevent its students from receiving basic educational equality. Moreover, there was no state policy of local autonomy and accountability at the district level that was compelling enough to justify the state's tolerance of the extreme and unprecedented educational deprivation that would have resulted from the early closure of the district's schools.

[See Cal.Jur.3d, Schools, §§ 291, 299.]

- (4) Schools § 1—Legislature's Nondelegable Responsibility Over Public School System.**—Public education is an obligation that the state assumed by adoption of the state Constitution. The public school system, although administered through local districts created by the Legislature, is one system applicable to all of the common schools. In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. The Legislature's "plenary" power over public education is subject only to constitutional restrictions. Local districts are the state's agents for local operation of the common school system, and the state's ultimate responsibility for public education cannot be delegated to any other entity.

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- (5) **Constitutional Law § 87.2—Equal Protection—Classification—Judicial Review—Strict Standard of Review for Suspect Classifications or Classifications Touching on Fundamental Interests—Right to Education.**—Under the equal protection clauses of the federal and state Constitutions, heightened judicial scrutiny applies to state-maintained discrimination whenever the disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest. Education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.
- (6) **Schools § 4—School Districts; Financing; Funds—Shortening School Year on Emergency Basis Due to Budget Shortfall—Preliminary Injunction Against State—Balancing Harm to Parents and Students Against Harm to District.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district to prevent closure of the district's schools six weeks early due to a budget shortfall, the trial court properly found that denial of the parents' motion for a preliminary injunction would have caused district students and their parents substantial and irreparable harm that was greater than that which defendants would suffer if the injunction were granted. Plaintiffs' declarations suggested that the district's inability to complete the school year arose from its ever-worsening fiscal condition and the deterioration of negotiations for emergency aid, and that the teachers' lesson plans did not provide for the contingency of early closure. They also detailed the difficulties of maintaining the educational progress of over 31,000 suddenly displaced students. While plaintiffs may not have demonstrated that "irreparable" harm to students was unavoidable by other means, the trial court's findings both that plaintiffs had a reasonable probability of success on the merits and that they would suffer more harm if an injunction were denied than the state would suffer if it were granted fully justified its decision to grant the preliminary injunction.
- (7a, 7b) **Schools § 4—School Districts; Financing; Funds—District in Financial Distress Due to Mismanagement—Trial Court's Equitable Power to Grant Relief—Ordering Superintendent of Public Instruction to Assume Management.**—In an action for injunctive relief by parents against the state, the state Superintendent of Public Instruction, the state Controller, and the board of education of a school district, seeking to prevent the school district from ending the school year six weeks early due to a budget shortfall, the trial court did not exceed its powers in issuing an order, based on a plan submitted by the superintendent and the Controller, authorizing the superintendent to

displace the board, operate the district, and impose a plan for the district's permanent financial recovery. Although no statute gave the superintendent such authority, the takeover order was within the trial court's inherent equitable power to enforce the state's constitutional obligations in light of the unique situation. The state was justified in satisfying its duty by extending a loan with conditions to ensure appropriate use of the funds and minimize the risk of default, especially since the district's ability to administer the loan under its existing systems and managers was uniquely suspect.

- (8) **Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power—To Order Discretionary Acts By Executive or Legislature.**—In general, courts have equitable authority to enforce their constitutional judgments. Principles of comity and separation of powers, however, place significant restraints on the authority of courts to order or ratify acts that are normally committed to the discretion of other branches or officials. In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature. Moreover, a judicial remedy must be tailored to the harm at issue. A court should always strive for the least disruptive remedy that is adequate to its legitimate task.
- (9) **Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power—To Order Spending of Legislative Appropriations—Ordering Emergency Loan to School District From Funds Appropriated for Other Educational Purposes.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district, seeking to prevent the school district from ending the school year six weeks early due to a budget shortfall, the trial court improperly ordered the state to extend the district an emergency loan of \$19 million out of unspent funds appropriated for the Greater Avenues for Independence (GAIN) program and for an emergency loan to another school district. The appropriations did not make funds "reasonably available" for the purpose of financing the remainder of the district's school term. GAIN's purpose is to provide employment, adult education, and job training to recipients of public aid. The GAIN appropriation was expressly designated for that program alone, and was not intended to fund the needs of non-GAIN students. Similarly, the emergency loan to the other district was specifically appropriated for that district, with conditions addressed to the circumstances of that case. The funding of the remainder of the district's term was clearly

outside the particular purposes for which the appropriations were reserved.

[See 7 **Witkin**, Summary of Cal. Law (9th ed. 1988) Constitutional Law, §§ 112, 115.]

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Robert J. Bezemek as Amicus Curiae.

OPINION

BAXTER. J.—In late April 1991, after a period of mounting deficits, the Richmond Unified School District (District) announced it lacked funds to complete the final six weeks of its 1990-1991 school term. The District proposed to close its doors on May 1, 1991. The Superior Court of Contra Costa County issued a preliminary injunction directing the State of California (State), its Controller, and its Superintendent of Public Instruction (SPI) to ensure that the District's students would receive a full school term or its equivalent. The court approved the SPI's plan for an emergency State loan, and for appointment by the SPI of an administrator to take temporary charge of the District's operation.

We declined to stay implementation of the plan pending the State's appeal. However, we transferred the appeal here in order to decide an important issue of first impression: Whether the State has a constitutional duty, aside from the equal allocation of educational funds, to prevent the budgetary problems of a particular school district from depriving its students of "basic" educational equality.

We affirm the trial court's determination that such a duty exists under the California Constitution. Further, the court did not err in concluding, on the basis of the plaintiffs' preliminary showing, that the particular circumstances of this case demanded immediate State intervention. However, the court exceeded its judicial powers by approving the diversion of emergency loan funds from appropriations clearly intended by the Legislature for other purposes.

FACTS AND PROCEDURAL HISTORY¹

On April 17, 1991, Thomas K. Butt and other named District parents filed a class action for temporary and permanent injunctive relief against the State and the District's board of education (Board).² The complaint alleged as follows: The State is responsible for educating all California children, and the Board is the State's agent for carrying out this responsibility in the District. The scheduled final day of the District's 1990-1991 school term was June 14, 1991, but the District had announced that its 44 elementary, secondary, and adult schools would close on May 1, 1991. The resulting loss of six weeks of instruction would cause serious, irreparable harm to the District's 31,500 students and would deny them their "fundamental right to an effective public education" under the California Constitution. Moreover, as an unjustified discrimination against District students compared to those elsewhere in California, the closure would violate equal protection guarantees of the California and United States Constitutions. Therefore, defendants should be enjoined from closing the District's schools before the scheduled end of the scholastic term.

On April 22, 1991, plaintiffs noticed a motion for preliminary injunction. In an attached declaration, Frank R. Calton, a member of the Board, stated

¹The State, as appellant, has elected to proceed by way of an appendix in lieu of the clerk's transcript, as permitted by rule 5.1 of the California Rules of Court. Some of the documents contained in the appendix, though they include handwritten filing dates, bear no official file stamps and have no proofs of service attached. However, rule 5.1 expressly allows the use of unofficial conformed copies (subd. (c)(1)) and provides that the filing of an appendix "constitutes a representation by counsel that the appendix consists of true and correct copies of the papers in the superior court file" (subd. (i)(1)). No party having urged otherwise, we adopt that assumption for purposes of this opinion.

²The named plaintiffs sued on behalf of themselves, their children, and other parents and students of the District.

that the District projected a revenue shortfall of \$23 million for the 1990-1991 academic year and only had sufficient funds to pay its employees through April 1991. Calton declared the District would have to close at the end of April unless new funds were obtained or employees agreed to work for registered warrants in lieu of paychecks. He indicated that the District's efforts to obtain an emergency loan from the State had not yet succeeded, and the District was preparing to file for bankruptcy.

Plaintiffs' motion papers also included declarations by District teachers, academicians in the field of education, and members of the Contra Costa County board of education. These statements detailed the serious disruptive effect the proposed closure would have upon the educational process in the District and upon the quality of education afforded its students.

The motion was heard on April 29, 1991. The Attorney General represented the State in opposition. Counsel for the District represented that the Board's appearance was precluded by an automatic bankruptcy stay. The trial court granted plaintiffs' unopposed motion for amendment of the complaint to include the SPI and the Controller as defendants. Pending applications for intervention and *amicus curiae* status were not formally granted,³ but as stipulated by the parties, the court heard argument from the applicants and agreed to consider their briefs.

At the conclusion of the hearing, the trial court ruled orally that under the California Constitution, the State itself is responsible for the "fundamental" educational rights of California students and must remedy a local district's inability to provide its students an education "basically equivalent" to that provided elsewhere in the State. Concluding that the threatened closure would deny the District's students a "constitutionally [equal] education," the court ordered the State and the SPI to act as "they deem appropriate" to ensure that District schools remained open until June 14, 1991, or to provide District students a "substantially equivalent educational opportunity" within the statutory school year ending June 30, 1991.

This oral decision was followed by two written orders filed May 2. One of these, drafted by plaintiffs' counsel, purported to formalize the April 29 ruling. It made findings that closure of District schools by May 1 would cause District students irreparable harm, that the balance of harm favored a preliminary injunction, that education is a "fundamental right" in California,

³Applications to appear as *amici curiae* were submitted by the Richmond Federation of Teachers (RFT) and jointly by the Meiklejohn Civil Liberties Institute, the National Lawyers Guild, and Multi-Cultural Education, Training, and Advocacy, Inc. (collectively Meiklejohn). Complaints in intervention and/or applications for leave to intervene were submitted by the Oakland Unified School District (OUSD), RFT, and United Teachers of Richmond (UTR).

that no "compelling interest" justified denying District students six weeks of instruction available to "every other child in the State," and that plaintiffs' ultimate success on the merits was reasonably probable. The State and its agents again were directed to act "as . . . appropriate" to ensure District students, within the school year ending June 30, 1991, an education "equivalent basically" to that provided elsewhere in California for a full school term. The Controller was added as a State official expressly bound by the court's commands.

On the same day, May 2, the SPI and the Controller submitted their plan for compliance with the preliminary injunction. With counsel for all interested parties present, the court took evidence indicating that uncommitted funds exceeding the estimated \$19 million necessary to complete the District's school year were available from existing State appropriations to the Greater Avenues for Independence (GAIN) program and for emergency assistance to the OUSD. Counsel for the OUSD stipulated that his client had "no objection" to use of the \$10 million OUSD appropriation for purposes of an emergency loan to the District.

Accordingly, the court executed an order, drafted by counsel for the SPI, approving in principle the submitted plan.⁴ The order authorized the Controller to disburse an emergency loan to the District from unspent portions of the GAIN and OUSD appropriations. (See Stats. 1989, ch. 93, § 22.00; Stats. 1989, ch. 1438, § 1 et seq.) Meanwhile, the SPI, by virtue of the State's "ultimate responsibility" for equal education and his own statutory obligation to "superintend the schools of this state" (Ed. Code, § 33112, subd. (a)),⁵ would have authority to "relieve the . . . [B]oard of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, [develop] a repayment plan on the [D]istrict's behalf as necessary" to ensure completion of the school term, the District's financial recovery, and the protection of the loaned funds.⁶

The Attorney General timely noticed appeals from the April 29 and May 2 orders on behalf of the State. Defendants SPI and Controller did not

⁴Though the court's order recites that the SPI and the Controller "presented . . . , after notice to all parties, an agreement" to provide an emergency loan, neither the agreement itself, nor a description of its precise terms, has been made part of the record on appeal.

⁵All further statutory references are to the Education Code unless otherwise indicated.

⁶The preliminary injunction motion was litigated with understandable haste, and evidence of the causes of the District's apparent insolvency was not presented below. On appeal, the SPI invites us to take judicial notice of grand jury findings on this subject which were released after the preliminary injunction was granted. (See *The Financial Affairs of the Richmond Unified School District, Rep. of 1990-1991 Contra Costa County Grand Jury* (May 29, 1991) [hereafter Report].) Without objection, we may note the Report's contents. (Evid. Code, §§ 452, subds. (c), (d), 455, 459; see *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1259, fn. 54 [275 Cal.Rptr. 729, 800 P.2d 1159].) Of course, we cannot accept its findings as evidence or its criticisms of the District and the Board as conclusively founded. We are

appeal. The State immediately requested transfer of the appeal from the Court of Appeal, First Appellate District, to this court (see Cal. Rules of Court, rule 20) and also asked that we stay enforcement of the trial court's orders pending appeal. (1)^(See fn. 7.) The SPI and the Controller opposed a stay but supported transfer of the appeal to this court. We granted the transfer request but denied a stay.⁷

DISCUSSION

1. *Standard of review.*

(2) In deciding whether to issue a preliminary injunction, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party

particularly loath to do so when the District and the Board were disabled below from defending against claims of mismanagement and, except for a special appearance at oral argument, have not participated in the appeal.

Nonetheless, we cannot ignore the grand jury's assessment that despite repeated warnings, an earnest but financially inexperienced Board permitted massive, accelerating deficit spending over a period of several years to expand staff, boost salaries and benefits, and support innovative programs installed by the District's former superintendent. (Report, pp. 3-5.) According to the Report, the resulting deficit for the years 1986-1990 was \$29.5 million, with an \$18.1 million deficit for 1990 alone. (*Id.*, at p. 4.) In 1990, the District had received a State emergency loan exceeding \$9 million, in consequence of which a limited-powers trustee appointed by the SPI was overseeing District financial affairs during the 1990-1991 school term. (*Id.*, at p. 5.)

⁷Our denial of a stay allowed implementation of the plan approved by the trial court, and the District's school year was completed. Though the State vigorously contends the court lacked power to invade the GAIN and OUSD appropriations, it does not demand actual rescission of the court-approved loan. Moreover, we judicially notice without objection that in June 1992, the SPI approved a repayment and recovery plan adopted by the District, restored the Board's powers, and terminated the court-authorized appointment of the State administrator. (See Evid. Code, §§ 452, subds. (c), (h), 455, 459.) Although portions of the appeal may therefore be technically moot, we have discretion to decide the issues presented as potentially recurring questions of public importance. (E.g., *O'Hare v. Superior Court* (1987) 43 Cal.3d 86, 91, fn. 1 [233 Cal.Rptr. 332, 729 P.2d 766]; *DiGiorgio Fruit Corp. v. Dept. of Employment* (1961) 56 Cal.2d 54, 58 [13 Cal.Rptr. 663, 362 P.2d 487]; *People v. West Coast Shows, Inc.* (1970) 10 Cal.App.3d 462, 468 [89 Cal.Rptr. 290].)

The Chief Justice objects in particular that we neither must nor should address whether the sources of funding approved by the trial court were proper. However, he fails to indicate why this important and sensitive issue is any more moot, or any less worthy of consideration, than other portions of the trial court's order which have also been irretrievably implemented. Indeed, in these uncertain times, the substantial possibility arises that similar future crises will produce similar emergency orders for immediate diversion of State funds from expedient sources. Hence, contrary to the Chief Justice's suggestion, the issue is one capable of repetition but difficult to review, and this concern favors its prompt consideration under the "public interest" exception to the mootness doctrine. (*DiGiorgio Fruit Corp.*, *supra*, 56 Cal.2d at p. 58.) Moreover, the State has fully litigated the merits of the appropriations issue throughout, and any mootness in this or other aspects of the injunction stems from our denial of the State's request for a stay pending appeal. Under these circumstances, the State should not be penalized on appeal for conceding that State funds already expended by the District cannot practicably be recovered.

will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 441-442 [261 Cal.Rptr. 574, 777 P.2d 610].) Appellate review is limited to whether the trial court's decision was an abuse of discretion. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286 [219 Cal.Rptr. 467, 707 P.2d 840].)

The trial court's determination must be guided by a "mix" of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. (*King v. Meese* (1987) 43 Cal.3d 1217, 1227-1228 [240 Cal.Rptr. 829, 743 P.2d 889].) Of course, "[t]he scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits." (*Common Cause, supra*, 49 Cal.3d at p. 442.) A trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. (*Id.*, at pp. 442-443.) Unless potential merit is conceded, an appellate court must therefore address that issue when reviewing an order granting a preliminary injunction.

Here, the trial court found that plaintiffs' constitutional demand for State intervention had potential merit, and that the balance of interim harm justified the issuance of a preliminary injunction against the State. For the reasons that follow, we conclude that each of these determinations was within the court's discretion.⁸

2. Merits of plaintiffs' claims.

(3a) The trial court expressly found "[t]here is a reasonable probability that plaintiffs will succeed on the merits of their case." The court agreed with plaintiffs' claim that the equal protection guaranties of the California Constitution (art. I, § 7, subs. (a), (b); art. IV, § 16, subd. (a)) require State intervention to ensure that fiscal problems do not deprive a local district's

⁸The State insists that under the circumstances of this case, appellate review should not be limited to whether the trial court "abused its discretion" when weighing "interim" harm and "probable" merit. The State stresses that the unstayed injunction, though preliminary in form, was both final and unprecedented in fact. Accordingly, the State suggests, we must decide, as on appeal from a final judgment, whether plaintiffs were entitled to the relief they received.

We disagree. The abuse-of-discretion standard acknowledges that the propriety of preliminary relief turns upon difficult estimates and predictions from a record which is necessarily truncated and incomplete. Here, the urgency of the situation forced plaintiffs to produce, and the State to rebut, a hasty tentative showing of constitutional necessity. The evidence on which the trial court was forced to act may thus be significantly different from that which would be available after a trial on the merits. Neither the trial court nor this court could undertake a final adjudication of plaintiffs' lawsuit under such circumstances.

students of basic educational equality.⁹ The court also accepted plaintiffs' preliminary showing that the effect of the District's crisis on its students' educational rights was serious enough to trigger the State's constitutional duty. The State, supported by amicus curiae Pacific Legal Foundation (Pacific),¹⁰ assails these conclusions on multiple grounds.

At the outset, the State does not claim it lacks any and all constitutional role in local educational affairs. Instead, its reasoning proceeds as follows: The State fulfills its financial responsibility for educational equality by subjecting all local districts, rich and poor, to an equalized statewide revenue base.¹¹ Unless a district fails to provide the minimum six-month school term set forth in the "free school" clause (Cal. Const., art. IX, § 5),¹² the State has no duty to ensure prudent use of the equalized funds by local administrators. Even if local mismanagement causes one district's services to fall seriously below prevailing statewide standards, the resulting educational inequality is

⁹Article I, section 7, subdivision (a) provides in pertinent part that "[a] person may not be . . . denied equal protection of the laws. . . ." Article I, section 7, subdivision (b) provides in pertinent part that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. . . ." Article IV, section 16, subdivision (a) provides that "[a]ll laws of a general nature have uniform operation."

¹⁰The positions adopted by the various parties and numerous amici curiae in this appeal are diverse. The Attorney General, representing the State as defendant and appellant, opposes all aspects of the trial court orders. Though they were joined as defendants below, the SPI and the Controller, deeming themselves "respondents" on appeal, support plaintiffs' view that the orders were proper in all respects. Amicus curiae Pacific supports the State's position. Amici curiae RFT and UTR approve State financial aid but object to displacement of the local governing board by a State administrator. Amici curiae Frank R. Calton and Howard P. Abelson urge that the Board acted correctly by deciding to close District schools and should not have been displaced. Calton and Abelson also suggest the injunction was improper because the Board had no opportunity to appear and defend against claims of mismanagement. Amici curiae Mario Diaz and Rebecca Hazlewood Bezemek (Diaz and Bezemek) take no position on State financial assistance but argue that the SPI's takeover of District government was improper. Amicus curiae briefs in support of plaintiffs have been filed by the American Civil Liberties Union Foundation, Human Rights Advocates, and Meiklejohn.

¹¹The funding scheme for public education is complex, but no party disputes the summary description provided in the State's brief: "The Legislature has attempted to equalize school district funding . . . by the use of a 'base revenue limit' for each district. Each district is classified by size and type. ([Ed.] Code, [§] 42238.) Based upon this classification scheme, each district has a 'base revenue limit' per unit of average daily attendance. The base revenue limit for any district includes the amount of property tax revenues a district can raise, with other specific local revenues, coupled with an equalization payment by the State, thus bringing each district into a rough equivalency of revenues. (Compare [Cal. Code Regs., tit. 5, [§] 15371, *et seq.*; Ed.] Code [§] 42238 *et seq.*) [¶] Because the student population is so diverse, the Legislature had to supplement the base revenue limit with specific augmentations targeted for categories of children with needs that require special attention. These supplements are designated as 'categorical' aid. . . ."

¹²Article IX, section 5 provides: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

not grounded in district wealth, nor does it involve a "suspect classification" such as race. Thus, "strict scrutiny" of the disparity is not required, and the State's refusal to intervene must be upheld as rationally related to its policy of local control and accountability. Even if strict scrutiny is appropriate, the local-control policy is "compelling" enough to justify the State's inaction.

Under the unprecedented circumstances of this case, we cannot accept the State's contentions. We set forth our reasons in detail.

Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all. The Constitution of 1849 directed the Legislature to "provide for a system of common schools, by which a school shall be kept up and supported in each district" (Cal. Const. of 1849, art. IX, § 3.) That constitutional command, with the additional proviso that the school maintained by each district be "free," has persisted to the present day. (Cal. Const., art. IX, § 5.)

In furtherance of the State system of free public education, the Constitution also creates State and county educational offices, including a Superintendent of Public Instruction and a State Board of Education. (Cal. Const., art. IX, §§ 2-3.3, 7.) It authorizes the formation of local school districts (*id.*, §§ 6½, 14), requires that all public elementary and secondary schools be administered within the Public School System (*id.*, § 6), establishes a State School Fund (Fund) (*id.*, § 4), reserves a minimum portion of State revenues for allocation to the Fund (*id.*, art. XVI, §§ 8, 8.5), guarantees minimum allocations from the Fund for each public school (*id.*, art. IX, § 6), specifies minimum salaries for public school teachers (*ibid.*), authorizes the State Board of Education to approve public school textbooks (*id.*, § 7.5), and permits the Legislature to grant local districts such authority over their affairs as does not "conflict with the laws and purposes for which school districts are established" (*id.*, § 14).

(4) Accordingly, California courts have adhered to the following principles: Public education is an obligation which the State assumed by the adoption of the Constitution. (*San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 951-952 [92 Cal.Rptr. 309, 479 P.2d 669]; *Piper v. Big Pine School Dist.* (1924) 193 Cal. 664, 669 [226 P. 926].) The system of public schools, although administered through local districts created by the Legislature, is "one system . . . applicable to all the common schools" (*Kennedy v. Miller* (1893) 97 Cal. 429, 432 [32 P. 558], italics in original.) ". . . In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. . . ." (*Jackson v.*

Pasadena City School Dist. (1963) 59 Cal.2d 876, 880 [31 Cal.Rptr. 606, 382 P.2d 878].) “[M]anagement and control of the public schools [is] a matter of state[, not local,] care and supervision. . . .” (*Kennedy v. Miller, supra*, 97 Cal. at p. 431; see also *Hall v. City of Taft* (1956) 47 Cal.2d 177, 181 [302 P.2d 574]; *California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1523-1524 [7 Cal.Rptr.2d 699].) The Legislature’s “plenary” power over public education is subject only to constitutional restrictions. (*Hall v. City of Taft, supra*, at pp. 180-181 [302 P.2d 574]; *Tinsley v. Palo Alto Unified School Dist.* (1979) 91 Cal.App.3d 871, 903-904 [154 Cal.Rptr. 591].) Local districts are the State’s agents for local operation of the common school system (*Hall v. City of Taft, supra*, at p. 181; *San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d at p. 952; *California Teachers Assn., supra*), and the State’s ultimate responsibility for public education cannot be delegated to any other entity (*Hall v. City of Taft, supra*; *Piper v. Big Pine School Dist., supra*, 193 Cal. at p. 669).

(3b) It is true that the Legislature has assigned much of the governance of the public schools to the local districts (e.g., §§ 14000, 35160 et seq., 35160.1), which operate under officials who are locally elected and appointed (§§ 35020, 35100 et seq.). The districts are separate political entities for some purposes. (E.g., *Johnson v. San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 698-700 [266 Cal.Rptr. 187] [general theory of respondeat superior does not make State liable for torts of local district or its employees]; *Gonzales v. State of California* (1972) 29 Cal.App.3d 585, 590-592 [105 Cal.Rptr. 804] [same]; *First Interstate Bank v. State of California* (1987) 197 Cal.App.3d 627, 633-634 [243 Cal.Rptr. 8] [State not vicariously liable for district’s breach of contract]; *Board of Education v. Calderon* (1973) 35 Cal.App.3d 490, 496 [110 Cal.Rptr. 916] [local district is not the “state” or the “People,” so as to be civilly bound in dismissal proceedings by teacher’s acquittal of criminal sex offense under principles of res judicata].)

Yet the existence of this local-district system has not prevented recognition that the State itself has broad responsibility to ensure basic educational equality under the California Constitution. Because access to a public education is a uniquely fundamental personal interest in California, our courts have consistently found that the State charter accords broader rights against State-maintained educational discrimination than does federal law. Despite contrary federal authority, California constitutional principles require State assistance to correct basic “interdistrict” disparities in the system of common schools, even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents.

In *Serrano v. Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187] (*Serrano I*), this court struck down the existing State

public school financing scheme, which caused the amount of basic revenues per pupil to vary substantially among the respective districts depending on their taxable property values. *Serrano I* concluded at length that such a scheme violated both state and federal equal protection guaranties because it discriminated against a fundamental interest—education—on the basis of a suspect classification—district wealth—and could not be justified by a compelling state interest under the strict scrutiny test thus applicable. (Pp. 596-619.) As the court concluded, “where fundamental rights *or* suspect classifications are at stake, a state’s general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause. [Citation.]” (P. 612, italics added.)

Among other things, *Serrano I* rejected a claim that the wealth-based financing scheme was immune from challenge because the interdistrict revenue disparities it produced were not de jure, but merely de facto. Our opinion detailed the purposeful state legislative action which had produced the geographically based wealth classifications. It also made clear, however, that under California principles developed in cases involving school racial segregation, the absence of purposeful conduct by the State would not prevent a finding that the State system for funding public education had produced unconstitutional results. (*Serrano I, supra*, 5 Cal.3d at pp. 603-604, citing *Jackson v. Pasadena City School Dist., supra*, 59 Cal.2d 876, 881.)

Serrano I also discussed two groups of federal cases suggesting that place of residence was an impermissible basis for State discrimination in the quality of education. *Serrano I* cited with approval *Hall v. St. Helena Parish School Board* (E.D.La. 1961) 197 F.Supp. 649. This federal decision struck down a Louisiana statute permitting local parishes to close their schools rather than integrate them. As *Serrano I* noted, *Hall v. St. Helena Parish* found an equal protection violation not only because of the statute’s racial consequences, but also “‘because its application in one parish, while the state provides public schools elsewhere, would unfairly discriminate against the residents of that parish, irrespective of race. . . . [A]bsent a reasonable basis for so classifying, a state cannot close the public schools in one area while, at the same time, it maintains schools elsewhere with public funds.’” (*Serrano I, supra*, 5 Cal.3d at p. 612, quoting *Hall v. St. Helena Parish, supra*, 197 F. Supp. at pp. 651, 656.)

Serrano I further noted a “second group of cases, dealing with apportionment [of votes], [in which] the high court has held that accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among a state’s citizens. [Citation.] . . . If a voter’s address may not determine the weight to which his ballot is entitled,

surely it should not determine the quality of his child's education. [Fn.]” (*Serrano I, supra*, 5 Cal.3d at p. 613.)

Finally, *Serrano I* rejected the State's claim that plaintiffs' wealth-discrimination theory would apply equally, and with disastrous effect, to all public services dependent in part on local property taxes. “[W]e are satisfied,” the majority concluded, that whatever the status of other public services, “its uniqueness among public activities clearly demonstrates that *education* must respond to the command of the equal protection clause.” (*Serrano I, supra*, 5 Cal.3d at p. 614, italics in original.)

In *San Antonio School District v. Rodriguez* (1973) 411 U.S. 1 [36 L.Ed.2d 16, 93 S.Ct. 1278], decided after *Serrano I*, the United States Supreme Court declined to subject Texas's similar local-property-tax based school financing scheme to heightened scrutiny under the Fourteenth Amendment. The *Rodriguez* majority concluded that a school finance scheme dependent on district tax values does not discriminate against the poor as a distinct class; in any event, the majority observed, wealth alone had never been deemed a suspect classification for federal purposes. Moreover, the majority reasoned, education is not a fundamental interest protected by the federal Constitution. Therefore finding the strict scrutiny standard of review inapplicable, the majority upheld Texas's system as rationally related to that state's policy of local control of schools. (411 U.S. at pp. 18-55.)

Nonetheless, in *Serrano v. Priest* (1976) 18 Cal.3d 728 [135 Cal.Rptr. 345, 557 P.2d 929] (*Serrano II*), this court reaffirmed the reasoning and result of *Serrano I* as required by the separate equal protection guaranties of the California Constitution. (*Serrano II, supra*, 18 Cal.3d at pp. 760-768.) Among other things, *Serrano II* reiterated that for California purposes, education remains a fundamental interest “which [lies] at the core of our free and representative form of government [fn.]” (*Id.*, at pp. 767-768.)

Hence, *Serrano II* declared, “[i]n applying our state constitutional provisions guaranteeing equal protection of the laws we shall continue to apply strict and searching judicial scrutiny” to claims of discriminatory educational classifications. (*Serrano II, supra*, at p. 767.) More recent cases confirm that education is a fundamental interest under the California equal protection guaranties (e.g., *Steffes v. California Interscholastic Federation* (1986) 176 Cal.App.3d 739, 746 [222 Cal.Rptr. 355]) and that the unique importance of public education in California's constitutional scheme requires careful scrutiny of state interference with basic educational rights (see, e.g., *Hartzell v. Connell* (1984) 35 Cal.3d 899, 906-909 [201 Cal.Rptr. 601, 679 P.2d 35] [scope of free school guarantee]).

In *Tinsley v. Palo Alto Unified School Dist.*, *supra*, 91 Cal.App.3d 871, parents sought mandate requiring several neighboring San Mateo and Santa Clara County school districts, the State, and certain State school officials, to submit a plan for the redress of interdistrict racial segregation in the affected locality. The petitioners declined to allege any specific acts committed by State or local parties as the cause of the interdistrict imbalance.

The State respondents answered the petition, but the districts successfully demurred, and the petition was dismissed as to them. The Court of Appeal reversed, holding that the California Constitution, unlike its federal counterpart as construed in *Milliken v. Bradley* (1974) 418 U.S. 717 [41 L.Ed.2d 1069, 94 S.Ct. 3112], contemplates interdistrict relief to remedy mere de facto racial imbalance which extends across district lines. (*Tinsley*, *supra*, 91 Cal.App.3d at pp. 899-907.) Several aspects of the *Tinsley* decision emphasize the State's ultimate responsibility for maintaining a nondiscriminatory common school system.

At the outset, the districts asserted that an appeal was premature under the "one final judgment" rule, because as mere agencies of the State, which had not demurred, they had no separate legal interests which an appeal from their dismissal could finally resolve. The Court of Appeal observed that if the districts' claim of mere agency was correct, any relief ordered against the State would necessarily affect them, and the judgment dismissing them from the action should therefore be reversed. In any event, the court concluded, the premise of identical interests did not bear scrutiny, because while "[t]he local districts, as agents, may have limited powers in interdistrict affairs, . . . the state . . . has plenary powers in all school district affairs. . . ." (*Tinsley*, *supra*, 91 Cal.App.3d at pp. 880-881.)

Turning to the merits, *Tinsley* dismissed the majority reasoning in *Milliken* insofar as based on the federal rule, long rejected in California (see *Crawford v. Board of Education* (1976) 17 Cal.3d 280 [130 Cal.Rptr. 724, 551 P.2d 28]; *Jackson v. Pasadena City School Dist.*, *supra*, 59 Cal.2d 876), that only de jure racial segregation is a constitutional violation. (*Tinsley*, *supra*, 91 Cal.App.3d at p. 903.) *Tinsley* also distinguished the *Milliken* majority's concern that it "would disrupt and alter" Michigan's entrenched system of local control of schools to impose an interdistrict remedy for Detroit city school segregation without proof that the state or affected suburban districts had engaged in intentional segregative conduct. The *Tinsley* court noted, among other things, that in California, the State shares responsibility with "the local entities it has created" to provide "equal educational opportunity

to the youth of the state" and "has a duty to intervene to prevent unconstitutional discrimination" in its schools. (*Id.*, at pp. 903-904.)¹³

It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity.

The State claims it need only ensure the six-month minimum term guaranteed by the free school clause (Cal. Const., art. IX, § 5). This contention, however, misconstrues the basis of the trial court's decision. Whatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State.

The State argues that even if the District's fiscal problems threatened its students' basic educational equality, any State duty to redress the discrimination must be judged under the most lenient standard of equal protection review. The State reasons as follows: Plaintiffs do not claim discrimination on the suspect basis of race. Nor is wealth-based discrimination at issue; as all parties concede, the District received the full benefit of the equalized funding system mandated by our *Serrano* decisions. At most, plaintiffs assert that a misuse of equalized funds by the District's officials caused a geographical disparity in service. Because residence and geography are not suspect classifications, the State's failure to prevent educational discrimination on those grounds is not subject to strict scrutiny. Rather, State inaction must be accepted as rationally related to the legitimate State policy of local control of schools.

(5) However, both federal and California decisions make clear that heightened scrutiny applies to State-maintained discrimination whenever the

¹³In November 1979, the voters adopted a Senate amendment to the California Constitution's equal protection clause, article I, section 7, subdivision (a). The amendment declares that nothing in the California Constitution imposes upon the State, or any local district or official, any obligations beyond those imposed by the Fourteenth Amendment of the United States Constitution "with respect to the use of pupil school assignment or pupil transportation." The amendment further forbids California courts from imposing any school-assignment or pupil-transportation obligation except when a violation of the Fourteenth Amendment has occurred, and unless a federal court could impose such a remedy for the violation. Whatever effect this amendment may have on *Tinsley's* result, it does not affect consistent interpretations of the California equal protection guaranty where, as here, assignment or transportation of students is not at issue.

disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest. (*Plyler v. Doe* (1982) 457 U.S. 202, 216-217 [72 L.Ed.2d 786, 102 S.Ct. 2382]; *Shapiro v. Thompson* (1969) 394 U.S. 618, 634 [22 L.Ed.2d 600, 614-615, 89 S.Ct. 1322]; *Darces v. Woods* (1984) 35 Cal.3d 871, 885, 888 [201 Cal.Rptr. 807, 679 P.2d 458]; *Fair Political Practices Com. v. Superior Court* (1979) 25 Cal.3d 33, 47 [157 Cal.Rptr. 855, 599 P.2d 46]; *Serrano II, supra*, 18 Cal.3d 728, 761, 767-768; *Weber v. City Council* (1973) 9 Cal.3d 950, 959 [109 Cal.Rptr. 553, 513 P.2d 601]; *Serrano I, supra*, 5 Cal.3d 584, 597; *Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 784-785 [87 Cal.Rptr. 839, 471 P.2d 487].) As we have seen, education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.

(3c) The State suggests there was no showing that the impact of the threatened closure on District students' fundamental right to basic educational equality was real and appreciable. Of course, the Constitution does not prohibit all disparities in educational quality or service. Despite extensive State regulation and standardization (see discussion, *post*), the experience offered by our vast and diverse public school system undoubtedly differs to a considerable degree among districts, schools, and individual students. These distinctions arise from inevitable variances in local programs, philosophies, and conditions. "[A] requirement that [the State] provide [strictly] 'equal' educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. . . ." (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176, 198 [73 L.Ed.2d 690, 707, 102 S.Ct. 3034].) Moreover, principles of equal protection have never required the State to remedy all ills or eliminate all variances in service.

Accordingly, the California Constitution does not guarantee uniformity of term length for its own sake. While the current statutory system for allocating State educational funds strongly encourages a term of at least 175 days (see fn. 14, *post*, at p. 687), that system is not constitutionally based and is subject to change. In an uncertain future, local districts, faced with mounting fiscal pressures, may be forced to seek creative ways to gain maximum educational benefit from limited resources. In such circumstances, a planned reduction of overall term length might be compensated by other means, such as extended daily hours, more intensive lesson plans, summer sessions, volunteer programs, and the like. An individual district's efforts in this regard are entitled to considerable deference.

Even unplanned truncation of the intended school term will not necessarily constitute a denial of "basic" educational equality. A finding of constitutional disparity depends on the individual facts. Unless the actual quality

of the district's program, viewed as a whole, falls fundamentally below prevailing statewide standards, no constitutional violation occurs.

Here, however, plaintiffs' preliminary showing suggested that closure of the District's schools on May 1, 1991, would cause an extreme and unprecedented disparity in educational service and progress. District students faced the sudden loss of the final six weeks, or almost one-fifth, of the standard school term originally intended by the District and provided everywhere else in California.¹⁴ The record indicates that the decision to close early was a desperate, unplanned response to the District's impending insolvency and the impasse in negotiations for further emergency State aid.¹⁵ Several District teachers declared that they were operating on standard-term lesson schedules made at the beginning of the school year. These declarants outlined in detail how the proposed early closure would prevent them from completing instruction and grading essential for academic promotion, high school graduation, and college entrance.¹⁶ Faced with evidence of such extensive educational disruption, the trial court did not abuse its discretion

¹⁴The trial court record contains no evidence of the prevailing term length in California, but the parties assumed below that a minimum term of 175 days prevails, and no dispute has arisen on the issue here. The statutes provide that an established local district may not receive any part of its annual apportionment from the State School Fund if it failed to remain in session at least 175 days during the most recent fiscal year, unless specified circumstances excusing the failure are established to the satisfaction of the SPI. (§§ 41420, subd. (a), 41422.) In an appendix to his brief, the SPI provides copies of local district certifications, submitted to the SPI as a condition of funding under section 41420, which indicate that virtually every established school district in California operated for at least 175 days during the 1990-1991 school year. The SPI asks us to take judicial notice of this information. Having received no objection, we do so. (Evid. Code, §§ 452, subds. (c), (h), 455, 459.)

¹⁵The declaration of Board member Calton, dated April 12, 1991, detailed the District's growing financial woes and stated the following: ". . . The District has only enough money to pay its employees through April 1991 [even under the most favorable accounting assumptions]. . . . Unless (a) additional funds are received, or (b) employees are willing to work for registered warrants, not redeemable checks, the District will have no alternative but to close all of its public schools at the end of April 1991. [¶] . . . The District has applied to the State of California for a loan, but that request has not been approved. It is my understanding that [collective bargaining concessions demanded by the State] have not been made, although negotiations are continuing. The District has retained bankruptcy counsel, . . . and is preparing to file for bankruptcy prior to April 30, 1991, if necessary."

¹⁶For example, John Enos, a high school government/economics teacher, stated that early termination of his required senior government class would eliminate intended lessons covering the State's executive and judicial branches, and county and local government. Geoffrey Cantrell, a high school mathematics teacher, stated that if the District closed early, Algebra I students would miss essential instruction in quadratic equations; Algebra II students would miss essential instruction in trigonometry; and geometry students would miss lessons in coordinate systems, logical proof, and trigonometric ratios. Craig Brammer, another high school mathematics teacher who also teaches a preparatory course for the Scholastic Aptitude Test (SAT), opined that loss of six weeks' instruction would severely impair his students' chances on the mathematics portion of the SAT. Betty Jean Crenshaw, a teacher of first-year languages, declared that early closure would prevent students from learning vocabulary and

by concluding that the proposed closure would have a real and appreciable impact on the affected students' fundamental California right to basic educational equality.

The State asserts that its financial obligation to equal education is limited to the equalized system of interdistrict funding required by our *Serrano* decisions. Once revenues are fairly apportioned at the beginning of each school year, the State insists, it cannot be constitutionally liable for how local officials manage the funds.

Nothing in the *Serrano* cases themselves, or in other California decisions, supports the State's argument. On the contrary, the cases suggest that the State's responsibility for basic equality in its system of common schools extends beyond the detached role of fair funder or fair legislator. In extreme circumstances at least, the State "has a duty to intervene to prevent unconstitutional discrimination" at the local level. (*Tinsley, supra*, 91 Cal.App.3d at p. 904.)

The State's most vigorous contention is that its nonintervention should have been upheld even under the strict scrutiny standard of equal protection analysis. Allowing the District's students to absorb the consequences of District mismanagement, the State urges, was necessary to preserve the State's compelling educational policy of local autonomy and accountability. However, the State fails to demonstrate a policy of local control so compelling as to justify State tolerance of the extreme local educational deprivation at issue here.

In the first place, the local-district system of school administration, though recognized by the Constitution and deeply rooted in tradition, is not a constitutional mandate, but a legislative choice. (See Cal. Const., art. IX, §§ 6½, 14.) The Constitution has always vested "plenary" power over education not in the districts, but in the State, through its Legislature, which may create, dissolve, combine, modify, and regulate local districts at pleasure. (See *Tinsley, supra*, 91 Cal.App.3d at p. 904.) The legislative decision

grammar necessary for advancement to second-year courses. Amy Shinsako, a first grade teacher, stated that early closure would prevent instruction in phonics, reading comprehension, creative writing, handwriting skills, two-digit addition and subtraction, and addition with three addends, all necessary for advancement to the second grade. Several declarants noted that failure to complete the term would prevent the scheduling of final examinations and other term-end projects crucial to the assignment of final grades. Other declarants detailed the difficulties District students would face if forced to transfer to other districts to complete the year's studies. They also noted that unless graduating seniors completed required courses and received final grades, the District might not be able to award high school diplomas, any diplomas awarded would be "stigmatized," and the ability of departing seniors to qualify for college admission might be seriously compromised.

to emphasize local administration does not end the State's constitutional responsibility for basic equality in the operation of its common school system. Nor does disagreement with the fiscal practices of a local district outweigh the rights of its blameless students to basic educational equality.

Moreover, though the Constitution and statutes encourage maximum local program and spending authority consistent with State law (Cal. Const., art. IX, § 14; Ed. Code, §§ 14000, 35160, 35160.1), the degree of supervision voluntarily retained by the State over the common school system is high indeed. The volume and scope of State regulation indicate the pervasive role the State itself has chosen to assume in order to ensure a fair, high quality public education for all California students.

School finance aside, the statutes address at length such matters as county and district organization, elections, and governance (§§ 4000-5450, 35000-35780); educational programs, instructional materials, and proficiency testing (§§ 51000-62008); sex discrimination and affirmative action (§§ 40-41, 200-263, 44100-44105); admission standards (§§ 48000-48053); compulsory attendance (§§ 48200-48416); school facilities (§§ 39000-40048); rights and responsibilities of students and parents (§§ 48900-49079); holidays (§§ 37220-37223); school health, safety, and nutrition (§§ 32000-32254, 49300-49570); teacher credentialing and certification (§§ 44200-44481); rights and duties of public school employees (§§ 44000-44104, 44800-45460; see also Gov. Code §§ 3540-3549.3 [organizational and bargaining rights]); and the pension system for public school teachers (§§ 22000-24924). The statutory scheme has spawned further voluminous regulations administered by the State's Department of Education and the SPI. (Cal. Code Regs., tit. 5, §§ 1-23005.) This long-established level of State involvement in the public education system undermines any claim that local control is a paramount and compelling State policy for all purposes.

Nor is there any indication that the State has had a compelling policy of absolute budgetary freedom and responsibility for local districts. On the contrary, during the years in which the District's deficit developed, districts were required to adopt budgets meeting State standards, and to submit them for oversight and approval by county and State authorities. (§§ 33127, former §§ 42120-42129.) Failure to adopt a conforming budget precluded State or county funding of the district (former § 42128), and a district was required to operate under its most recent approved budget (former § 42127.4).

The State argues that by saddling the District with long-term debt to cover short-term operations, the trial court's orders undermine the District's future

financial health and compromise its ability to provide basic educational equivalency in years to come. The State also urges that other districts will feel free to overspend if encouraged to believe in the availability of State relief.

These are indeed troubling concerns, but we cannot accept the implication that the State deems them compelling. In fact, the State itself has endorsed a policy of emergency conditional loan assistance to districts in financial difficulty.

Under statutes in effect since 1977, distressed districts may, through the SPI, seek specific legislative apportionments for emergency loans. (§§ 41310, 41310.5, 41320 et seq.) As a condition of such aid, a district must prepare a financial recovery plan and obtain approval of the plan from the county superintendent and the SPI. (§ 41320.) The district must also accept a temporary SPI-appointed trustee with veto power over financially significant actions of the local governing board. (§ 41320.1.)

The District itself had received a \$9,525,000 conditional State loan under this program in spring 1990 (Stats. 1990, ch. 171, § 3), and its operations were already being monitored by a State trustee at the time closure of District schools was threatened in April 1991. The 1989 Legislature had also appropriated \$10 million for a similar emergency loan-with-trustee to the OUSD. (Stats. 1989, ch. 1438, §§ 1-11.) Under these circumstances, the State cannot claim it follows a compelling policy of local control by declining to intervene when financial adversity threatens a district's operations.

Shortly before this lawsuit began, the District faced the prospect of further legislative intervention in its crisis. Assembly Bill No. 128, 1991-1992 Regular Session (A.B. 128), as introduced in December 1990 and thereafter amended, would have appropriated an additional \$29 million for emergency loans to the District. Acceptance of the proposed loan would have subjected the District to unprecedented restrictions on self-government. These included a temporary takeover of all District affairs by an SPI-appointed administrator pending approval and implementation of a plan for financial recovery and loan repayment. The administrator would have had broad power, among others, to unilaterally determine wages and benefits for all District employees who, as of April 29, 1991, were not covered by ratified collective bargaining agreements meeting the requirements of an approved recovery plan. (A.B. 128, Sen. Amend. of Jan. 18, 1991, §§ 2, 5.)

A.B. 128 failed passage, but that fact does not suggest a compelling policy against emergency State financial assistance to a local district. On the

contrary, the State has forged into the realm of emergency assistance and control, using the "specific appropriation" requirement (§ 41320) to decide on a case-by-case basis whether, and on what terms, it will intervene.

The State claims that emergency assistance to mismanaged districts contravenes the compelling principle of equalized funding established in our *Serrano* decisions. As we have seen, however, nothing in the *Serrano* cases, which addressed wealth-based disparities in district revenues, prohibits emergency State assistance to a particular district which is experiencing financial difficulties despite its receipt of equalized funding.¹⁷

Finally, nothing in our analysis is intended to immunize local school officials from accountability for mismanagement, or to suggest that they may indulge in fiscal irresponsibility without penalty. The State is constitutionally free to legislate against any recurrence of the Richmond crisis. It may further tighten budgetary oversight, impose prudent, nondiscriminatory conditions on emergency State aid, and authorize intervention by State education officials to stabilize the management of local districts whose imprudent policies have threatened their fiscal integrity. To the extent such conditions compromise local autonomy and mortgage a district's future, they are not calculated to persuade local officials or their constituents that mismanagement and profligacy will be rewarded.

Indeed, in response to this case, the Legislature and the Governor have already agreed to tighter county and State control of local district budgets and spending.¹⁸ Under certain circumstances, this new legislation *requires* the SPI's complete takeover of an insolvent district as a precondition of an

¹⁷The *Serrano* decisions themselves, as well as the subsequent adoption of Proposition 13, have exacerbated the need for occasional emergency State intervention by restricting one aspect of local control—the power of local districts to tax themselves out of financial crises. Our *Serrano* opinions condemned the former dependence of school finance on local ad valorem property taxes, because, as a practical matter, however willing a local district might be to increase taxes for education, "districts with small [real property] tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts. . . ." (*Serrano I, supra*, 5 Cal.3d 584, 598.) In obedience to *Serrano* principles, the current system of public school finance largely eliminates the ability of local districts, rich or poor, to increase local ad valorem property taxes to fund current operations at a level exceeding their State-equalized revenue per average daily attendance. (§ 42238 et seq.) Moreover, Proposition 13 places a general ceiling on the ad valorem property taxes which may be levied on behalf of local governments and school districts. (Cal. Const., art. XIII A, § 1.)

¹⁸Legislation adopted in 1991 provides, among other things, that if a local district's proposed budget fails to win final county and State approval, the county superintendent of schools shall adopt a governing budget for the district which permits the district to meet current and "multiyear" commitments. The county superintendent may rescind any district action or payment which is inconsistent with the county superintendent's budget, except those

emergency State appropriation.¹⁹ Thus, the State has already made vast inroads on the principle that local control is paramount to State intervention in an insolvent district's affairs. The State's plenary power over education includes ample means to discourage future mismanagement in the day-to-day operations of local districts.

In sum, the California Constitution guarantees "basic" equality in public education, regardless of district residence. Because education is a fundamental interest in California, denials of basic educational equality on the basis of district residence are subject to strict scrutiny. The State is the entity with ultimate responsibility for equal operation of the common school system. Accordingly, the State is obliged to intervene when a local district's fiscal problems would otherwise deny its students basic educational equality, unless the State can demonstrate a compelling reason for failing to do so.

The preliminary facts before the trial court support the inference that the District's impending failure to complete the final six weeks of its scheduled school term would cause educational disruption sufficient to deprive District students of basic educational equality. The State has identified no compelling interest which negated its duty to intervene. We therefore find no abuse of discretion in the trial court's conclusion that plaintiffs' constitutional claims had potential merit.²⁰

3. *Interim harm.*

The trial court also expressly concluded that plaintiffs, District students and their parents, would suffer "substantial and irreparable harm" if a preliminary injunction were denied. This harm, the court further found,

in performance of a previously effective collective bargaining agreement. (§ 42127.3, subd. (b)(1), as amended by Stats. 1991, ch. 1213, § 18.) The county superintendent must also monitor all local budgets continuously to ensure that each district can meet its financial obligations for the current and ensuing fiscal years. A county superintendent's determination that a district will be unable to meet its obligations triggers a process which may culminate in forced revisions to the district's budget and rescission of actions, other than collective bargaining obligations, which are inconsistent with the revisions. (§ 42127.6, added by Stats. 1991, ch. 1213, § 20.)

¹⁹New sections 41325 through 41327 provide that when a local district accepts an emergency appropriation more than twice the size of its State-recommended reserve, the SPI must take control of the district for at least two fiscal years, assume all duties and powers of the local governing board, fire district officials who took no action to avert insolvency, impose a recovery plan including a ten-year repayment schedule, and remain in control until satisfied that local compliance with recovery requirements is probable.

²⁰Our conclusion that the trial court's finding of probable merit is supported by the equal protection clauses of the California Constitution makes it unnecessary to address claims that a State duty of intervention may also have arisen under the "free school" clause or the Fourteenth Amendment.

would be "greater . . . than defendants will suffer if the injunction is granted."

These determinations were based upon the uncontradicted declarations of District teachers, local and regional public school officials, and academic specialists in the field of public education. Besides detailing the severe and immediate academic disruption which would arise from the pending closure (see discussion, *ante*, fn. 16, at p. 687), these declarations set forth at length the "ripple" effect on District parents and students. For example, the declarations recounted, working parents, including the high percentage of needy families in the District, would be faced with expensive child care for the lost school hours; difficult efforts would be required to obtain other placement of the students for the remainder of the year; and special-need students would lose carefully nurtured progress.

The State submitted no evidence that it would suffer comparable or greater harm by offering emergency loan assistance necessary to ensure completion of the District's academic program for 1990-1991. Instead, the State simply argued that court-ordered State aid would damage the State's public school policies of local control and accountability.

(6) The State nonetheless claims plaintiffs' "interim harm" showing was inadequate as a matter of law. In the State's view, plaintiffs' declarations failed to establish that the early closure was unforeseeable, or to explain persuasively why any adverse effects on student progress could not be ameliorated.

We find the trial court's interim-harm findings amply supported. As previously noted, plaintiffs' preliminary showing suggested that the District's inability to complete its school year arose from its ever-worsening fiscal condition and from the deterioration of its negotiations for emergency aid. The declarations of District teachers uniformly indicated that their lesson plans did not provide for the contingency of early closure. Other declarations detailed the difficulties of alternate arrangements to maintain the educational progress of over 31,000 suddenly displaced District students, who included high school seniors poised for graduation. The court could reasonably infer that orderly planning to minimize the resulting educational disruption had not taken place and was not realistically possible.

In any event, the court was not obliged to deny a preliminary injunction simply because plaintiffs failed to demonstrate that "irreparable" harm to students was unavoidable by other means. The preliminary record properly convinced the court *both* that plaintiffs had a reasonable probability of

success on the merits, *and* that they would suffer more harm in the meantime if an injunction were denied than the State would suffer if it were granted. This “mix” of the “interrelated” relevant factors fully justified the court’s decision to grant the injunction. (See *Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d at pp. 441-442; *King v. Meese*, *supra*, 43 Cal.3d at p. 1227.) No error appears.

4. *Scope of remedial order.*

In orders dated April 29, 1991, and May 2, 1991, the trial court directed the State, the SPI, and the Controller to ensure “by whatever means they deem appropriate” that District students would receive their educational rights; both orders made clear that “[h]ow these defendants accomplish this is up to the discretion of defendants. . . .” When no other State official proposed a solution, the SPI and the Controller, on May 2, 1991, offered a conditional loan plan for approval by the court.

After a hearing on that day, the court found that \$19 million in aid funds proposed by the SPI and the Controller were presently available, and the court authorized the Controller to apportion such funds as an emergency loan to the District. The court further determined that, given the State’s obligation to provide an equal education, the SPI’s statutory authority to “[s]uperintend the schools of this state” (§ 33112, subd. (a)), and the “unique” emergency circumstances, “the [SPI] . . . has authority to relieve the [Board] of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, [develop] a repayment plan on the [D]istrict’s behalf as necessary to ensure the operation of the schools through June 14, 1991, the financial recovery of the [D]istrict, and the protection of State funds loaned to the [D]istrict.”

(7a) The State and several amici curiae contend that even if the trial court could require State intervention to prevent violation of the District students’ constitutional rights, there was no legal or equitable basis for the court’s order authorizing the SPI to displace the Board, operate the District through his own administrator, and impose a plan for the District’s permanent financial recovery. Under the circumstances presented by this case, however, we conclude that this portion of the court’s order did not exceed its powers.

We agree that the statutes themselves provided no direct authority for the approach taken by the trial court. In general, though they act as regulated State agents, local governing boards are vested by statute with immediate jurisdiction over day-to-day district affairs. (§§ 14000, 35000 et seq.) The

SPI has important statutory responsibilities for allocating school funds (§§ 33118, 14000 et seq.), monitoring local budgets (§§ 42120 et seq., 41450), and administering the conditions of emergency loans *appropriated by the Legislature* (§§ 41310, 41320 et seq.; see also § 41325 et seq.), but no statute grants him emergency powers to operate a local district under other circumstances.²¹

The court relied in part on section 33112, subdivision (a), which provides that the SPI shall “[s]uperintend the schools of this state.” But no case has interpreted this statute to vest the SPI with nonexpress powers, and an older decision construed similar language narrowly against a county superintendent. (*McKenzie v. Board of Education* (1905) 1 Cal.App. 406, 409 [82 P. 392].) Indeed, counsel for the SPI conceded in the trial court that the SPI had no statutory authority to take over the District’s government.

The trial court also believed its takeover order was within its inherent equitable power to enforce the State’s constitutional obligations in light of the “unique emergency financial conditions” presented by the case. In the court’s view, ratification of all loan conditions proposed by the SPI was necessary to ensure the District’s continued operation through June 14, 1991, promote its permanent financial recovery, and protect the loan itself. We agree.

(8) In general, courts have equitable authority to enforce their constitutional judgments. (E.g., *Crawford v. Board of Education*, *supra*, 17 Cal.3d 280, 308.) Of course, principles of comity and separation of powers place significant restraints on courts’ authority to order or ratify acts normally committed to the discretion of other branches or officials. (*Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d 432, 445-446; *Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Serrano II*, *supra*, 18 Cal.3d 728, 751; *Crawford v. Board of Education*, *supra*, 17 Cal.3d at pp. 305-306; cf. *Missouri v. Jenkins* (1990) 495 U.S. 33, 50-58 [109 L.Ed.2d 31, 53-59, 110 S.Ct. 1651].) In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature.

Moreover, a judicial remedy must be tailored to the harm at issue. (E.g., *Sheet Metal Workers v. EEOC* (1986) 478 U.S. 421, 476 [92 L.Ed.2d 344, 388, 106 S.Ct. 3019]; *Dayton Board of Education v. Brinkman* (1977) 433

²¹A.B. 128 would have granted the SPI powers of this magnitude over the District, but the bill failed passage. (See discussion, *ante*, at p. 690.) 1991 statutory amendments call for the SPI’s takeover of districts that accept large emergency insolvency *appropriations* (§ 41325 et seq.; see discussion, *ante*, fn. 18 at p. 691), but even after 1991, the SPI has no such statutory authority *independent* of a specific insolvency appropriation by the Legislature.

U.S. 406, 420 [53 L.Ed.2d 851, 863-864, 97 S.Ct. 2766].) A court should always strive for the least disruptive remedy adequate to its legitimate task.

(7b) The trial court's remedial order in this case fell within proper boundaries. Having correctly held the State constitutionally responsible for the students' rights, the court could not deny the State and its officials effective means of fulfilling its obligation. Under the circumstances, the court was warranted in authorizing temporary transfer to the SPI of the Board's statutory powers over District affairs.

The emergency the court confronted on May 2, 1991, demanded a prompt State-assisted solution to prevent immediate closure of the District's schools. The State was justified in satisfying its constitutional duty of aid by extending a loan that would impose the ultimate consequences of the District's self-created predicament upon the District, rather than upon the State, its taxpayers, and the students of other districts. The State was also entitled to conditions on the loan that would ensure its appropriate use for the intended constitutional purpose, and would minimize the risk of the District's default in repayment.

The District's ability to administer the new loan under its existing systems and managers was uniquely suspect. As a matter of public record, the District's worsening financial situation had recently led the Legislature to provide a loan in excess of \$9 million. A limited-powers State trustee appointed to monitor the District's fiscal affairs in connection with that loan had not been able to stem a growing District deficit estimated by one declarant, a member of the Board, to exceed \$23 million for the 1990-1991 school year alone. In response to these difficulties, the Board had caused the District to seek bankruptcy protection against its existing creditors.

As counsel for the SPI explained on April 29, 1991, the District's unprecedented financial collapse indicated systemic management problems. Hence, counsel reported, the SPI considered it foolhardy to extend further substantial State credit to the District unless its management was placed in competent hands, its administrative practices were reformed and restructured from the outside, and a long-term plan for its financial recovery was imposed.²² On behalf of the State, the Attorney General contested the legality of vesting such extraordinary powers in the SPI, but no party disputed the logic of the SPI's position.

²²The following colloquy occurred between the court and counsel for the SPI: "[¶] MR. HERSHER [SPI's counsel]: . . . [The SPI] does not want to make . . . 20 to 30 million dollars in state funds available to a district that has already demonstrated substantial financial irresponsibility. It's pouring state money into a hole and it's never going to come back out. [¶] THE COURT: Would he want to do that if the State was given the responsibility for running the district as you suggested? [¶] MR. HERSHER: I believe so. I think what Bill Honig sees is that

Nor can we. Given the emergency circumstances, and under the extreme and aggravated conditions disclosed by the evidence, the court below could properly conclude that orderly completion of the District's 1990-1991 school term, and the sound financing essential to achieve that end, required temporary displacement of the sitting Board and the operation of the District by the SPI's designee for the purpose of stabilizing its financial affairs.²³ We conclude that the order approving temporary takeover of the District by the SPI was within the court's inherent equitable power to remedy the constitutional crisis.²⁴

5. *Source of loan funds.*

In order to obtain the necessary \$19 million in emergency loan funds, the trial court authorized the Controller to disburse (1) \$9 million of unspent funds from a special contingency appropriation to the Department of Education for the GAIN program, and (2) the unused \$10 million appropriated as an emergency loan to the OUSD. (9) The State and amicus curiae Pacific argue that because the Legislature had not earmarked either of these sums

the District has to be reorganized. The financial management of the District needs to be completely restructured, and there needs to be a long-term recovery plan [I]t has always been [the SPI's] position that somebody needs to . . . take over the District, come up with a long-term plan in which all the creditors of the District suffer equally or equitably."

²³Amici curiae Diaz and Bezemek ask us to receive additional evidence and make findings about the SPI's record as administrator of the District after May 2, 1991. Among other things, Diaz and Bezemek allege that the SPI's administrator has withdrawn the District's bankruptcy petition, dismantled essential programs, failed to reappoint a citizens' advisory committee, restructured the District's administration, dismissed faculty and counselors, obstructed reorganization of the District's existing debt, imposed an unconscionable interest rate on the court-approved loan, and diverted educational funds to debt repayment. Diaz and Bezemek claim this evidence supports their contention that the SPI's governance of the District presents an inherent conflict between his role as protector of State-loaned funds and his duty to restore the District to financial and educational health.

Appellate courts have limited powers to take evidence and find facts in nonjury civil cases. (Cal. Const., art. VI, § 11; Code Civ. Proc., § 909; Cal. Rules of Court, rule 23(b).) However, the matters Diaz and Bezemek seek to present are beyond the scope of this lawsuit and unnecessary to our analysis. Moreover, Diaz and Bezemek concede the proffered evidence is disputed; appellate courts will not resolve such factual conflicts. (E.g., *In re Marriage of Davis* (1983) 141 Cal.App.3d 71, 75-76 [190 Cal.Rptr. 104]; see *McCracken v. Teets* (1953) 41 Cal.2d 648, 653 [262 P.2d 561].) We therefore deny the motion.

²⁴The State argues that even if extraordinary judicial interference in the District's affairs was necessary to guarantee the constitutional rights of District students, the court erred by granting the SPI extralegal "discretion" to act rather than assuming control over the District itself, with the SPI as the court's appointed agent. The State cites no authority for its proposition that the court's remedial options were so narrowly confined. The remedial order of May 2, 1991, makes clear that the authority therein accorded the SPI flows from a direct and critical exercise of the court's equitable power and jurisdiction over the constitutional dispute. The order laudably minimizes direct judicial involvement in matters best left to officials with specific responsibilities and expertise in education, but its effect is no different than if it had expressly made the SPI a court functionary. We find no error.

for purposes "reasonably related" to resolving the District's financial crisis, the court improperly invaded the nonjudicial power of appropriation.

We agree. In a valid exercise of its constitutional powers, the Legislature had directed each of these sums to specific agencies and narrow purposes which did not include the District and its financial emergency. Hence, the Legislature had not made these funds reasonably available for disbursement to the District. By diverting the funds from their earmarked destinations and purposes, the court invaded the Legislature's constitutional authority.

Article III, section 3 of the California Constitution provides that "[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." Article XVI, section 7 provides that "[m]oney may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." Article IV, sections 10 and 12 set forth the respective powers of the Legislature and Governor over the enactment of appropriations. It has long been clear that these separation-of-powers principles limit judicial authority over appropriations. (*Myers v. English* (1858) 9 Cal. 341, 349; see *Westinghouse Electric Co. v. Chambers* (1915) 169 Cal. 131, 135 [145 P. 1025]; *California State Employees' Assn. v. Flournoy* (1973) 32 Cal.App.3d 219, 234 [108 Cal.Rptr. 251]; see also *Payne v. Superior Court* (1976) 17 Cal.3d 908, 920, fn. 6 [132 Cal.Rptr. 405, 553 P.2d 565].)

In certain narrow circumstances, California courts have concluded that judicial orders for the disbursement of appropriated funds do not invade valid legislative functions. *Mandel v. Myers, supra*, 29 Cal.3d 531, is the only decision by this court which found judicial power to "commandeer" appropriated funds. The facts and analysis of that case demonstrate the strict limits on the judicial authority it recognized.

The plaintiff in *Mandel*, a Department of Health Services (DHS) worker, had prevailed in litigation challenging DHS's practice of allowing paid employee leave on Good Friday. The judgment against the State included an award of attorney fees. However, the Legislature removed appropriations for payment from successive claims and budget bills, including the 1978-1979 Budget Act (Act). The Act included the usual appropriation to DHS for "general operating expenses and equipment," which expressly included expenses for "services" and "all other proper purposes." Such "catchall" budget categories for State agencies had traditionally been used to pay agency legal expenses. However, the Act expressly precluded use of any appropriation therein "to achieve any purpose which has been denied by any formal action of the Legislature."

We upheld the trial court's order that the Controller pay the fee award from the general operating budget of DHS. We noted first that the "catchall" appropriation was "reasonably" or "generally" available for payment of legal expenses incurred by DHS, because the broad terms of the appropriation, as well as its historical uses, indicated such a legislative intent. In effect, we concluded that the Legislature had voluntarily made an appropriation for payments of this general kind. (*Mandel v. Myers*, *supra*, 29 Cal.3d at pp. 539-545.)

We further explained that, once having made an appropriation generally available, the Legislature may not impose specific restrictions which are unconstitutionally discriminatory, or which constitute an impermissible legislative attempt to readjudicate the merits of a final court judgment. Hence, we reasoned, the Legislature's attempt to avoid payment of the *Mandel* award in particular must be struck down. The DHS "catchall" appropriation thus remained "available" under its general terms for payment of the judgment. (*Mandel v. Myers*, *supra*, 29 Cal.3d at pp. 545-551.)

Subsequent Court of Appeal decisions adhered to these principles of *Mandel*. In *Serrano v. Priest* (1982) 131 Cal.App.3d 188 [182 Cal.Rptr. 387], attorneys who had won the school-finance class action sought judicial help after the State rebuffed their informal efforts to collect a court-ordered fee award. After *Mandel* was decided, the State conceded that the trial court had properly ordered payment from a "catchall" appropriation to the Department of Education, the SPI, and the State Board of Education for "operating expenses and equipment." (Pp. 197-198.) In *Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852 [183 Cal.Rptr. 475], the court concluded, after disregarding an unconstitutional budget act provision against use of Medi-Cal funds for abortions (see *Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252 [172 Cal.Rptr. 866, 625 P.2d 779, 20 A.L.R.4th 1118]), that abortion funding could be ordered from monies appropriated for other Medi-Cal pregnancy services. (132 Cal.App.3d at pp. 857-858.)

Plaintiffs and the SPI suggest that two more recent Court of Appeal decisions, *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155 [275 Cal.Rptr. 449] and *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521 [234 Cal.Rptr. 795], have expanded *Mandel's* concept of "reasonable [or] general availability." The trial court in the instant case apparently relied on these decisions to conclude that it could divert the GAIN and OUSD appropriations to the District because they were "generally related" to education.

Long Beach and *Carmel Valley* do make occasional use of the term "generally related" to describe *Mandel's* principle of reasonable or general

"availability." (See *Long Beach*, *supra*, 225 Cal.App.3d at p. 181; *Carmel Valley*, *supra*, 190 Cal.App.3d at p. 541.) But nothing in those cases supports the trial court's apparent view that funds appropriated for one specific educational purpose may be judicially diverted to another. So far as the face of the opinions discloses, the stated intent of the target appropriation in each case, or its historical uses, indicated that the court's application of the funds was plausibly within purposes the Legislature might have contemplated.²⁵ No court has suggested that *Mandel* principles permit court-ordered diversion of an appropriation away from a clear, narrow, and valid purpose specified by the Legislature. We affirm that the words "generally related," as used in *Long Beach* and *Carmel Valley*, do not countenance such judicial incursions into the legislative power over appropriations.²⁶

The instant trial court misapplied *Mandel* when it authorized the diversion of appropriated funds from the specific purposes and programs for which the Legislature had validly earmarked them. Nine million dollars was taken from an appropriation in the 1989-1990 Budget Act for the GAIN program. (Stats. 1989, ch. 93, § 22.00.) GAIN's purpose is to provide employment, adult

²⁵In *Carmel Valley*, the Court of Appeal struck down budgetary language which had been inserted to foreclose the constitutionally required reimbursement of local agencies for expenses incurred in upgrading firefighter protective clothing as mandated by the State. (See Cal. Const., art. XIII B, § 6.) After disregarding these unconstitutional restrictions, the Court of Appeal quite logically determined that funds appropriated to the Department of Industrial Relations for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers, were available for this expense. (*Carmel Valley*, *supra*, 190 Cal.App.3d at p. 541.) In *Long Beach*, a local school district sought reimbursement for the State-mandated expenses of developing desegregation programs. After the Legislature deleted an appropriation for this purpose from the 1985-1986 budget bill, the district obtained a trial court order for reimbursement from specified line-item accounts related to education, and from the general operating budget of the Department of Education, which had mandated the programs. The Court of Appeal affirmed on grounds that the record substantially supported the trial court's order. As the Court of Appeal explained, these and similar accounts had historically been used to support programs such as the one for which reimbursement was sought, and were logical sources of funding for this specific purpose. (*Long Beach*, *supra*, 225 Cal.App.3d at pp. 181-182; see also p. 185.)

²⁶We are aware that in *Missouri v. Jenkins*, *supra*, 495 U.S. 33, the United States Supreme Court upheld the power of federal courts to order local tax levies to enforce judicial remedies for unconstitutional school segregation. However, even if the federal Constitution permits federal courts to impose far-reaching remedies for State government violations of federal constitutional rights, it does not follow that California courts are exempt from the constraints imposed by the California Constitution upon their power to invade the functions of a coequal branch of State government.

Indeed, the California Constitution's separation of powers clause precludes any branch from usurping or improperly interfering with the essential operations of either of the other two branches. (See Cal. Const., art. IV, § 1 [legislative power]; Cal. Const., art. V, § 1 [executive power]; Cal. Const., art. VI, § 1 [judicial power].) Nothing in this opinion should be interpreted as sanctioning or immunizing such unconstitutional interference, or as addressing the question of the appropriate remedies that may be invoked in the event one branch improperly impinges on the essential operations of a coequal branch.

education, and job training to recipients of public assistance. (Welf. & Inst. Code, § 11320 et seq.) Local school districts can receive GAIN funds for adult education and training classes (*id.*, §§ 11320.8, 11322, 11323), and the Legislature intended that the 1989-1990 GAIN appropriation might include such funding subject to strict conditions (see Stats. 1989, ch. 93, § 22.00, subd. (b)). However, this appropriation was expressly designated for that program alone and was not intended to fund the needs of non-GAIN students. Nothing in the trial court's order restricted use of the GAIN-derived funds to uses contemplated by the appropriation.

Similar considerations govern the remaining \$10 million of the emergency loan, which was derived from the 1989 Legislature's special appropriation for the OUSD. This appropriation, by its express terms, was "for the purpose of an emergency loan *to [that] [d]istrict* in compliance with Article 2 (commencing with Section 41320) of Chapter 3 of Part 24 of the Education Code." (Stats. 1989, ch. 1438, § 1, italics added.)

Section 41310 expresses the intent that emergency loans to distressed districts under section 41320 et seq. not occur "unless funds have been *specifically* appropriated *therefor* by the Legislature." (Italics added.) The statutory scheme imposes detailed conditions on emergency loans granted under its auspices (§§ 41320.1-41323), and the Legislature further refined the conditions on the OUSD appropriation to address the particular circumstances of that case (Stats. 1989, ch. 1438, §§ 2-9).

When it makes an appropriation to a specific district, under specific conditions addressed to the problems of that district, the Legislature clearly intends and contemplates that the appropriation will only be used for that purpose, and under those conditions. Hence, the appropriation is not reasonably available for court-ordered diversion to another district under different conditions.

The trial court, understandably anxious to resolve the crisis, concluded that it could fund its order from any monies previously appropriated "for a purpose that is reasonably related to educational purposes." The court found that the GAIN and OUSD appropriations were "reasonably related to the State's obligation to keep the Richmond schools open through June 14, 1991"

As we have seen, however, the test of reasonable availability under *Mandel* does not extend to uses clearly outside the particular purpose for which an appropriation was reserved. The GAIN and OUSD appropriations were earmarked for purposes entirely distinct from the subject matter of this

lawsuit.²⁷ They were not reasonably available for court diversion to finance the remainder of the District's school term.

In her concurring and dissenting opinion, Justice Kennard claims that by flatly disclaiming judicial power to divert appropriations from the purposes specified by the Legislature, we adopt a "formalistic" and outmoded view of the separation of powers. Citing language from two United States Supreme Court decisions (*Mistretta v. United States* (1989) 488 U.S. 361 [102 L.Ed.2d 714, 109 S.Ct. 647]; *Nixon v. Administrator of General Services* (1977) 433 U.S. 425 [53 L.Ed.2d 867, 97 S.Ct. 2777]), she proposes that interbranch conflicts of this kind be resolved under a "pragmatic" and "flexible" case-by-case balancing test, in which the derogation of one branch's powers by another may be warranted to promote overriding objectives within the "constitutional authority" of the latter. Because both the OUSD and GAIN appropriations were "generally related" to elementary and secondary education, she reasons, diversion of these funds to the District was not a "great" or "extreme" intrusion upon the appropriations power, and the court's action was justified by its constitutional responsibility to District students.

We cannot accept these contentions. Our adherence to *Mandel* can hardly be deemed rigid or formalistic; our decision in that case strained to find a practical, sensitive, and principled balance between legislative and judicial power over appropriations. In effect, Justice Kennard urges abandonment of *Mandel*'s careful analysis in favor of a rule giving the judiciary unchecked power to override the valid budgetary acts of coequal branches.

However, nothing in the California or federal cases on which Justice Kennard relies even hints that a court may *nullify* a *specific and valid exercise* by the Legislature and the Executive of fundamental budgetary powers explicitly entrusted to those branches, simply for the purpose of

²⁷No party or amicus curiae suggests that the purposes specified by the Legislature for these two appropriations were "improper or invalid . . . restriction[s]" on their use which may be disregarded by the courts. (*Mandel v. Myers, supra*, 29 Cal.3d at p. 542.) This is not a case where the Legislature, in defiance of the Constitution or the judicial branch, had prohibited use of appropriations for particular purposes to which they would otherwise logically extend.

We recognize that, at the May 2 hearing, counsel for the OUSD indicated his client had "no objection" to diversion of its loan appropriation for the court's purposes. The OUSD's position may not have been entirely altruistic; on April 29, counsel had committed the OUSD to accepting an influx of displaced District students but expressed concern about the disruption such a solution would cause. Even if the OUSD believed that diversion of its appropriation was in its own best interests, however, the OUSD could not unilaterally alter the terms and conditions the Legislature had imposed on the appropriation. Moreover, the OUSD's waiver was conditional; counsel made clear that the OUSD reserved its right to demand refunding of the OUSD appropriation "if and when [the OUSD] chooses to exercise its rights to request a loan from the state of [\$]10 million at any time up until June 30, 1993."

satisfying a judgment or order that is *unrelated* to the appropriation. (Compare, e.g., *Mistretta v. United States*, *supra*, 488 U.S. 361, 380-384 [102 L.Ed.2d 714, 735-738] [Congress's creation of United States Sentencing Commission, a judicial-branch agency charged with establishing mandatory federal sentencing guidelines, did not usurp authority of individual judicial officers or grant forbidden legislative power to judicial branch]; *Nixon v. Administrator of General Services*, *supra*, 433 U.S. 425, 441-446 [53 L.Ed.2d 867, 889-893] [legislation vesting Administrator of General Services with limited control over presidential papers of resigned chief executive did not undermine authority of executive branch]; *Wilson v. Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306] [Legislature's failure to reapportion justifies judicial adoption of reapportionment plan]; *Davis v. Municipal Court* (1988) 46 Cal.3d 64, 72-87 [249 Cal.Rptr. 300, 757 P.2d 11] [District attorney's statutory power to disapprove local misdemeanor-diversion program was not improper delegation of legislative authority; prosecutor's absolute discretion to prevent diversion by charging "wobbler" as felony did not constitute forbidden judicial power]; *Younger v. Superior Court* (1978) 21 Cal.3d 102, 115-118 [145 Cal.Rptr. 674, 577 P.2d 1014] [statute requiring Department of Justice to destroy individual's marijuana arrest and conviction records upon application after sentence is complete did not create impermissible conflict with executive clemency powers].)

The balance proposed by Justice Kennard in this case would elevate the judiciary above its coequal brethren, upset the delicate system of checks and balances, and stand the separation of powers clause on its head. Applying *Mandel's* well-settled principles, we remain satisfied that the trial court acted in excess of its authority when it funded the District's loan with appropriations specifically earmarked by the Legislature for other purposes.²⁸

CONCLUSION AND DISPOSITION

The District's financial inability to complete the final six weeks of its 1990-1991 school term threatened to deprive District students of their

²⁸Although the instant record is silent on the point, Justice Kennard worries that there *may* have been no unearmarked educational appropriations available to enforce this trial court's order. She suggests further that such funds *may* also not be available under current laws and budgetary constraints to permit judicial enforcement of students' constitutional rights in similar future cases. These concerns have no practical effect in the instant lawsuit, because the State does not seek rescission of the District's loan, and the educational rights of the District's students are secure. In any event, we cannot overlook the fact that the urgency of the District's crisis denied the Legislature any opportunity to respond to the trial court's injunctive order. Once alerted by the trial court's constitutional ruling, however, the Legislature and the Governor have taken significant steps to prevent or remedy recurrences of the District's crisis. We may not assume they will fail or refuse to respond as necessary to our final determination of the State's constitutional responsibilities.

California constitutional right to basic educational equality with other public school students in this State. As the court further concluded, discrimination of this nature against education, a fundamental interest, could only be justified as necessary to serve a compelling interest. The State itself, as the entity with plenary constitutional responsibility for operation of the common school system, had a duty to protect District students against loss of their right to basic educational equality. Local control of public schools was not a compelling interest which would justify the State's failure to intervene.

The trial court thus properly ordered the State and its officials to protect the students' rights. The court also acted within its remedial powers by authorizing the SPI to assume control of the District's affairs, relieve the Board of its duties, and supervise the District's financial recovery. However, the court invaded the exclusive legislative power of appropriation by approving the diversion of appropriations for GAIN and the OUSD to an emergency loan for the District.

Accordingly, we reverse the trial court's remedial order of May 2, 1991, insofar as it approves funding of an emergency loan to the District from appropriations for the Oakland Unified School District and the Greater Avenues for Independence program. In all other respects, the court's orders of April 29 and May 2, 1991, are affirmed. The Court of Appeal is directed to remand the cause to the trial court for such further proceedings as may be appropriate under the views expressed in this opinion.

Panelli, J., Arabian, J., and George, J., concurred.

LUCAS, C. J., Concurring and Dissenting.—I concur with the majority's conclusions regarding the constitutional obligations of the State of California (State) to assure educational equality. I would not, however, address the propriety of the sources approved by the trial court to provide an emergency loan.

In my view, we need not consider questions regarding the use of the Oakland Unified School District (OUSD) emergency appropriation or the unused appropriation for the Greater Avenues for Independence (GAIN) program because the issues are moot and their resolution will have no impact on the status quo in this case. As the majority notes, at the May 2, 1991, proceeding, the State continued to object to the trial court's order arising out of the April 29, 1991, hearing. That order required the State, Superintendent of Public Instruction (SPI) and Controller, at their discretion and "by whatever means they deem appropriate," to ensure Richmond students were not deprived of six weeks of education provided to other students within California. In addition to renewing its basic position on the merits of the

constitutional arguments, the State also objected to use of the specific funds proposed by the SPI and Controller. It offered no alternative sources of funding and appealed from both orders.

Before us, however, the State does not demand rescission of the court-approved loan or any change in the status of that funding. The funding was granted as a loan and a loan repayment agreement has been worked out by the parties. The State, acknowledging those facts, expressly asserts "We do not argue that the Controller must be compelled immediately to recover the money." In other words, it seeks no relief from the trial court's order granting payment from the challenged sources and compelling repayment of the funds under a prescribed repayment schedule.

Accordingly, as the SPI observes, the matter is moot. The State's response, found in its reply brief, is only that "the trial court in the next case will still be guided by, unless this court disapproves the test, the 'generally related' test set forth in *Carmel Valley [Fire Protection Dist. v. State of California]* (1987) 190 Cal.App.3d 521, 540-541 (234 Cal.Rptr. 795)] and *Long Beach [Unified Sch. Dist. v. State of California]* (1990) 225 Cal.App.3d 155, 181-182 (275 Cal.Rptr. 449)]." It does not assert that this issue is capable of evading review because of timing or that a present controversy over the use of these particular funds still exists. Instead, it seeks guidance only for the future. I would decline to render what would essentially be an advisory opinion here. (See *People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912 [83 Cal.Rptr. 670, 464 P.2d 126] ["The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court"].)

MOSK, J., Concurring and Dissenting.—I am in general agreement with the views expressed in Justice Kennard's concurring and dissenting opinion.

However, I cannot embrace the ill-advised concession that the trial court's order "did pose a potential for disruption of a function of the legislative branch" although the degree of potential disruption "is not great" and the purported infringement on the legislative function is "not substantial." (Kennard, J., *post*, conc. and dis. opn. at pp. 710, 711.)

The theory of potential interference with legislative functions to any extent is inconsistent with the ultimate conclusion that the funds used for the emergency loan were "reasonably related" to the educational purposes of the legislation, and, indeed, "the trial court's order furthered, rather than defeated, that valid legislative purpose." As persuasively observed in footnote 2, the "funds were appropriated for purposes reasonably and closely related

to the purpose for which the trial court ordered them to be used.” (Kennard, J., *post*, conc. and dis. opn. at p. 711.)

Under the foregoing circumstances—with which I agree—there cannot be some conceptual interference, even though “not great,” with the functions of the legislative branch.

With that caveat, I join the concurring and dissenting opinion.

KENNARD, J., Concurring and Dissenting.—I agree with the majority that the threatened closure of the schools of the Richmond Unified School District (District) was such an extreme departure from prevailing educational standards as to infringe on the students’ state constitutional rights to basic educational equality, requiring the State of California (State) to intervene to protect those rights.

I do not agree, however, that the trial court violated the separation of powers doctrine by ordering that emergency loan funds be made available from an unused special appropriation to the Department of Education and an unused emergency appropriation to the Oakland Unified School District (OUSD). The majority has, in effect, declared that although the students’ right to education is fundamental, no means may exist by which our judicial system can enforce that right. In my view, the trial court’s order was an appropriate and pragmatic resolution of a difficult case under extreme pressure. Because the Legislature had already appropriated the funds in question for educational purposes reasonably related to the District’s needs, I discern no constitutional violation, and would affirm the trial court’s orders in their entirety.

I

On April 17, 1991, the District, facing a \$23 million budgetary shortfall, announced its schools would close on May 1, 1991, rather than as scheduled on June 14, 1991. Parents of students in the District’s schools then filed a class action against the State and the District’s board of education, alleging the closure would deprive children of their fundamental right to education and would violate equal protection guarantees. The trial court granted plaintiffs’ motion for a preliminary injunction, finding that “education is a fundamental right in California [and] unless injunctive relief is granted children in the District will be denied six weeks of instruction that will be provided to every other child in the State.” The trial court ordered the State, the Superintendent of Public Instruction (Superintendent), and the State Controller “to ensure that the students in the District are not deprived of six

weeks of public education while others within the state are not so deprived." The trial court added that "how these defendants accomplish this is up to the discretion of the defendants."

Thereafter, the Superintendent and the Controller proposed a plan to keep the schools open. They proposed that \$19 million in unspent funds from two educational programs—from the Greater Avenues for Independence (GAIN) program and from an appropriation to the OUSD—be loaned to the District. After an evidentiary hearing, the trial court ordered the State Controller to disburse an emergency loan to the District from these funds. This court denied the State's motion to stay the order pending appeal, but transferred the case here.

II

The majority holds that the trial court's remedial order violated the doctrine of separation of powers. Essentially, the majority reasons that by ordering that the unused funds be loaned to the District, the trial court impermissibly engaged in the appropriation of funds, an area of exclusive legislative concern.

The majority's conclusion originates from a fundamental misunderstanding of the separation of powers doctrine. Implicit in the majority's discussion is the assumption that under our tripartite scheme of government, particular powers can be definitively categorized as belonging to one of the three branches, and that these powers can never be exercised by a branch other than the designated branch. Thus, under the majority's approach, appropriation is exclusively a legislative function, and unless the Legislature has either appropriated funds for a specific purpose, or made a "catchall" appropriation under which a specific use of funds may fall, funds are simply not available for any purpose, no matter what rights are at stake.

This formalistic interpretation of the separation of powers concept is, however, contrary to modern understanding. The opinions of the United States Supreme Court, although not binding on this court in interpreting the separation of powers principles of the California Constitution, supply a persuasive body of case authority. Just as our state Constitution provides for the separation of the powers of government into three branches (Cal. Const., art. III, § 3), so does the federal Constitution segregate the branches of government (U.S. Const., art. I, § 1, art. II, § 1, & art. III, § 1).

The United States Supreme Court has "squarely rejected the argument that the Constitution contemplates a complete division of authority between the

three branches.” (*Nixon v. Administrator of General Services* (1977) 433 U.S. 425, 443 [53 L.Ed.2d 867, 891, 97 S.Ct. 2777].) Rather than reading the federal Constitution as “‘requiring three airtight departments of government,’” the high court has adopted a “pragmatic, flexible approach.” (*Id.* at pp. 443, 442 [53 L.Ed.2d at pp. 891, 890-891].) This approach, the court has explained, is supported by historical understanding. James Madison, one of the principal architects of the United States Constitution, wrote that the concept of separation of powers “‘d[oes] not mean that these departments ought to have no *partial agency* in, or no *control* over the acts of each other,’” but instead that “‘where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted.’” (J. Madison, *The Federalist* No. 47, pp. 325-326 (J. Cooke ed. 1961) (original italics), quoted in *Mistretta v. United States* (1989) 488 U.S. 361, 380-381 [102 L.Ed.2d 714, 735-736, 109 S.Ct. 647].) Thus, the basic purpose of the separation of powers is to guard against the concentration of power in the hands of one branch, but it is important to distinguish “partial agency” from those aggrandizements of power that pose genuine threats to the constitutional scheme.

The pragmatic and flexible approach favored by the nation’s highest court is also appropriate because, in a society growing ever more complex, the practical requirements of efficient government action by each of the three branches must be considered. “‘While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government.’” (*Mistretta v. United States, supra*, 488 U.S. at p. 381 [102 L.Ed.2d at p. 736], quoting *Youngstown Sheet & Tube Co. v. Sawyer* (1952) 343 U.S. 579, 635 [96 L.Ed. 1153, 1199, 72 S.Ct. 863, 26 A.L.R.2d 1378] (conc. opn. of Jackson, J.).) In contemporary society, concerns about the workability of government are especially weighty.

Thus, the high court has not evolved a rigid classification of governmental powers as belonging exclusively to one branch or another. Instead, the court has stated that “the proper inquiry focuses on the extent to which [the act complained of] prevents [one of the three branches] from accomplishing its constitutionally assigned functions.” (*Nixon v. Administrator of General Services, supra*, 433 U.S. at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta v. United States, supra*, 488 U.S. at p. 383 [102 L.Ed.2d at pp. 737-738].) If the “potential for disruption is present,” the court must then “determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority” of the branch whose action is challenged. (*Nixon v. Administrator of General Services, supra*, 433 U.S. at p. 443 [53

L.Ed.2d at p. 891]; *Mistretta v. United States*, *supra*, 488 U.S. at p. 383, fn. 13 [102 L.Ed.2d at p. 737].)

This court has expressed a similar understanding. We have recognized that the purpose of the doctrine of separation of powers "is to prevent one branch of government from exercising the *complete* power constitutionally vested in another [citation]; it is not intended to prohibit one branch from taking action properly within its sphere that has the *incidental* effect of duplicating a function or procedure delegated to another branch. [Citation.]" (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 117 [145 Cal.Rptr. 674, 577 P.2d 1014] [original italics].)

More recently, this court reiterated that the separation of powers doctrine "has not been interpreted as requiring the rigid classification of all the incidental activities of government, with the result that once a technique or method of procedure is associated with a particular branch of the government, it can never be used thereafter by another." . . . 'From the beginning, each branch has exercised all three kinds of powers.'" (*Davis v. Municipal Court* (1988) 46 Cal.3d 64, 76 [249 Cal.Rptr. 300, 757 P.2d 11] [citations and italics omitted].)

III

A line of cases from California courts has established the principle that a court does not violate the separation of powers doctrine when it orders appropriate expenditures from already existing funds, if such funds are reasonably available for the expenditures in question. (*Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 180-181 [275 Cal.Rptr. 449]; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 538-539 [234 Cal.Rptr. 795]; *Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. 475].) The precise question in this case is whether funds can be considered "reasonably available" when they are not made part of a "catch-all" appropriation under which the specific use of the funds may fall. The majority concludes that unless the funds are part of a "catchall" appropriation, they are not reasonably available.¹

I would announce no such categorical rule. In my view, the proper inquiry is that set forth by the United States Supreme Court in *Nixon v. Administrator of General Services*, *supra*, 433 U.S. 425 and *Mistretta v. United States*,

¹The majority purports to reaffirm the rule of these cases, but in fact undermines it. The "catchall" appropriation exception to the majority's rule could easily be eliminated if the Legislature took the time to label more specifically the purpose of each appropriation in a particular area. If the Legislature did so, there would be no possible remedy for the failure to fund any program, no matter how essential.

supra, 488 U.S. 361: To what extent does the challenged act of one branch interfere with another branch's performance of its constitutionally assigned functions? If there is some potential disruption, the court must then determine whether the challenged act is "justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon v. Administrator of General Services*, *supra*, at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta v. United States*, *supra*, at p. 383, fn. 13 [102 L.Ed.2d at p. 737].)

Applying the principles followed by the high court in *Nixon v. Administrator of General Services*, *supra*, 433 U.S. 425 and *Mistretta v. United States*, *supra*, 488 U.S. 361, and by this court in cases such as *Younger v. Superior Court*, *supra*, 21 Cal.3d 102 and *Davis v. Municipal Court*, *supra*, 46 Cal.3d 64, I conclude that the trial court's order authorizing the Controller to disburse funds from the GAIN and OUSD accounts as an emergency loan to the District to assure the District's schools remained open did pose a potential for disruption of a function of the legislative branch.

The degree of potential disruption, however, is not great. As the trial court concluded, the funds that were the source of the emergency loan were appropriated for purposes reasonably related to the educational purposes served by the District.

The OUSD loan funds were appropriated by the Legislature for the precise purpose for which they were employed here—to alleviate a fiscal crisis in a local school district and prevent disruption of an ongoing educational program. (See Stats. 1989, ch. 1438, § 1.) Moreover, the trial court had before it an application for leave to intervene from the OUSD itself, in which the OUSD stated that the threatened closure of the nearby District "would place substantial and difficult burdens on OUSD as displaced Richmond students seek admission to Oakland Schools," that would be "extremely costly and disruptive" to the operation of the Oakland schools. The emergency loan fund for the OUSD was intended by the Legislature to avoid disruption of the educational program at the Oakland schools, and the trial court's order furthered, rather than defeated, that valid legislative purpose.

The GAIN program was enacted to address the problem of teenage parenting, basic educational deficiencies, and long-term welfare dependency. Specifically, GAIN was intended to "[p]rovide the education and training services needed by teenage parents to help them earn a high school diploma or its equivalent," and to "[l]ink teenagers to other needed health and social services." (Welf. & Inst. Code, § 11330, subd. (c).) The purpose of the particular appropriation to the Department of Education at issue in this case

was solely to meet educational needs, and not to provide health and social services. (Stats. 1989, ch. 93, § 22.00.) This goal is served by keeping the District's schools open. The trial court had before it uncontradicted evidence that a large number of the students in the District came from low-income families, many of whom were welfare-dependent. The court could rationally conclude that the otherwise unused GAIN funds were reasonably available to meet the basic educational needs of the District's students, a significant portion of whom were in the welfare-dependent population the GAIN program was targeted to assist. Under the circumstances, the funds were ordered to be used for a purpose reasonably congruent with the statutory purpose.²

Thus, because the trial court authorized the OUSD and GAIN funds to be used for a purpose that was reasonably related to the purposes for which the funds were appropriated, any infringement on the legislative function is not substantial. By contrast, we are not faced with a situation in which a trial court has ordered that funds appropriated for one purpose be used for some entirely unrelated purpose; nor are we confronted with a trial court order that funds actually in use for one program be diverted to another. It is vital that

²The majority asserts that this opinion "urges abandonment" of the rule of *Mandel v. Myers*, *supra*, 29 Cal.3d 531 (*Mandel*). This is incorrect.

In *Mandel*, *supra*, 29 Cal.3d 531, this court held that the separation of powers doctrine does not prevent the courts from ordering appropriate expenditures from already existing funds when such funds are "reasonably available for the expenditures in question" (*Id.* at p. 542.) There, the court found that certain "catchall" funds were reasonably available for the expenditures in question, the payment of attorney fees in a case enforcing constitutional rights. But nothing in *Mandel* indicated that the only funds that might ever be reasonably available in any case were "catchall" funds. And, as later cases made clear, *Mandel*'s test of "reasonable availability" encompasses unused funds that have been appropriated for purposes closely related to the purposes for which they are sought to be expended. (*Long Beach Unified Sch. Dist. v. State of California*, *supra*, 225 Cal.App.3d at p. 181; *Carmel Valley Fire Protection Dist. v. State of California*, *supra*, 190 Cal.App.3d at p. 541.)

In this case, as my analysis has demonstrated, the OUSD and GAIN funds were appropriated for purposes reasonably and closely related to the purpose for which the trial court ordered them to be used. Thus, *Mandel* and its progeny were not violated. The analysis in this opinion is entirely consistent with both the *Mandel* line of cases, and the cases from the United States Supreme Court and this court that more fully and generally articulate the doctrine of separation of powers. *Mandel* and its progeny represent an area of specific application of general separation of powers principles; properly understood, there is no disjunction between the *Mandel* line of cases and cases such as *Nixon v. Administrator of General Services*, *supra*, 433 U.S. 425, and *Mistretta v. United States*, *supra*, 488 U.S. 361, that set forth a principled and coherent view of the separation of powers doctrine.

Thus, the majority's accusation that the approach to separation of powers questions set forth in this opinion, which is the same approach employed by our nation's highest court, would "stand the separation of powers clause on its head," is meritless.

trial courts take care to minimize any impingement on legislative prerogatives. But the trial court in this case did use the least intrusive means available to it to ensure the students' rights.³

As discussed earlier, if there is some cognizable interference with the functions of another branch, the reviewing court must then determine whether the act is "justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon v. Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta v. United States*, *supra*, 488 U.S. at p. 383, fn. 13 [102 L.Ed.2d at p. 737].) In my view, here the trial court's order was so justified.

The objective that the trial court sought to achieve by its orders in this case—to assure the protection of the fundamental rights of the District's students—was unquestionably within its constitutional authority. As this court has made clear on previous occasions, and as the majority reaffirms today, education is a fundamental right under the California Constitution. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608-609 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Serrano v. Priest* (1976) 18 Cal.3d 728, 766 [135 Cal.Rptr. 345, 557 P.2d 929].)

Moreover, the court, in acting to protect the students' rights to education, had no practical alternative to the remedial order it issued. It was the court's

³At the hearing on the preliminary injunction, an official of the Department of Education testified without contradiction that there were two sources from which department funds were available that could be employed to assist the District—the OUSD fund and the GAIN fund. No other funds were identified as available.

The funds appropriated to the Department of Education for the general support of elementary and secondary schools are not placed in a "catchall" fund subject to the discretion of Department of Education officials. Instead, under the Education Code, virtually all sums transferred from the state's general fund to the Department of Education for the general support of elementary and secondary education are transferred subject to a strict formula under which each local district is entitled to an amount computed on the basis of average daily student attendance. (Ed. Code, § 14000 et seq., § 46000 et seq.) No state official appears to have any discretion to vary the legislatively mandated allocation of funds.

My research reveals that the only funds that might have been considered reasonably available to aid the District under the majority's criteria at the time of the trial court's decision in this case were certain emergency funds under control of the Director of Finance. (Stats. 1990, ch. 467, § 2.00.) But there is nothing in the record to show that these funds had not been used for some other emergency purpose. Even assuming that none of these funds had been committed to some other use, however, the funds would have been grossly inadequate to meet the District's needs in any event. The total amount of funds available to the Director of Finance to meet all the emergency needs of the State under the then-current budget was \$7 million. (*Ibid.*) As we have seen, the District faced a \$23 million budget shortfall.

duty to act. As the United States Supreme Court has held, "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." (*Reynolds v. Sims* (1964) 377 U.S. 533, 566 [12 L.Ed.2d 506, 530, 84 S.Ct. 1362].)

When the other branches of government have failed to act, the courts have not flinched from their duty to fashion appropriate remedies when necessary to guarantee constitutional rights to the people of this state. Thus, in *Wilson v. Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306], we held that, although reapportionment is primarily a matter for the legislative branch, when that branch has failed to act and electoral rights will be irretrievably lost if no action is taken, "we must proceed forthwith to draft such [reapportionment] plans." And in *Crawford v. Board of Education* (1976) 17 Cal.3d 280, 307 [130 Cal.Rptr. 724, 551 P.2d 28], we held that when a recalcitrant school board failed to act to cure the harmful consequences of school segregation, the trial court could exercise "broad equitable powers" to frame a remedy that would assure the students' basic rights. (Accord, e.g., *Swann v. Board of Education* (1971) 402 U.S. 1, 15 [28 L.Ed.2d 554, 566, 91 S.Ct. 1267]; see *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 659 [180 Cal.Rptr. 297, 639 P.2d 939]; *Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765, 779 [269 Cal.Rptr. 796].)

No sound reason exists to hold that although some fundamental rights demand judicial protection when they are endangered because the other branches of government have failed to act, other rights, equally fundamental, do not. Yet that is the consequence of the majority's holding in this case that the trial court erred in ordering that an emergency loan be made to the District.

The practical consequences of the majority's holding should not be overlooked. In an era of fiscal constraint and uncertainty for local governments, including school districts, we cannot assume that the District's problems will prove to be unique. If another school district experiences financial difficulties and the other branches of government fail to act, parents may indeed bring a lawsuit to protect their children's right to education. Under today's decision, the trial court will declare that the children have a constitutional right to basic educational equality, and that the State bears responsibility for assuring this right is not denied. The court may then announce that no means

exist by which it can enforce that right. And the doors to the schoolhouse will close.

I would affirm the orders of the trial court in their entirety.

EXHIBIT B

CRB: School Facility Financing

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School Facility Financing A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds

By Joel Cohen

*Prepared at the Request of
Senator Quentin Kopp*

FEBRUARY 1999

CRB 99-01

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EXECUTIVE SUMMARY

As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand. Recognizing the substantial need for infrastructure, in November 1998, California voters passed Proposition 1A, a bond measure that provides \$6.7 billion for public K-12 school construction and repair.

This measure establishes two new programs for the disbursement of bond funds and simplifies the application process by which schools apply for school construction resources. This change in programs, and in the methods by which funds are allocated, is important to the people of the State, as school districts, many of which have facilities in serious disrepair or require new construction, vie for their portion of the \$6.7 billion pie.

Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.

In order to understand the significance and relevance of this new process and its concomitant programs, however, it is useful to review the history of school construction financing in California and to understand the various pitfalls that existed under previous programs so as to avoid similar pitfalls in the future. This paper discusses that history and highlights the problems with preexisting programs.

It begins with an examination of the State Allocation Board and its staff (the Office of Public School Construction). Specifically, it reviews the role of the Board which is responsible for establishing policies for the distribution of school facility financing funds. It discusses how the Board, which was established in 1947, has evolved during the past five decades from one that set policy for various *loan* programs to one that today sets policy for *grant* programs.

The paper also discusses how various externalities—legislative or voter imposed initiatives, such as Proposition 13—have affected the Board's policies and procedures. The paper notes that the Board changed its policies often, and its policy shifts created an untenable dynamic for school districts as they attempted to secure funding. In particular, the paper highlights how districts were forced to weave their way through a complex, bureaucratic maze of applications, forms, and plans; and how this dynamic forced school districts to employ sophisticated personnel, or to contract with savvy consultants, in order to secure state financing for their construction projects.

This paper also presents a history of bond initiatives during the past five decades. It is clear that throughout this history there was never enough State money available to school districts for facility construction or repair. In fact, in spite of the \$6.7 billion approved by Proposition 1A, experts estimate that an additional \$10 billion will be required during the next decade. This paper discusses how the constant shortage of funds caused districts to use “whatever” means available to them to secure funding.

Voters have consistently been generous in approving the vast majority of statewide bond initiatives. Only three bond proposals out of 24 have failed in the past 50 years, and those that failed did so during times of recession. However, it is not clear how much additional debt voters will be willing to incur. This has especially been true since the passage of Proposition 13 in 1978, when the State began taking on a larger role in supporting school construction than it had before. To that end, this paper discusses how Proposition 1A creates a mechanism for school districts to tap state resources, and how school districts may need to tap other sources of facility funding.

Proposition 1A forges a partnership between the State and school districts for financing the construction and repair of their schools. Under its new programs, the State will provide 50 percent of the cost associated with building new schools, and provide 80 percent of the cost associated with modernizing existing facilities. It requires school districts to match state resources. However, school districts that are unable to offer this match can receive hardship funds based on prescriptive criteria. This paper provides details regarding these new programs and compares them to programs previously administered by the State Allocation Board. It also discusses how the Board is required to respond to district requests.

Proposition 1A is not the only impetus behind simplifying the school facility financing process. Concurrently, the Office of Public School Construction has rewritten the application process for funds to make it more user-friendly to school districts and has even offered applications and program information via the Internet. This paper discusses these changes.

The paper concludes with options that the Governor and the Legislature may wish to consider, including: offering protection to small and rural school districts when bond funds are exhausted; requiring annual financial reporting by the State Allocation Board; providing an on-line technical support for program applicants; and redeveloping the State funding source for school facility construction and rehabilitation.

REQUEST FOR RESEARCH

Programs and administrative procedures in Proposition 1A may produce significant changes to the previous programs and the manner by which the State Allocation Board distributes resources for school facility construction. In light of these changes, Senator Quentin Kopp requested that the California Research Bureau provide research on the following topics:

- A history of the State Allocation Board. How was the board's funding program intended to work and how has it evolved?
- An explanation of the State Allocation Board process. How does the State Allocation Board work? What are the procedures and criteria for receiving allocations? How are priorities set?

INTRODUCTION—THE PASSAGE OF PROPOSITION 1A

On November 3, 1998, California voters passed Proposition 1A - a \$9.2 billion school bond initiative, and the largest of its kind passed in our nation's history. Over the next four years, revenues from Proposition 1A's general obligation bonds will provide \$6.7 billion to public K-12 schools and \$2.5 billion to public colleges and universities for the purposes of constructing new facilities and repairing existing ones.

The State Allocation Board will have the responsibility for determining a fair means of distributing the \$6.7 billion available to K-12 schools. Many experts feel that developing such a system will be a daunting task, in spite of the fact that Proposition 1A/Senate Bill 50 is very prescriptive regarding the allocation of its bond funds.

This paper begins with a history and a discussion of the role of the State Allocation Board. Next, it examines the 24 state bond initiatives since 1947 and discusses how the Board has evolved its policies for distributing resources generated by these bond efforts. It then presents an overview of Proposition 1A and how this initiative creates a new allocation program that differs from previous ones. The paper also discusses the various problems that existed within the State Allocation Board's previous resource allocation systems and how Proposition 1A addresses these problems. It concludes with a section that offers options that the Legislature may wish to consider regarding the policies that the State Allocation Board should use for the equitable distribution of bond funds.

HISTORY OF THE STATE ALLOCATION BOARD AND ITS ROLE IN SCHOOL FACILITY FINANCING

There is a long and complex history regarding public school construction in California. This paper begins a review of the history in 1947¹ when the state legislature created the State Allocation Board.² Chapter 243, Statutes of 1947, established the State Allocation Board³ as a successor to the Post War Public Works Review Board. That statute specifically authorized the board to allocate funds for building and repairing schools. In addition, it designated the State Allocation Board to make allocations for public works projects when no other state officer or agency had authority to appropriate state or federal funds.⁴ Although it had many other fund allocation requirements during its five-decade history, the State Allocation Board today allocates funds only for school construction and renovation.

Composition of the Board

The State Allocation Board is comprised of seven members: two Senate members appointed by the Senate Rules Committee; two Assembly members appointed by the Speaker of the Assembly; the Director of the Department of General Services or his/her designee; the Director of the Department of Finance or his/her designee; and the Superintendent of Public Instruction or his/her designee. This appointment structure has existed since the Board's inception in 1947.⁵

Although its basic appointment structure is set in statute, its actual membership changes over time. One member, Senator Leroy Greene, served on the Board for over 20 years. Some Board members have served for only one meeting, while others have served an entire legislative session.

The four legislatively appointed State Allocation Board members provide a strong policy influence to the State Allocation Board. Through them, other members of the Legislature have input into the Board's policy and decision-making processes.

Policy Requirements

Members of the State Allocation Board are charged to formulate fair systems for determining priorities among project proposals. Prior to the passage of Proposition 1A/SB 50 in 1998, the Board was responsible for developing a fair and equitable appeals process that addressed the "special needs" of school districts. Such "special needs" included disaster relief, inability to secure matching funds, or inability to locate affordable property.

Board members also had extraordinary power to set school facility financing policy. Although the Board falls under the auspices of the State Administrative Procedures Act, it has often ignored the Act's provisions. It was common that board policies were changed from meeting to meeting, and that these new policies were not readily made public.⁶ Therefore, school districts that were uninformed of existing policy operated at a distinct disadvantage. They may not have known the appropriate procedures for receiving

financing approval. Conversely, school districts that utilized hired consultants or had staff that regularly monitored the Board's actions knew exactly what mechanisms and procedures would be necessary for them to secure funding.

State Allocation Board Staff

The Office of Public School Construction (formerly the Office of Local Assistance), within the Department of General Services, was and continues to be responsible for providing staff work that is necessary to carry out the policies and implement the various programs of the State Allocation Board. The State Allocation Board is responsible for policies regarding the allocation of funds for building new schools and for repairing, upgrading, and rehabilitating old ones.

The Office of Public School Construction staff is also responsible for disseminating to school districts information regarding board policy and programs. Under its previous programs, the staff was responsible for making recommendations to the State Allocation Board regarding various appeals made by school districts that may have been denied funding, or that may have required special funding consideration. To that end, the Office of Public School Construction staff influenced where school districts fell on the long queue of project proposals considered and passed by the State Allocation Board. Staff also could have influenced Board decisions by advocating for specific school district projects.

Outside Influence

The State Allocation Board and the Office of Public School Construction staff have also been influenced by a variety of external interest groups. These include, but are not limited to, private school facility financing consultants, school board members, school administrators, teachers, parents, developers, California Building Industry Association, financial institutions, and other members of the Legislature. In addition, various state agencies with influence included the Division of State Architect, Department of Finance, and the Department of Education. These interests groups played and are likely to play a significant role in determining funding for projects that may have been denied or required special consideration. Consultants in particular, whether employed by or on contract with school districts, played an active role in the process. Many of these consultants, whose offices are in the same building as that of the Office of Public School Construction, influenced decisions of both the Office of Public School Construction staff and the State Allocation Board. Consultants were current on Board policies and procedures, and were highly sophisticated about the complicated processes that school districts must follow in order to obtain funding. They have been instrumental in shepherding proposals through the complex maze of funding phases - application to construction. School districts that did not contract with such advocates were often at a competitive disadvantage.

Evolution of State Allocation Board Programs—From Loans to Grants

The State Allocation Board has evolved markedly during the past five decades. Initially, its school programs provided resources to school districts via *loan programs* in which

districts were required to repay their assistance with property tax revenues. In addition, school districts used local school bonds to finance their various construction projects. In both cases, a two-thirds popular vote was required.

Proposition 13

With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority, and the Legislature and Governor were forced to rethink how school districts could repay their existing loans to the State Allocation Board.

Recognizing that many school districts faced bankruptcy by being unable to service their loans, the Legislature in 1979 directed the State Allocation Board to allow school districts four options: (1) withhold payments on their loans; (2) temporarily delay their payments; (3) pay only a portion of their loan obligations; (4) or not pay back their loans at all. Further, with the implementation of these options, the Legislature required that the State Allocation Board shift its policy focus from a *loan-based* program to a *grant-based* program. This shift to grant-based programs remains today.

HISTORY OF SCHOOL BOND INITIATIVES—A CYCLE OF UNDER-FUNDING

The electorate of the state has been ultimately responsible for determining the availability of resources for school construction. The electorate must have confidence in the state's economy, and perceive a need for new and upgraded schools. Without such assurances, the electorate can and has rejected various bond efforts. Since 1949, voters have been asked to approve 24 bond measures related to school construction and renovation, and have passed 21 of these proposals. However, an interesting history follows regarding the content of these initiatives.

State as a Bank—The Loan Program 1949-1978

Legislation enacted in 1949⁷ and 1952⁸ established a loan-grant program "to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the public school system."⁹ During this time period, the first baby boomers entered school, and for the next two decades, California public school enrollment increased by roughly 300 percent.¹⁰ The Legislature recognized that many school districts faced substantial enrollment growth, while lacking the bond debt capacity that was necessary to finance large building programs. In fact, many school districts had reached their financial capacity to service the bonds that they previously incurred.

As a result, the Legislature developed a program to provide loans to school districts that were approaching or were likely to exceed their legal level of bonded indebtedness.¹¹ This new program was financed through State general obligation bonds. This program also required building construction standards and placed fiscal controls on the districts, including maximum cost standards and square feet per pupil limitations.¹² School districts, however, retained control over the design and construction of their facilities. Districts that wanted to participate in the state loan program were required to receive approval from two-thirds of their district's electorate in order to incur the debt. A surcharge on the local property tax provided revenues to service the loan debt.

The State formula provided that the total amount due on some loans would be less than the total amount of the actual loan. Some experts believe that the state's willingness to forgive part of school district loans through this formula was a precursor to the state grant program discussed below.

The First Loan Program Bond Initiatives

In 1949, the state issued its first bond proposal for education facilities financing¹³ in the amount of \$250 million.¹⁴ This first initiative also began a cycle of inadequate funding. In that year, the Legislature thought that \$400 million was necessary (over what school districts could afford above their debt limits) to meet the need of school districts that were facing enrollment growth from the new generation of baby boomers. However, after substantial debate, the bond proposal was reduced to \$250 million, because the sponsors thought, "the people would not vote for such a large sum at one time."¹⁵ In arguments

against the bond, opponents argued that \$250 million was insufficient. Therefore, absent full funding, voters should reject the initiative. The measure passed.

In 1952, another school construction bond of \$185 million was put before the voters. Proponents of this initiative stated that the amount was “extremely” conservative. A comprehensive study by the State Department of Education at that time revealed that \$198 million was needed, while the Department of Finance estimated the need at \$250 million. Again, the amount of needed resources surpassed the amount proposed, and the cycle of chronically under-funded facility financing for schools continued.

To further exacerbate the shortfall, the 1952 proposition, along with subsequent propositions offered in 1956, 1958, and 1960, included “poison pill” language that limited the Legislature’s ability to appropriate any additional funds for school construction beyond that in the various propositions.¹⁶ If the Legislature approved any additional resources for school construction, the amount of bonds that were sold would be reduced by an amount equal to the additional appropriation. After 1960, however, bond proposals excluded the language that precluded the Legislature from raising additional capital outlay funds.

During a two-decade period, the State Allocation Board administered this program as a bank. Resources from the state were limited, and many school districts were uncomfortable with the concept of borrowing money from the state, rather than from their local constituents. Further, since school districts were obligated to reach full bond indebtedness before applying for state loans, many did not participate. For these reasons, many school districts chose not to build facilities until their bonding capacity grew. Hence, many school districts found themselves chasing dollars after their schools were overcrowded—a situation not unlike today.

The Early 1970s

As a result of a major earthquake in the San Fernando Valley (Sylmar) in 1971, the state authorized \$30 million¹⁷ for a new program to finance the rehabilitation and construction of earthquake safe schools,¹⁸ and for the renovation of buildings that the earthquake damaged.¹⁹ This program was known as the School Buildings Safety Fund. Like its predecessor programs, the 1971 Act created a state loan program for eligible school districts. The Act also included provisions to forgive loans for school districts that had reached their bonding capacity. The 1971 program was augmented by a 1972 state bond initiative of \$350 million of which \$250 million was set aside for structural repairs due to earthquakes.²⁰ This latter bond initiative also provided a method for financing buildings in districts that did not meet the criteria of the program that was initiated in 1971,²¹ and it required the State Allocation Board to first approve those applications from school districts for earthquake repairs. The State Allocation Board gave second consideration to funding projects for other types of repairs or upgrades. Hence, the Board began a new system for not only new construction but also repairs, as well as a system that set priorities.

A Changing Paradigm

From 1970 to 1980, public school enrollment statewide decreased by roughly one percent per year.²² Reductions in both immigration and domestic in-migration to the state, as well as a decrease in the state's birth rate caused this decline. During this decade, there were sufficient resources available from local property tax revenues and from the state's loan program to meet the various rehabilitation needs especially of those school districts that were experiencing enrollment declines. The State Allocation Board thus shifted its loan program emphasis from new construction to rehabilitation, and to upgrading unsafe facilities that were damaged due to the 1971 earthquake.²³

Nevertheless, some school districts continued to experience enrollment growth in response to suburban housing development.²⁴ In spite of such growth patterns, the State Allocation Board set its priorities to favor rehabilitation projects over new construction. The Board's orientation accentuated the differences between growing school districts and those that required rehabilitation, and caused an unequal state spending system that favored property rich urban districts over fiscally poor and growing suburban districts.²⁵

To counter the State Allocation Board's orientation toward urban rehabilitation, growing suburban school districts recognized that in order to fund new school construction, they would have to depend almost entirely on their local property tax base. As more people demanded affordable housing in suburban neighborhoods, developers accommodated them by building numerous suburban housing units. The sheer increase in the number of suburban homes added significant resources to the property tax base, thereby benefiting the school districts that served those communities. Furthermore, the ongoing demand for suburban housing caused the prices of homes in these areas to increase precipitously, adding even more resources to the property tax base. Although school districts could have requested to reduce those tax rates that supported them to a minimum amount, they did not. Most districts kept their rates steady, and some even increased them. Homeowners, unhappy about menacing property taxes, sought relief. In 1972, the Legislature enacted a multi-year package, funded by the state's general fund, of \$1.2 billion for school operation to be allocated over a three-year period and to serve as property tax relief.²⁶ In spite of this legislation, property taxes remained relatively high to cover local bond debt, and continued to be the primary source for school construction for growing school districts. Concurrently, the state continued to loan money to enrollment-static school districts for the purpose of rehabilitation.

Leroy Greene State School Building Lease Purchase Law

In 1976, the Leroy Greene State School Building Lease Purchase Law was signed into legislation.²⁷ This law established a state fund to provide loans to school districts for reconstruction, modernization, and replacement of school facilities that were more than 30 years old. The Act significantly altered the state's role in how school facilities construction was financed. Specifically, the state would no longer loan money; but it would finance school construction based on a leasing model.²⁸ Although the legislation was passed, the voters of the State remained unconvinced that more money was needed to

improve schools. Consequently, they did not pass the bond initiative that was necessary to fund the Lease Purchase Program.

The 1976 Act had specific language that created “priority points” for school districts that would apply for state funding. This was the first time that the State Allocation Board used a point system for creating a queue of approved projects. Priority points were given based on the number of unhoused students in the district, the rate of student enrollment growth, and how much rehabilitation a facility needed. Further, the Board instituted a first-come, first-served policy in which each accepted school district’s application was stamped with a time and date.

Under the previous program, the state loaned money to school districts to build their facilities, and the school districts owned their property. Under the Greene legislation, however, the State maintained a lien on the property for the duration of the loan via a lease purchase agreement.²⁹ The State wanted to preclude school districts from purchasing land on a speculative basis using State money, only to sell the State funded property at a profit at a later date. This meant that the state would control the disposition of any school facility that it financed until the school district repaid its obligation on the lease.

The Proposition 13 Epoch 1978-1986

Proposition 13—Local Governments and School Districts Fiscally Stymied

With its passage, Proposition 13 eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness. Proposition 13 capped the ad valorem tax rate on real property at one percent of its value, thereby reducing the income from property taxes to such an extent that it virtually eliminated this source as a means for lease payments. Proposition 13 also prohibited the electorate of a school district from authorizing a tax over-ride to pay debt service on bonds for the purpose of constructing needed school facilities.

To exacerbate this problem, the voters soundly defeated school construction bonds in both 1976 and 1978. They were two of only three³⁰ state general obligation bonds rejected by voters since 1947. The non-passage of these two successive bond initiatives, coupled with suburban enrollment growth, caused a statewide shortfall of \$550 million³¹ that was needed for school construction projects throughout the state in 1978.

Post Proposition 13

The limitations set by Proposition 13 caused school districts, counties and cities to turn to the state, which had a \$3.8 billion surplus, to fill the gap.³² In 1979, lawmakers approved a \$2.7 billion (in 1978 dollars) “bailout” plan to assist schools and local governments.³³ Within a year, the state surplus was reduced to roughly \$1 billion. Furthermore, the state had taken on a larger role as a funding source for school operations and capital improvement. To that end, it expected school districts to conform to its programs and projects.³⁴

Effects of Proposition 13 on the Lease Purchase Program

In 1979, legislation implementing Proposition 13 included provisions for restructuring the State's Lease Purchase Program.³⁵ School districts that received funds from the state were required to pay rent to the State as low as \$1 per year, creating an "unofficial" grant program.³⁶ In addition, school districts were to contribute up to 10% of the project's cost from local funds.³⁷ However, many school districts could not raise these matching funds through local bonds. They requested that the State fund their entire projects. The State Allocation Board created a waiting list of projects.

A Recession Further Complicates School Facility Financing

Beginning in 1982, California was in a recession that lasted until 1984. During this time period, the State's budget surplus was expended. School districts' recession experiences were complicated by the fact that student enrollments again began to increase again.³⁸ Approximately 60 percent of California's 1,034 districts at the time projected annual growth rates of over two percent between 1980-81 and 1983-84, with some districts projecting a doubling in their enrollment.³⁹ At the same time, estimates indicated that over one-third of the State's school buildings were over 30 years old and many needed substantial rehabilitation.⁴⁰ The Coalition for Adequate School Housing (CASH) estimated that the one-time cost of rehabilitating these older facilities would be \$1.9 billion.⁴¹ Further, CASH estimated that school districts would need an additional \$400 million annually for the next five years for building and repairing school buildings. Since the State was in recession, such funds were not available. Thus the State had to rethink how it would prioritize its school facilities projects.

A New System for Funding School Construction

In light of the backlog of applications for state funds, the Office of Local Assistance (now known as the Office of Public School Construction) designed a numerical ranking system that used "priority points" to determine a school district's eligibility for funds. This system gave priority to school districts who had students who were "unhoused," and special consideration was given to how districts used certain facilities.⁴² The more points a project application received, the higher on the list it was placed. Recognizing that school districts were facing enrollment growth and required further rehabilitation, the Legislature in 1982 authorized a general fund appropriation of \$200 million for school construction projects. This amount was later reduced to \$100 million.⁴³

Further, in order to ease the burden that many school districts felt because of the recession, the State loosened the repayment schedule for its lease-purchase program. School districts were allowed, for 10 years, to pay one percent of the cost of state funded lease-purchase projects, rather than the 10 percent they initially were required to pay.⁴⁴ Again, the State Legislature and the State Allocation Board moved away from a loan program and more toward a grant program.

Multi-Track Year-Round Education

Recognizing that the State had very limited bond resources, the Legislature wanted a more cost-effective facilities financing incentive system for school districts. That system would force districts to use their space more efficiently. In response to the shift in policy, the Legislature passed Chapter 498, Statute of 1983. This statute encouraged school districts that were experiencing growth pressure to adopt multi-track year-round education (MTYRE) programs. MTYRE programs enroll students in several tracks throughout the entire calendar year. At any given time, one track is on vacation, but vacation periods are short in duration.⁴⁵ The MTYRE program allows a more intensive use of existing facilities, thereby reducing the need for new facilities in growing districts.

School districts received an immediate financial return if they participated in the MTYRE program. A school district that redirected its students into a MTYRE program received a grant of up to 10 percent⁴⁶ of the cost that would be necessary to build a new facility not to exceed \$125 per student.⁴⁷ School districts that participated in MTYRE were eligible for air conditioning and insulation in their buildings.

In 1988, as pressure for state financing continued, the Legislature required that top priority for financing new construction projects be given to districts that used multi-track year-round education programs. School districts that offered MTYRE and were willing to match 50 percent of their construction costs received a funding priority from the State Allocation Board.⁴⁸ This put other school districts that could not meet these MTYRE and funding criteria at a distinct disadvantage. These latter school districts sought relief from the voters in 1986. Small school districts were one exception to the MTYRE requirement.

1986 Lease Purchase Program

In 1986, the voters approved Proposition 46. Proposition 46 amended Proposition 13⁴⁹ by restoring to local governments, including school districts, the ability to issue general obligation bonds and to levy a property tax increase to pay the debt service subject to a two-thirds vote of the local electorate.⁵⁰ This amendment allowed school districts to augment the one-percent cap on property taxes and to secure additional bond indebtedness to build and improve their schools.⁵¹

Passage of Proposition 46 helped, but did not solve school districts' financing problems. Many school districts were unable to secure the necessary two-thirds vote to authorize local funding, and still relied on state funding to assist them. Further, the federal government in 1986 passed legislation that required each state to remove friable asbestos from their educational facilities – another charge that the school districts could ill afford.

California adopted similar asbestos standards to those established by the federal government in 1986; however, few school districts reported their estimated costs for removing the substance. In light of the need to remove the asbestos, and in order to address the growing backlog of proposed school construction projects, voters passed Proposition 79 in 1988 - an \$800 million bond initiative. It specifically set aside \$100 million to cover asbestos removal.⁵²

A Growing Shortfall and Greater Scrutiny

There is no doubt that from 1982 to 1988 state support for public school construction was limited and difficult to secure. The demand for new school facilities, for modernization, and for asbestos removal was great.⁵³ As of June 1, 1986, applications that were submitted by school districts to the State Allocation Board for state funding of *new school construction* projects alone totaled roughly \$1.3 billion. In addition, applications for state funding for *reconstruction or rehabilitation* of school facilities totaled over \$991 million.⁵⁴ Total demand for school facility improvement in 1986 was nearly \$2.3 billion - an amount that significantly outweighed the \$800 million voters approved in that year's bond initiative.⁵⁵ Even with a boost of funding of \$150 million per year from Tidelands revenues in fiscal years 1984 and 1985, the Lease Purchase Program fell short.⁵⁶ By 1988, the shortfall had grown to \$4 billion, in spite of the fact that voters had approved \$2.5 billion in bond money from 1982-1988.

The State Allocation Board was forced to scrutinize every request for school construction funding, recognizing that absent a major infusion of State bond money, most districts would not receive funding for their projects. This scrutiny created an extremely competitive environment for the limited resources that were available to the schools. Many participants believe that school districts that contracted with knowledgeable consultants, or had district staff who were familiar with the State Allocation Board's policies and criteria, were the most successful in securing a high ranking place in the queue for resources, once those funds become available.

There is no definitive research or data that support this belief. Consultants are not required to report their involvement in the application process. However, there is substantial anecdotal evidence to support the assertion.

School Financing as a Collective Effort—The Three Legged Stool

In 1986, the Legislature recognized that resources were scarce and that no one governmental or private entity could finance school construction. It attempted to equalize the burden of school facilities financing between state government, local government and the private sector.⁵⁷ This concept was known as the "three legged stool." The idea was that the state would provide funds through bonds. Local government would provide its share through special taxes, general obligation, Mello-Roos and other bond proceeds. The private sector would provide funds through developer fees. Appendix A describes funding alternatives for these latter two legs of the stool.

The "three legged stool," however, never quite worked. For example, to assure that developers would not fund a disproportionate share of the cost to build schools, the Legislature, in 1986, capped the amount new homebuyers would pay for developer fees at \$1.50 per square foot, and empowered the State Allocation Board to raise the cap by a certain amount each year. However, school districts found a loophole around the cap by requesting that cities impose a fee on their behalf, and cities imposed rates on some

developers that exceeded those allowed.⁵⁸ California courts upheld these fees in the Mira, Hart, Murrieta court cases.

Until the recent passage of Proposition 1A, many local governments have imposed developer fees that exceed those allowed by the Board. For example, in 1987, fees in San Diego and Orange counties reached a high of \$8700 per house.⁵⁹ By 1990, total development fees for some homes reached \$30,000.⁶⁰ Statewide, developer fees have increased from \$31 million in 1978 to \$200 million in 1997.

In 1998, the State Allocation Board increased the fee to \$1.93 per square foot.⁶¹ With the passage of Proposition 1A in November 1998, however, local governments have apparently lost their ability to increase their fees beyond those determined by the State Allocation Board. Further conflict is likely.

The 1990s—Complicated Funding Programs

In the fall of 1990, the Legislature passed legislation that created two programs that provided additional financial incentives for schools to offer year-round education.⁶² The first of these programs provided a one-time grant to school districts to ease the expense of changing from traditional nine-month programs to year-round tracks. The second program provided an “operating grant” of between 50 percent and 90 percent of the amount districts saved the state by not having to build new schools. At the recommendation of the Office of the Legislative Analyst, the Legislature repealed the 1982 and 1986 incentive programs discussed above.⁶³

In response to the 1990 legislation, the State Allocation Board developed a new priority system for allocating lease purchase money. Under this new system, the Board apportioned funds based on a combination of when an application was received and how many priority points it garnered. Through a complex formula, priority points were given to schools that had a significant number of “unhoused students,” or had substantial rehabilitation needs. This procedure might have worked well if the state could have financed all applications in a timely manner. However, the demand for state money increased to the point where districts without special priorities could expect to wait years for the state to finance their projects.

The program was in effect for only one year when the Legislature repealed the program and created yet another system for allocating state money.⁶⁴ In 1991, the Legislature defined six priorities for funding. First priority was given to districts that had a “substantial”⁶⁵ enrollment in multi-track schedules, and that were paying at least 50 percent of the construction costs for their new schools. Second priority went to districts with a “substantial” year-round enrollment and that wanted the state to pay the entire cost of any new construction for their year-round schools. The remaining four priority levels took into consideration factors for those schools who did not meet the “substantial enrollment” criteria outlined above, or were unable to match state resources.

The complex set of formulas made it difficult for school districts to completely understand what criteria would best serve them. Further, throughout this period, the Board was

required to implement new programs and redefine its priorities. For example, in 1990 the Legislature created a program that was adopted by State Allocation Board for school districts that could not find adequate land on which to build a school. Known as the Space Saver Program, it was designed to assist urban school districts that could not obtain adequate acreage for a school campus. The first space saver school, developed in 1993, is scheduled to be completed in Spring 2000 in the Santa Ana Unified School District, in a former shopping mall.⁶⁶

Another example of shifting priorities took place in 1996 when the Legislature mandated the Board to redirect its third highest priority to class size reduction from a previous focus on child-care facilities.⁶⁷ A third took place at the end of 1997 when the priority points system was replaced by a first-come, first served system. While there were exceptions to this rule, money was offered first to school districts willing to cover some of the costs associated with constructing or repairing facilities. Schools that could not afford to cover the remaining 50 percent were placed on a separate list.

Such shifts in policy, coupled with the significant complexity of formulas that drove the priority point system, along with the sporadic creation of new programs, caused many school districts to depend on outside consultants. These consultants understood the many policy changes that the Board enacted – sometimes on a monthly basis. They were also knowledgeable of new programs, and clearly understood the workings of the staff who carried forth the Board's policies. Without the assistance of consultants, school districts were unable to keep track of policy changes and special considerations enacted by the Board. Further, while the Board and its staff advised school districts regarding changes in their policies in a regularly published document, it did not provide a centralized source of materials, such as an up-to-date handbook. Consequently, school district personnel were often uninformed about the various nuances of the programs administered by the Board.

State Bond Efforts of the Nineties

As the State Allocation Board shifted its focus and policies throughout the early 1990s, Californians approved state school bond initiatives in 1990 for \$1.6 billion and in 1992 for \$2.8 billion. In one of its 1992 reports, the Department of Finance reported that statewide K-12 enrollment was estimated to grow by 200,000 new students per year for at least five years,⁶⁸ and that an estimated \$3 billion would be needed annually for new school construction.⁶⁹ However, in spite of growing enrollments and a significant demand for facility rehabilitation, in 1994, the electorate rejected a \$1 billion bond initiative. The State was in a recession.

A lack of State bond funds was not the only problem associated with the allocation of school construction funds. The Auditor General reported in 1991 that the Office of Local Assistance mismanaged state funds. It detailed that construction funds loaned to school districts were not recovered; that districts overpaid on some projects and failed to collect the overage; that it dispersed funds without proper documentation; and that it failed to conduct required close-out audits on construction projects.⁷⁰

As a result of this audit, the Office of Public School Construction in concert with the State Allocation Board developed stringent internal and external audits and fiscal controls. These control mechanisms included increasing the detail of financial review of projects, prohibiting school districts from participating in the program unless a balance was not due, and no longer receiving rent checks for portable classrooms.⁷¹

Attempts to Ease Passage for Local Bonds

Recognizing that the State would be unable to fund the entire backlog of school construction proposals, Governor Pete Wilson in 1992 proposed a constitutional amendment to reduce the requirement for the passage of local bonds from two-thirds to a simple majority.⁷² The idea was that local governments should have to meet the same 50 percent requirement as the State for passing bonds. Further, there was strong sentiment in the Wilson administration that local governments should pay an increased share of school construction costs. However, the Legislature rejected his plan.⁷³ Other attempts in recent years to reduce the vote for passage of local bonds from two-thirds to something less have also failed.⁷⁴

1996 School Bond Issuance - Finally More Money

Proposition 203, passed by the voters in March 1996, provided \$2.065 billion for school facility construction. However, the Legislature at the time estimated that school districts would need \$7 billion in construction funds to meet enrollment growth that was anticipated during the next five years.⁷⁵ This \$7 billion did not include the needs of Los Angeles Unified School District (LAUSD), which had 20 percent of the state's student population. At the time, LAUSD alone needed \$3 billion to upgrade and modernize its schools.⁷⁶ Clearly, anticipated demand for State funds substantially exceeded available resources.

To respond to the many school district proposals, the State Allocation Board followed its general priority points policy. However, many school districts, recognizing that they would not receive funding for years because of their position in the funding queue, and because of the limited amount of resources that were available, resorted to creative means to try to secure funding for their projects. For example, some schools districts sought special consideration for funds by requesting emergency allocations. Such a tactic would allow a school district to receive funds immediately.⁷⁷ Other school districts used the appeals process to argue that their projects were needed more than those of other school districts that were higher in the queue.⁷⁸

This cannibalistic dynamic caused a fair amount of resentment among those school districts that were bumped from a relatively high position in the queue by those districts that sought emergency relief or special consideration. Further, it was clear that the most sophisticated school districts found a variety of tactics that would secure the funding of their projects. These tactics are described in greater detail later in this paper under the section that describes how the Board processed its applications.

Class Size Reduction Causes Greater Housing Needs

The distribution of funds from Proposition 203 was further complicated by the Governor's Class Size Reduction Initiative. In particular, the State Allocation Board earmarked \$95 million for the purpose of purchasing 2,500 portable classrooms for schools that were facing severe classroom shortages. This was in addition to \$200 million that the Department of Education had available for assisting schools in purchasing such facilities. The Office of Public School Construction determined that a total of 17,500 classrooms were needed to accommodate class size reduction, and that there was only enough money to fund less than half of the estimated need.⁷⁹ The State Allocation Board reinterpreted Proposition 203 by creating a new Portables Purchase Program at the expense of their other programs. This caused some school districts to again get bumped in the queue for funding.

Never Enough Money—Still a Shortfall

Since 1947, the electorate has approved all but three State bond initiatives. In spite of the voters' tendency to support various bond initiatives, by 1998, the backlog of school construction projects that were approved by the State Allocation Board, but unfunded, totaled more than \$1.3 billion. Although the voters have been generous by approving bond initiatives roughly every two years,⁸⁰ there were times during the past five decades when bond money was not available for periods of four or six years.⁸¹

The Department of Finance has estimated that \$16 billion is needed over the next decade for public school construction and rehabilitation.⁸² Various bond proposals in 1997 and 1998 were circulated that considered multiple-year bond issuances. The California Teachers Association and the California Building Industry Association presented a plan to issue \$2 billion a year for 10 years.⁸³ Governor Wilson proposed \$2 billion a year for four consecutive years. In the end, Proposition 1A was passed. It provides \$6.7 billion over a four-year period. However, while the amount appears generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following this bond issue will require roughly an additional \$10 billion in State money.

Table 1 on page 18 shows the history of state school bond initiatives from 1949 to 1998. In the next sections of this report, we discuss the various programs, the complicated application process used by the State Allocation Board that school districts had to endure to secure funding, and how Proposition 1A attempts to simplify this process.

Table 1 - STATE SCHOOL CONSTRUCTION BONDS

Title of Bond Initiative	Date & Year of Election	Funds Authorized
School Building Aid Law of 1949	November 8, 1949	\$250,000,000
School Building Aid Law of 1952	November 4, 1952	\$185,000,000
School Building Aid Law of 1952	November 2, 1954	\$100,000,000
School Building Aid Law of 1952	November 4, 1958	\$220,000,000
School Building Aid Law of 1952	June 7, 1960	\$300,000,000
School Building Aid Law of 1952	June 5, 1962	\$200,000,000
School Building Aid Law of 1952	November 3, 1964	\$260,000,000
School Building Aid Law of 1952	June 7, 1966	A)\$275,000,000
School Building Aid Law of 1952	June 6, 1972	B)\$350,000,000
School Building Aid Law of 1952 And Earthquake	November 5, 1974	\$150,000,000
School Building Lease-Purchase Bond Law of 1976 (Failed)	June 8, 1976	\$200,000,000
School Building Aid Law of 1978 (Failed)	June 6, 1978	\$350,000,000
School Building Lease-Purchase Bond Law of 1982	November 2, 1982	\$500,000,000
School Building Lease-Purchase Bond Law of 1984	November 6, 1984	\$450,000,000
Green-Hughes School Building Lease-Purchase	November 4, 1986	\$800,000,000
School Facilities Bond Act of 1988	June 7, 1988	\$800,000,000
1988 School Facilities Bond Act	November 8, 1988	\$800,000,000
1990 School Facilities Bond Act	June 5, 1990	\$800,000,000
School Facilities Bond Act of 1990	November 6, 1990	\$800,000,000
School Facilities Bond Act of 1992	June 2, 1992	\$1,900,000,000
1992 School Facilities Bond Act	November 3, 1992	\$900,000,000
Safe Schools Act of 1994 (Failed)	June 7, 1994	\$1,000,000,000
Public Education Facilities Bond Act of 1996, Proposition 203	March 1996	C)\$3,000,000,000
Class-size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, Proposition 1A	November 3, 1998	D)\$9,200,000,000

Bonds in [bold] failed to receive a majority of votes.

- A) New amount of 1966 bond authorization available for regular program is \$185.5 million after deducting \$35 million reserved for compensatory education facilities, \$9.5 million for regional occupational centers, and \$35 million for rehabilitation and replacement of earthquake damaged and unsafe schools.
- B) Up to 250 million dollars earmarked for rehabilitation and replacement of unsafe schools.
- C) One billion dollars earmarked for higher education facilities
- D) Two and one-half billion dollars is allocated for higher education.

THE PROGRAMS

Prior to the approval of Proposition 1A, the State Allocation Board oversaw six active programs associated with school facility construction, repair, and remodeling. These six programs made up the Lease-Purchase Program that was discussed earlier in this paper. This section briefly describes these programs, discusses how the State Allocation Board set priorities for school district projects, explains how the Office of Public School Construction staff reviewed and acted upon district proposals, and how the State Allocation Board considered district appeals. The purpose is to advise the reader of not only the process and administration of allocation, but also some of the pitfalls that existed under the old system. Perhaps these pitfalls of the old system can be avoided when allocating Proposition 1A resources.

The Growth and Modernization Programs

The Growth and Modernization Programs allocated funds to school districts for building new schools (Growth Program) and for repairing existing facilities (Modernization Program). School districts qualified for the Growth Program based on an "allowable building standards" formula.

For its Growth Program, the State Allocation Board developed standards for the amount of space that was necessary to house students based on a district's number of ADA (Average Daily Attendance).⁸⁴ The Modernization Program provided funds to school districts for nonstructural improvements to permanent school facilities that were more than 30 years old, and for portable buildings that were more than 20 years old. Such nonstructural improvements included interior partitions, air conditioning, plumbing, lighting and electrical systems.

The Modernization Program provided funding for up to 25 percent of the replacement value of the building. Under some circumstances, districts could use additional funds beyond the 25 percent for handicap access compliance, including elevators when appropriate, and for alternate energy systems.

School districts could apply to this program by offering to match state funds and be listed as "Priority One," or they could ask the State to fund their entire project and be listed as "Priority Two."

Process for Receiving Growth and Modernization Funds

School districts that applied for growth and/or modernization funds were required to follow nine steps in three critical areas - planning, site selection and construction. Each of these three critical areas provided a separate and gradual funding stream for the school's project.

Planning Phase

During the planning phase, a district was required to complete four forms that demonstrated that it was eligible for either the growth or modernization program.

Eligibility to participate in the programs was based on enrollment patterns or the age and condition of those schools that required modernization. If a district met these standards, it moved on to the "site development phase."

Site Development Phase

Selecting a school site was critical. If a school district was participating in the modernization program, it would move to the next phase. The site would have to be safe and able to support the school's curriculum. An adequate site would have to meet certain standards with respect to size and location. Site review could take a school district months (if not years) to investigate. Under the growth program, a school district arranged a search committee to locate available properties and narrowed its search to three sites. In addition, the school district held public hearings regarding the impact of the lands to be used for educational purposes, and notified neighbors about possible site use. A representative from the Department of Education visited three selected sites to review and determine which was the most suitable site based on criteria including, but not limited to: street traffic safety; traffic congestion; geological hazards; and other environmental issues. All school districts followed a similar process for site selection whether they financed the project themselves, or requested State funding.⁸⁵

Some school districts were unable to build new schools because they could not secure appropriate properties. This was especially true in urban and industrial areas where vacant land was not readily available or was extremely expensive.⁸⁶

Once a district found an appropriate property, it was required to prepare a site development plan that included architectural and engineering drawings, along with building contract agreements. Districts were required to follow strict site development, plan development, and construction cost guidelines in order to be eligible for state funds.⁸⁷ Once these guidelines were met, the district proceeded to the construction phase.

Construction Phase

Every construction project received an allowance for site development and to erect a building. The eligible costs associated with construction for these programs were classified into several broad categories: building construction; site development; energy conservation; and supplemental funding for multi-story construction. In addition, facility funding included adjustment costs associated with geographic and regional differences, or the demolition of an existing structure.

A project architect for each contract developed final plans and documents as part of the project's final stage. These documents were used to establish a construction budget. The Division of the State Architect approved and monitored the district's final plans. After review, a construction apportionment was recommended to the State Allocation Board, which in turn authorized the distribution of funds. Upon completion of all regulatory oversight, the district was allowed to break ground.

The Deferred Maintenance Program

The Deferred Maintenance Program provided a 50 percent State match to assist school districts with expenditures for major repair or replacement of school buildings. Such repairs or replacements were for plumbing, heating, air conditioning, electrical systems, roofing, interior and exterior painting, and floor systems. School districts were required to place one and one-half percent of their general funds into an escrow account in order to receive a State match. For school districts that could not fit the parameters of the modernization program, the deferred maintenance program was the only alternative to receive State assistance.

The State also provided critical hardship funds to repair buildings that might seriously affect the health and/or safety of pupils. When available funding was insufficient to fully fund all hardship requests in any given year, the State Allocation Board created a priority list. However, the State Allocation Board often made exceptions to its list.

The Deferred Maintenance Program differed from the modernization program in that school districts were required to submit a five-year plan as to how their projects would be implemented. The plan displayed a rank for each project, and identified those projects that the school district would likely fund.

Deferred Maintenance Application Process

Based on the most recent available material, the deferred maintenance program had 13 steps, and a school district needed to complete several forms and documents. The 13 steps were divided into categories including a letter of interest, application process, critical hardship project documentation, and fund release.

A school district notified the Office of Public School Construction each year if it wanted to participate. Upon receipt of the initial letter, the Office of Public School Construction would send the district a request for its five-year plan of maintenance needs and an "Annual Application for Funds."

The school district would then provide the OPSC with a list of items scheduled for major repair or replacement,⁸⁸ along with its five-year implementation plan. When the district received state funds, it could only expend those resources for those items on the list. It could not redirect any resources toward administrative overhead, repair and maintenance of furniture, ongoing preventative maintenance, energy conservation, landscaping and irrigation, athletic stadium equipment, drapery or blackout curtains, testing underground storage tanks for leaks, or chalkboards.

Once the Office of Public School Construction approved a school district's list of projects it allocated funds accordingly. In cases of hardship, OPSC would visit the school prior to allocating funds. The district's governing board controlled and was responsible for all deferred maintenance funds. These funds were placed in a special escrow account.

The Year-Round Air Conditioning/Insulation Program

The Year-Round Air Conditioning/Insulation Program (ACI) began in 1986, as an incentive program for schools to operate during the summer.⁸⁹ In order to participate in the program, a school district was required to have a plan for Multi-Track Year-Round Education, or have 10 percent of its students enrolled in a Multi-Track Year-Round Education program. The ACI program assisted school districts by providing resources for air conditioning and insulation.

Year-Round Schools Air Conditioning/Insulation Application Process

The application process for the ACI program differed slightly for those school districts that had a year-round program from those that were planning a year-round program. However, regardless of their status, school districts were required to complete eleven stages in two phases to receive funding. If a school district had an air conditioning system that needed repair, it could not apply to this program, but could apply for funds under the deferred maintenance program.

A school district completed forms that included information on the buildings and spaces that would be affected, along with a report regarding the project's anticipated start-date. In addition, another application was required that provided information on whether the school site was experiencing enrollment growth, and whether some level of modernization was already in progress. Further, a school district that was not on a year-round schedule was required to show how its year-round calendar would be used. If the district was approved for funding, various allowances were provided to the district.⁹⁰ In addition to these allowances, the state would provide funds for gas and electric service, general site development, and air conditioning/insulation construction.

Items that were not covered by this program included costs for heating, window solar film, classroom doors and hardware, re-roofing, lighting, security, interior housing, fire alarm systems, unrelated repairs, installations, and painting.

The State Relocatable Classroom Program

The Relocatable Classroom program was designed to meet the needs of school districts that were impacted by excessive growth or unforeseen classroom emergencies. The State Allocation Board allocated funds for the acquisition, installation, and relocation of safe portable classroom facilities. The State maintained a fleet of 5,000 furnished classrooms that could be leased to school districts for \$4,000 per year. Hardship cases could lease portables for \$2,000 per year. These portable units were available on a first-come, first-served basis. However, there was no maximum amount of time a school district could keep the portables, and districts were not required to return them. Thus, some school districts have kept the portables indefinitely.

Relocatable Classroom Application Process

In order to participate in either relocatable classroom program, a school district was responsible for site preparation costs including electrical hookup, plumbing connection, a State Architect approved plan, insurance and maintenance. After approval by the Board, the district would be reimbursed for the cost of architect fees, electrical hookup, furniture and equipment, and plumbing installation. However, reimbursements were capped at \$9,450 per classroom.

The Unused Site Program

The Unused Site Program was established in 1974 as part of the General Lease–Purchase umbrella. It required school districts and county superintendents of schools to pay a fee for district properties that were not used for “official” school purposes. “Official” school purpose was defined as being used for K-12 education, continuing or adult education, special education, childcare, or administration of any educational units.

This program did not provide funds directly to schools. However, resources generated from the fees that districts paid for unused facilities were used to cover deferred maintenance costs and to service the debt on the state’s various school construction bonds. Since the Board simply administered the return of funds to the state, the funds could not be redirected to other programs administered by the Board. Proposition 1A eliminates their fee requirements.

The Office of Public School Construction Staff Review and The State Allocation Board’s Appeals Process

The State Allocation Board meets roughly 11 times a year. At each meeting the Board reviews and approves about 200 applications for funding. Prior to the State Allocation Board’s review, the Office of Public School Construction staff processes all applications. Before Proposition 1A, the approval processes for the programs, except for the growth and modernization programs, were straightforward. Either a school district’s application fit a program’s description for reimbursement, or it did not. Due to the complicated nature of the Growth and Modernization programs, “special considerations,” or project applications that did not fit in the parameters of the program were placed in a different category. The State Allocation Board approved roughly 90 percent of all growth and modernization projects without special consideration. Issues requiring special consideration could include peculiarities of the proposed site, or the costs associated with a project. The applications were divided into special consents or “specials,” and appeals. Both types permitted the Office of Public School Construction staff great latitude in the decision-making process, as they investigated and evaluated school district applications on a case-by-case basis.

A “special” occurred when OPSC staff reviewed a school district’s application that did not meet the standards of the program, and determined that an exception should be made. This agreement may have required several meetings between the school district’s administration and the OPSC staff. With OPSC staff recommendation, which may have

been inconsistent with State Allocation Board policy, this application would be brought before the State Allocation Board for review. This category was normally granted approval in one action.

An appeal occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined an exception should not be made. If after several meetings an agreement could not be reached, the school district would bring its case before the State Allocation Board. An appeal was granted only on a case-by-case basis. At times, legislators have spoken on behalf of school districts at Board meetings.⁹¹ The difference in the two types of special considerations was that a school district or its representative would have to defend its actions in an appeal. However, as already noted, only those people who kept up with the process and policy changes were adept enough to tackle an appeal. Therefore, a school district seeking an appeal before the State Allocation Board might seek help from legislators that represented them, or hire consultants. For instance, in the May 1998 State Allocation Board meeting, a well-versed school finance consultant appeared on behalf of the Apple Valley Unified School District. Apple Valley hired both a construction manager and a general contractor to erect its new school, in the face of board policies allowing a school district to hire only one such position. On behalf of the school district, the consultant addressed the State Allocation Board, and pointed out that in five other cases the State Allocation Board had voted in favor of a school district that hired both a general contractor and a construction manager.⁹²

Less seasoned district representatives would not have known that the State Allocation Board had already set a precedent for funding projects that include both a construction manager and a general contractor.⁹³ The OPSC staff was not knowledgeable on this issue and therefore could not be a source of information.

PROPOSITION 1A—A POSSIBLE FIX TO SAB PROCESS PROBLEMS

Proposition 1A not only authorizes an additional \$6.7 billion to K-12 schools, but it also offers a fix to several of the process problems discussed above. It replaces the provisions of the previous Lease-Purchase Program. This section discusses (1) the resource allocation provisions of the legislation; (2) the programmatic components of the legislation; and (3) how the legislation improves the resource allocation process over that which existed under previous bond programs.

Total Resource Allocation Provisions of Proposition 1A

The resource allocation system in Proposition 1A is specific and detailed. Bond proceeds are to be allocated in 2 two-year cycles: \$3.35 billion available immediately; and \$3.35 billion available after July 2, 2000. Of the \$3.35 billion that is immediately available, \$1.35 billion is earmarked for new construction, \$800 million for modernization, \$500 million for hardship cases, and \$700 million for class-size reduction.

For the second \$3.35 billion distribution, \$1.55 billion will be available for new construction, \$1.3 billion for modernization, and \$500 million for hardship cases. There are no resources in the second allocation for class-size reduction.

School districts receive funding for their projects based on a per pupil formula. The formula is based on a statewide average cost for construction, adjusted each January for inflation. The figures are based on unhoused⁹⁴ average daily attendance (ADA). The per pupil ADA formula is as follows:

	Growth	Modernization
Elementary	\$5,200	\$2,496
Middle School	\$5,500	\$2,640
High School	\$7,200	\$3,456

It is anticipated that the initial \$1.35 billion available for new construction during the first round of allocations will be insufficient to meet the needs of those school districts that are facing substantial enrollment growth. Proposition 1A establishes a priority point system for new construction projects when State bond resources are exhausted.⁹⁵ The Office of Public School Construction will process applications on a first-come, first-served basis from subsequent bond offerings.

In addition to the provisions outlined above, school districts that receive bond proceeds are required to set aside three percent of their general funds each year for 20 years for the purpose of deferred maintenance.

Components of Proposition 1A

Proposition 1A establishes three categories for funding. The first is the Growth Program, in which the State finances half the cost of new construction and the school district the other half. The second is the Modernization Program, in which 80 percent of the cost of rehabilitation is provided by the state and 20 percent by the school district. The third category is “hardship,” in which the State funds up to 100 percent of the cost for emergency needs, or an increased proportion of its share for new construction or modernization.⁹⁶

Proposition 1A holds harmless those school districts that received State Allocation Board approval for the construction phase of their projects (under the previous Priority 1 - able to provide a 50 percent match). They will receive growth and modernization funds, but under the rubric of the previous “Lease Purchase Program.” This grant is supplemented by land costs, site development, and other adjustments.

Another new provision of the Proposition is that school districts can seek modernization resources after a facility is 25 years old, rather than 30 years under the previous program.

Schools districts that had received prior Board approval for Priority 2 projects (100 percent state funding) will have to either indicate their ability to finance 50 percent of their proposed projects or reapply under one of the new programs. If the school district cannot meet the provisions of the new programs, it can apply as a “hardship” case.

The California Supreme Court ruled in 1991 that cities and counties could limit housing development on the basis of the supply of classrooms.⁹⁷ Proposition 1A suspends, until 2006, the Court’s ruling.⁹⁸ With the passage of Proposition 1A, school districts will not be able to limit new housing construction based on a rationale that school facilities do not exist. However, in 2006, if adequate bond funds for new construction are not available, cities and counties can once again deny development. Further, as discussed earlier, the Proposition permits the school board to increase developer fees to up to \$1.93 per square foot.⁹⁹ Proposition 1A sets up a system where fees can be levied of up to 50 percent and 100 percent of the costs associated with building a school by developers under certain circumstances.

Proposition 1A Improves the Resource Allocation System of the State Allocation Board

Proposition 1A makes several changes to the programs administered by the State Allocation Board. It attempts to simplify the process of applying for funds, consolidates the Board’s previous six programs into two, and attempts to create a more equitable funding system. It also makes the State Allocation Board and the Office of Public School Construction staff more accountable for their actions. Table 2 presents the differences between the Board’s previous Lease Purchase Program, and the new programs that are initiated by Proposition 1A.

Table 2 - Comparison of Lease Purchase Program to Proposition 1A Programs

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
FUNDING FACILITIES	<p>Priority 1 projects-growth and modernization-received 50 percent funding based on actual costs from the state.</p> <p>Priority 2 projects-growth and modernization-received 100 percent funding form the state.</p>	<p>Growth projects receive 50 percent funding based on a per pupil formula from the state.</p> <p>Modernization projects receive 80% funding from the state.</p> <p>Hardship projects can receive up to 100 percent of funding from the state based on three broad categories financial, physical and excessive costs.</p>
CONSTRUCTION EXCESSIVE COSTS & COST SAVINGS	<p>Some excessive costs (i.e., change orders) were reimbursed by the state. Cost savings were returned to the state.</p>	<p>Excessive costs are not reimbursed by the state and school districts keep costs savings.</p>
MODERNIZATION PROJECTS	<p>Buildings must be at least 30 years old.</p>	<p>Buildings must be at least 25 years old.</p>
PROJECT APPROVAL	<p>Projects were approved three times in conjunction with the planning, site acquisition and construction phases.</p>	<p>Projects receive one approval (except hardships that receive two approvals).</p>
FUND ALLOCATION	<p>Funds were allotted after each phase.</p>	<p>Funds are allotted only after DSA approves plans, unless there is a hardship.</p>
MAINTENANCE OF FACILITIES	<p>Required school districts to set aside two percent of their general fund for ongoing maintenance.</p>	<p>Requires school districts to set aside three percent of their general funds for 20 years for ongoing maintenance.</p>
PROPERTY LIENS	<p>State maintains a lien to properties it funds.</p>	<p>State does not hold liens, and existing liens are released.</p>
ARCHITECTURAL APPROVAL	<p>Division of State Architect approved all plans.</p>	<p>The Division of State Architect or a state approved private engineering firm may approve plans.</p>

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
DEVELOPER FEES	The cap on fees was \$1.93 per square foot; however, cities or counties could levy a higher fee and pass it to schools districts.	The cap on fees is \$1.93 per square foot, adjusted biannually. Fees may be assessed up to 50 percent of the costs of a project if a school district has accessed other forms of financing including Mello-Roos, G. O. bonds, and parcel taxes. In order to increase fees, school districts must meet two of four criteria, including MTYRE, local school bond positive votes of 50 + 1 percent, 20 percent of students are housed in portables, 15 percent of bond debt used.
WHEN STATE FUNDS RUN DRY	Projects were placed on a pending state-funding list or charged a city-based developer fee.	Modernization projects may be placed on a pending state-funding list. Growth projects may be placed on a priority points list, or the school district may collect 100 percent of financing from a developer.
CONTAINING DEVELOPMENT (MIRA, HART MURRIETA COURT CASES)	Cities and counties on behalf of school districts were able to contain residential development by suspending the building of new facilities.	School districts can not request cities or counties to prohibit residential development based on a lack of funds or school facilities until 2006.
ARCHITECT & CONSTRUCTION MANAGEMENT FEES	Percentage caps on fees based on size of projects	No caps.
MODERNIZATION PROGRAM	Provides funding to building over 30 years old, and portables over 25 years old. Calculations done on a district basis.	Provides funding for buildings over 25 years old and portables over 20 years old. Provides funding on a site-specific basis.
AIRCONDITIONING-ASBESTOS PROGRAM	Allotted funds specifically to install AC and remove asbestos.	These are now incorporated in the modernization program.

Simplification

To further simplify the process, the Proposition reduced the number of school facility financing phases from three to one.¹⁰⁰ This is now possible because school districts receive a flat grant from the State based on the number of students they enroll, rather than on the estimated cost of a project. Under the previous program, each phase of a project was evaluated independently; thus the cost to the State for any given project could change. Under the new program, a school district receives a single grant for a single project, and cannot request that the state fund additional need beyond the original request.¹⁰¹

The Proposition also explicitly requires that the State Allocation Board initiate a public hearing process that notices any policy changes considered by the Board. It requires that the Board make available to school districts written up-to-date documentation that clearly explains its policies, and specifically describes how its new programs work.

Consolidation

Until Proposition 1A, the State Allocation Board administered as many as 13 programs. The most current six are discussed above. With the enactment of Proposition 1A, the number of programs has been reduced to two, along with a special category for hardship cases. This consolidation of programs makes it easier for school districts to choose a program that best suits their needs. It precludes the type of creative tactics that school districts were forced to pursue to match their projects to the right program in order for them to receive funding.

A More Open Process

The Proposition causes a major shift in policy direction for the State Allocation Board. Under its previous programs, the Board funded both new construction and modernization on a 50/50 matching basis. Under Proposition 1A, the Board is required to fund modernization projects more generously than new construction projects, in that the State will fund 80 percent of the cost for modernization compared to 50 percent for new construction.

Another major outcome of Proposition 1A is that the State Allocation Board no longer has the authority to offer grants to school districts that may seek funds for special projects without any real statutory framework. Now school districts must demonstrate that they meet specific hardship criteria set out in the new law. The practical effect of this change will depend on how the Board interprets this provision.

Previous legislation implicitly required that the State Allocation Board follow guidelines set forth in the Administrative Procedures Act (APA); however, the Board did not do so. Proposition 1A explicitly requires the Board to follow APA guidelines. This means that any change in policy or regulation considered by the Board must be properly noticed to the public before the Board can act. This requirement, if the Board follows the full spirit, will allow school districts to be fully informed of Board policies and procedures, as well as its rules and regulations.

PITFALLS IN THE PROCESS PRIOR TO PROPOSITION 1A

This section discusses the State Allocation Board's attempts to improve its system and the pitfalls that existed under the previous programs.

Until recently, rules governing the application process were labor-intensive, both for school districts and the state agency personnel (including the Office of Public School Construction and the Division of the State Architect). In 1989, the Legislature received a report outlining the complex application.¹⁰² The report identified 54 steps school districts had to perform in order to receive application approval and eventual financing. In addition, the process required 24 separate forms.

Process Streamlined Recently

Since 1992, the OPSC has tried to be more efficient. Changes implemented by OPSC included: simplified and streamlined applications; improved response time for application review; improved policy information dissemination; and school districts were empowered to complete their own applications.

The most concrete indication that the Office of Public School Construction was becoming more efficient was in the application process. The application process for the Growth Program was reduced from 54 steps to nine. In addition, the number of forms that were needed to apply for funding was reduced from 24 to four.

School districts complained and begged for applications to be checked and approved for a State Allocation Board meeting agenda in an expeditious fashion. As part of the efficiency movement, the Office of Public School Construction set a goal to reduce the time from when a school district filed a completed application until it was placed on a State Allocation Board meeting agenda from over 400 days to 60 days.¹⁰³ Prior to Proposition 1A, applications on average still took longer than the 60 days to be reviewed. However, the office's efficiency achievement by reducing application review days is noteworthy.

In addition, the Office of Public School Construction worked more closely with school districts in the decision making process and provided greater leeway. In particular, school district personnel could self-certify certain information pertaining to a project rather than rely on state agency personnel. The self-certification process removed the time a school district would wait for a response from the Office of Public School Construction. It thereby shortened the application process.

Under its previous programs, it was difficult for school districts to get information pertaining to the funding process from the Office of Local Assistance (OLA) staff or from written materials. The Office of Public School Construction is now more service-oriented.¹⁰⁴ One can obtain information in person or from the office's Internet site.¹⁰⁵ In fact, the staff of the Office of Public School Construction is continually placing more information on the Internet. This information includes an automated project tracking system. Senate Bill 50 regulations, office contacts, and old board policy changes.

School Districts in Line Stand on Shifting Sands

Under the previous allocation system, school districts that completed their applications and were placed in queue were never guaranteed funding in the order their applications were received. The State Allocation Board dictated that school district applications were placed in an unfunded application list on a first-come/first-served basis. However, there were four general ways that school district applications could be “bumped” up or down in the queue.

Broad Classification Decisions

The first way a school district could get bumped was if the State Allocation Board decided to redirect its emphasis and fund a broad category of projects. For instance, the SAB could decide to fund all application projects from small school districts (no matter where they were in queue). If a school district was large, hundreds of proposed school projects could jump ahead in the funding queue.

The second way a school district could get bumped was if the State Allocation Board shifted the specific funding program allocations. Thus, for example, the State Allocation Board could decide to shift funds earmarked for the Growth Program to the State Portable Classroom Program.

Specific School District Decisions

The third way a school district could get bumped was if another school district application in queue with a later application filing date appealed to the State Allocation Board to change its application filing date to be ahead of other school districts. That school district application would be funded first.

The fourth way a school district could get bumped was if an emergency situation occurred and a school district requested critical hardship money from the State Allocation Board. The Board could provide these funds when available.

The application process requires equity and balance in order to ensure fair competition by school districts for State funds. The process needs to be flexible enough to handle emergency situations, yet firm enough to prohibit jockeying among school districts for better placement in the queue.

Proposition 1A halts the movement of funds from one program to another. However, the other examples are still feasible. Jockeying of school districts by consultants for better placement in line may continue to occur. This is especially true as Proposition 1A cannot handle the pent up demand for State funds. The next section discusses options that the Legislature may consider in order to improve this system.

OPTIONS FOR IMPROVING THE SCHOOL FACILITY FINANCING SYSTEM

A Separate List for Small and Rural School Districts

When the Proposition 1A funds are exhausted, new construction project applications will receive priority points for future funding. Small and rural school districts may require separate lists to ensure that they are placed near the front of a funding queue. This is necessary because there is no guarantee that the entire queue would receive future funding. Small and rural school districts, based on the current priority points system, may not receive enough priority points to approach the front of the queue. Larger school district applications, with greater per pupil need, may be able to position themselves high enough in the queue for funding by receiving favorable OPSC evaluations. Proposition 1A allows schools to skip to higher positions in the funding queue if they score higher priority points based on their number of unhoused students or if they can demonstrate a special hardship. *The Legislature may wish to create a separate list for small and rural school districts to create a more equitable system.*

Annual Report and Independent Accounting

In the early 1990s, many state agencies, boards, and commissions, because of budget cuts, postponed writing annual reports to the Legislature. These reports provided financial and policy information to the public. The State Allocation Board was one government entity that has not prepared regular audited reports of its programs' operations and expenditures for public review. The State Allocation Board will receive \$6.7 billion over the next four years to fund school construction projects. *The Legislature may wish to require the Board to prepare for the Governor and Legislature an annual report that details how and to whom bond funds were distributed. The Legislature may wish to require that an independent accounting firm or the State Auditor General prepare the Board's report.*

On-Line Technical Assistance

Although the application and funding process administered by the Office of Public School Construction has been streamlined and simplified in recent years, certain components of the process are still cumbersome. The process should be simple enough that school districts do not need to hire consultants or lobbyists to advise them or to shepherd their proposals. *The Legislature may wish to pass legislation that would require the OPSC to develop a technical assistance program to provide school districts with the necessary information and advice they need in order to qualify for and receive bond funds. Such a system could include an automated Internet help-line.*

A Special General Fund Appropriation for School Construction

The State's bond capacity may not be able to fund every State infrastructure need, including schools, transportation, prisons, and water during the next decade. School facility needs are estimated conservatively at roughly \$10 billion, while some estimates have put the figure at \$40 billion for the next decade alone. According to the Department of Finance, the State can afford to service approximately \$25 billion in additional debt. Thus, school facility financing alone could incur the entire debt capacity of the State. *The Legislature may wish to create a special appropriation fund for public school capital outlay as part of the State General Fund to augment the State's bond programs. In addition, the State may wish to design a school construction reserve fund, which is funded from budget surplus revenues.*

ENDNOTES

¹ Chapter 243, Statutes of 1947.

² If a school district wants state funding for construction or repair of a school, it must apply to the State Allocation Board for the money. There are school districts that repair and construct school buildings without the assistance of the State Allocation Board (i.e., San Diego Unified School District, San Luis Unified School District). However, this report will focus on a school district that requires state support.

³ Chapter 243, Statutes of 1947. Initially, the State Allocation Board administered a number of Public Works programs for the State ranging from housing and employment assistance to school facilities construction. Various programs include: the Postwar Planning and Acquisition, Construction and Employment Act, Veterans Temporary Housing, State School Building Construction Programs, Emergency Relief Programs, and Community Assistance Programs (State Allocation Annual Report 1983-1984, p. 1).

⁴ California Government Code 15502.

⁵ Government Code 15490.

⁶ While the State Allocation Board submitted policy changes to school districts, an up-to-date handbook was not made available. In addition, turnover of board members and school administrators may lead to ignorance of programs and the program changes.

⁷ Amendments to the Constitution, Proposition 1, November 8, 1949.

⁸ Amendments to the Constitution, Proposition 4, November 4, 1952.

⁹ Op.cit.

¹⁰ California School K-12 enrollment grew from 1.689 million students in 1950, to 4.633 million students in 1970 (State of California. Department of Education. Education Demographics Unit. CBEDS Data Collection. "Enrollment in California Public Schools 1950 through 1997").

¹¹ This is defined by California Education Code, Section 15102, as the legal limit of debt that a school district can incur based on the assessed value of property in that school district.

¹² Known as the State School Building Aid Program. The Legislature determined qualifications in order for school districts to participate in this program. They include the following provisions:

1. To qualify for a loan from the State a school district must have voted local bonds to 95 percent of its bonding ability.
2. Borrowing districts financially able to do so must repay the money to the State. Terms of 30 or 40 years of repayments are provided.
3. No money can be borrowed by a school district unless the proposed loan is approved by two-thirds vote of the electors of the district.
4. School construction, financed in any part by State loans will be subject to cost controls to be established by State Allocation Board (includes restrictions on the number of square feet of construction allowed per pupil).

¹³ Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for \$250 million.

¹⁴ Voters set the initiative process in motion in 1911 under reform-minded Governor Hiram Johnson. Los Angeles Times. "State's Voters Face Longest List of Issues in 66 Years; November 8 Ballot to Carry Maze of 29 Propositions." July 7, 1988, p. 1-1.

¹⁵ Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for \$250 million.

¹⁶ Amendments to the Constitution, Special Election, June 7, 1960, Proposition 2, Part II, Appendix. p. 2.

¹⁷ School Building Safety Fund, December 1971.

¹⁸ The Field Act, that mandates that school construction is able to withstand earthquakes, has yet to dictate how to build an indestructible building.

¹⁹ Propositions and Proposed Laws, Together with Arguments, Primary Election Tuesday, June 6, 1972, p. 1.

²⁰ Ibid.

²¹ State Allocation Board Report to the Legislature 1972-1973 Fiscal Year, p. 3.

²² Public school K-12 enrollment declined from 4.457 million students in 1970 to 3.942 million students in 1980. (State of California. Department of Finance. Demographic Research Unit. 1997 Series California Public K-12 Graded Enrollment).

²³ Op.cit., p. 2.

²⁴ Ibid.

²⁵ Property rich communities often have more poor people than property poor communities. The presence of commercial and industrial development can make an otherwise poor district "rich" in its tax base. Conversely, affluent communities often discourage industrial development that would make them property rich, but environmentally poorer. The lack of correlation between poor people and property poor districts is often overlooked in discussions of school finance issues. Even though the distinction has been known for a long time. Campbell, Colin D.; Fischel, William A. National Tax Journal "Preferences for School Finance Systems; Voters Versus Judges." Footnotes from Helen Ladd. "Statewide Taxation of Commercial and Industrial Property for Education." National Tax Journal (June 1976): 143-153.

²⁶ Goff, Tom. "Passage of Tax Reform School Financing Bill Urged by Riles." Los Angeles Times, July 19, 1972, p. 1-1.

²⁷ Section 17700 et al., Education Code.

²⁸ Property values were increasing dramatically all over the State. This model stopped school districts from speculating on land that was financed by the State.

²⁹ Op.cit., p. 2.

³⁰ Proposition 1 of 1978 was defeated 65 percent to 35 percent. Propositions from 1976, 1978 and 1994.

³¹ Proposition 1 of 1976 would have provided \$250 million, and Proposition 1 of 1978 would have provided \$300 million.

³² Shultz, Jim. "Major Firms Gained Most With Prop. 13." Sacramento Bee, September 13, 1997, p. F-1.

³³ Ibid.

³⁴ Karmin, Bennett. California's Bankrupt Schools. " New York Times, July 17, 1983, pp. 4-21. Linsey, Robert. "San Jose Schools Declare Insolvency in Wake of Tax Revolt." The New York Times, June 30, 1983, p. A-14. However, some school districts that were academically and fiscally well managed prior to Proposition 13 faced problems. In 1983, the San Jose Unified School District filed for bankruptcy. The National School Boards Association stated that it was the first insolvency of a large school district since the depression. The San Jose Unified School District, at the time, held a reputation for excellence in education. It ranked 14th in the state in the ratio of students to teachers, and its teachers' salaries ranked second highest in Santa Clara County. However, since Proposition 13, the school district set aside maintenance and construction projects, laid off teachers and non-teaching administration, until it could not make further reductions and still continue to pay its staff.

³⁵ Chapter 282, Statutes of 1979. State School Building Lease Purchase Bond Law of 1984—Voter Pamphlet Analysis.

³⁶ While the loan program was still on the books, the state made exceptions to aid school districts.

³⁷ California Education Code, Sections 17730.2, 17732. However, the Attorney General cited that 10 percent of local funds to cover the costs associated with facility development is not required. Coalition for Adequate School Housing. CASH Register, November 1984, p. 3.

³⁸ California Department of Education. CBEDS Data Collection. Education Demographics Unit. 1998.

³⁹ Coalition for Adequate School Housing. CASH Register, September 1982, p. 1.

⁴⁰ Ibid.

⁴¹ Coalition for Adequate School Housing. CASH Register, December 1982, p. 2., (in 1980-81 dollars).

⁴² This evaluation was amended annually. The State developed a formula that was based on standards that considered how a facility was used and how many pupils were unhoused. In some years, the State gave preference to unhoused pupils, while in other years, the state gave first consideration to how a facility was used. Facility use included childcare, before and after school programs, adult education, and traditional K-12 programming.

⁴³ Savage, David. "Resolution Brings Tax Cuts, Schools Told." Los Angeles Times, October 15, 1982, p. B1.

⁴⁴ Assembly Bill 62, Chapter 820, Statutes of 1982.

⁴⁵ California Department of Education. California Year-Round Education Directory 1997-98.

⁴⁶ For example, a school district that needed to build a new elementary school that cost \$4 million could receive \$400,000 from the state if it chose to redirect students to existing facilities that incorporated the MTYRE program.

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- ⁴⁷ Chapter 886, Statutes of 1986, added provisions that capped the grant at \$125 per student.
- ⁴⁸ School districts that could not offer to cover any expenses (now referred to as a Priority 2) could conceivably wait years. MTYRE continues today, and has been a successful program. In 1997, more than 1.19 million or about 22 percent of California students attended schools with year-round calendars. The State Department of Education estimates that the MTYRE program has saved that State more than \$1.8 billion in construction costs since its inception. In 1997-98, \$66 million was allocated from the "mega item" of the state budget. About \$40 million was sent to Los Angeles Unified School District to cover the reported 40,872 excess students. However, once students are "excess," they can not be counted as students for the Office of Public School Construction in the erection of new facilities. Approximately 102,000 students are "excess." While the program has provided relief for school construction, it remains a controversy whether educationally the program is successful.
- ⁴⁹ Proposition 46 on the June 1986 Ballot.
- ⁵⁰ Greene-Hughes School Building Lease-Purchase Bond Law of 1986 Voter Pamphlet.
- ⁵¹ Proposition 46: Property Taxation, June 3, 1986.
- ⁵² DeWolfe, Evelyn. "Schools Get Low Marks for Asbestos." Los Angeles Times, January 8, 1989.
- ⁵³ School enrollment bottomed to 4.089 million students in 1983, the same population amount that occurred in 1964. By 1986, student population increased to 4.377 million. California Department of Education. Education Demographics Unit. CBEDS. 1998.
- ⁵⁴ Op.cit.
- ⁵⁵ Op.cit.
- ⁵⁶ State Allocation Board Report to the Legislature 1984-85, 1985-86, Fiscal Years.
- ⁵⁷ AB 2926, Statutes of 1986.
- ⁵⁸ These were referred to as the Mira, Hart, Murrieta court cases.
- ⁵⁹ Later that year, fees were capped by the Legislature at \$1.50 per square foot on residential units statewide.
- ⁶⁰ Fulton, William, "California Pulls Out the Stops; Cities Cope with Government Budget Deficit." American Planning Association, p. 24, October 1992. About one-third going to school districts.
- ⁶¹ Cummings, Judith. "CA Turns to Developer Fees." The New York Times, January 16, 1987, p. A-15.
- ⁶² Chapter 1261, Statutes of 1990.
- ⁶³ Legislative Analyst's Office, p. 23. "Building Schools in California: What Role Should the State Take in Local Capital Development?" Linda Herbert. Jesse Marvin Unruh Assembly Fellowship Journal, Volume II, 1991, pp. 1-4.
- ⁶⁴ Op.cit.
- ⁶⁵ Substantial enrollments are defined as at least 30 percent of the district's enrollment in kindergarten or any of the grades one to six, inclusive, or 40 percent of the students in the high school attendance area, see Education Code, Section 17717.7g.
- ⁶⁶ Conversation with Mike Vail, on January 21, 1999. Mr. Vail is the Assistant Superintendent of Facilities and Governmental Relations at the Santa Ana Unified School District.
- ⁶⁷ The class size reduction program reduced the ratio of students to teachers in kindergarten to third grades. It exacerbated the obstacles for school districts that were growing in size, but lacked facilities to house the new students. School districts that were not growing had to provide additional classroom space to account for smaller ratios of teachers to students in kindergarten to third grades. The State Allocation Board provided portable classrooms to cover the smaller-sized classes. The State Allocation Board estimates that thousands more classrooms are needed.
- ⁶⁸ Department of Finance, School Populations Projections. 1998.
- ⁶⁹ Jacobs, Paul. "Backers of Education Cite Jobs, Overcrowding." Los Angeles Times, May 27, 1992.
- ⁷⁰ Auditor General of California. "Some School Construction Funds are Improperly Used and not Maximized." January 1991.
- ⁷¹ County of Sacramento Superior/Municipal Court, Court #97F05608, CJIS XREF #250593.
- ⁷² Vrana, Deborah. "Assembly Rejects Plan in California to Ease Passage of School Bonds." The Bond Buyer, January 27, 1992.
- ⁷³ The passage required a two-thirds vote by the legislature.
- ⁷⁴ November 1993, Proposition 170 failed by 70 percent.

⁷⁵ Colvin, Richard Lee. "Bond Victory Heartening to Educators." Los Angeles Times, March 28, 1996, p. A1. Anderluh, Deborah, Sacramento Bee, March 31, 1996, p. A1. Of the \$7 billion, \$1.6 billion was estimated for overhauls of buildings over 30 years old, and \$5.6 billion for new construction and classroom additions.

⁷⁶ Colvin, Richard Lee. "The California Vote (a Series)." Los Angeles Times, March 19, 1996, p. A3.

⁷⁷ If a school district has an application with the SAB to repair its roof and the roof is not fixed in a reasonable period of time, further structural damage may occur. This new or additional damage could bump the project to the top of the list.

⁷⁸ See the sub-section entitled "School Districts in Line Stand on Shifting Sands."

⁷⁹ Bazar, Emily and Jane Ferris. "Money for Portable Classrooms." Sacramento Bee, September 26, 1996.

⁸⁰ State bonds were proposed biannually in 1988, 1990, and 1992.

⁸¹ In 1976 and 1978 bond measures were defeated by the electorate.

⁸² "Lawmakers Scrap Over Billions in School Bonds." California Public Finance, May 5, 1997, p. 1.

⁸³ "Huge School Bond Mulled" California Public Finance, September 8, 1997, p. 1.

⁸⁴ This included the type of facility and the number of teaching stations (classrooms).

⁸⁵ The Department of Education, School Facilities Planning Division is responsible for site review and site plan review and is required to recommend all school locations for new schools and additions to schools site regardless of the funding source.

⁸⁶ For example, in 1988, the Los Angeles Unified School District wanted to rehabilitate a hotel into a school. The State Allocation Board paid \$48 million to an escrow account in an attempt to hold the price to acquire the Ambassador Hotel. When the school district and State Allocation Board realized that the site was not acceptable and decided to back out of the contract, they found that the developer had removed the money placed in the escrow account. In addition, when the district attempted to backpedal out of the contract, the owner sued for a breach of contract. Currently, there are negotiations between the school district and the owner of the property, Donald Trump.

⁸⁷ A school district was responsible for developing detailed cost estimates for the proposed school or addition. Site support costs provided funds for the preparation of environmental impact documents, development of relocation reports, determination of relocation claims, and negotiation of site purchases. The state reimburses up to 85 percent of the amount expended for eligible sites.

⁸⁸ This list was limited to those school facility components that have approached or exceeded their normal life expectancy.

⁸⁹ Applications for projects and appeals with correspondence from Carol A. Fisher, Apple Valley Unified School District, Author.

⁹⁰ Reimbursable fees and costs related to plans include architect fees, Division of State Architect/ORS Plan Check fee, CDE Plan Check Fee, Preliminary Tests (like soil, foundation, and exploratory borings) and other fees, for instance, advertising construction bids, and printing of plans.

⁹¹ Pascual, Psyche. "Funding to Build High School Finally Approved By State." Los Angeles Times, June 17, 1993.

⁹² Understanding the board's other five opinions would be difficult to track if not impossible to uncover.

⁹³ To evaluate the State Allocation Board's policies and procedures, it was necessary to obtain the State Allocation Board Handbook. The Handbook contains procedures and policies for reviewing and criteria for approving applications from school districts for bond funds to build new schools. When this report was initiated, the Handbook that the State Allocation Board provided was dated 1995, but contained policies adopted in 1993. Further, the State Allocation Board changes its policies and procedures often, and has no administrative process by which it updates its Handbook. An up-to-date, comprehensive list of policies and procedures was not available in any other format. A new handbook for the Lease Purchase Program was available on line - however, it also suffered from a lack of regular updating. The State Allocation Board meets every month and, hypothetically, policy changes can occur each month. Prior to Proposition 1A, despite being subject to the Administrative Procedures Act, the State Allocation Board had no public notice or participation requirements for the procedures by which it changes its policies. Only long-term policies are published in the California Regulatory Notice Register. Such policies included contracting and affirmative action requirements. Furthermore, staff reported that policies change so frequently, that it would be impossible to include relevant policies in the reporter or any other document.

⁹⁴ The number of students above the maximum number set by CDE to be in a classroom.

⁹⁵ The priority points ranking mechanism is based on, among other things, the percentage of currently and projected unhoused students relative to the total population of the applicant district or attendance area.

⁹⁶ In hardship cases, the State will fund more than 50 percent of new construction if a school district is unable to come up with its 50 percent match and had gone through a reasonable effort. Similarly, districts that are unable to offer a 20 percent match for modernization can seek relief from the State. Financial hardship is defined for those school districts that cannot afford to build, repair, or replace facilities because of fiscal restrictions (for example, an inability to match state funding because of an inability to pass local bonds or a lack of bonding capacity). Facility hardship can also apply to school districts that lack adequate housing for their pupils due to a lack of health and public safety conditions; or because of a natural disaster, traffic safety, or the remote geographic location of pupils (i.e., rural). Excessive costs may be attributed to geographic location, size of project, the cost associated with a new project in urban locations that may require high security or toxic cleanup, and sites that may require seismic retrofitting.

⁹⁷ The State Supreme Court ruled that school districts that were unable to accommodate enrollment growth could ask their city and county councils to limit real estate developers from building additional housing. Some developers found it necessary to offer additional resources (land or money) to get support from school districts and city councils for their projects.

⁹⁸ In three legal challenges, the courts have ruled that cities were not precluded from making zoning or other land-use decisions, because of the availability of classroom space, see *Mira Development Corporation v. City of San Diego*, *William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles*, *Murietta Valley Unified School District v. County of Riverside*. The practical effect of the rulings was that cities could limit development on the basis of the supply of classrooms. Some developers found it necessary to offer additional resources, land or money, to get support from school districts and city councils for their projects.

⁹⁹ If the State expends all of its Proposition 1A resources prior to 2006, school districts can ask developers to pay 100 percent of site acquisition and school construction costs. In order to receive developer support under these conditions, school districts must participate in the Multi-Track Year-Round Education program. The Proposition includes language that the State may reimburse developers for up to 50 percent of their costs if subsequent bond funds become available.

¹⁰⁰ Under the old program, school districts had three application phases for each of their projects – planning, site, and construction. Under the new program, there is only one application phase for the entire project proposal, except under hardship provisions.

¹⁰¹ However, once the funds are distributed to the school district, the school district keeps the interest accrued on the funds.

¹⁰² Price Waterhouse. Joint Legislative Budget Committee Office of the Legislative Analyst. Final Report of the Study of the School Facilities Application Process. January 10, 1988.

¹⁰³ One streamlined step is the self-certification process in the Lease Purchase Program.

¹⁰⁴ However, in light of the office's accomplishments, the author had to request information routinely more than once.

¹⁰⁵ www.dgs.ca.gov/opsc.

¹⁰⁶ School Services of California.

APPENDIX A

School District Financing Mechanisms

In addition to state bond funds, school districts have a variety of other alternatives for funding school construction. These include developer fees, certificate of participation, general obligation bonds, and Mello-Roos taxes. Also, a developer may simply build a school rather than consider other financing alternatives.

Local General Obligation Bonds

In 1986, after an eight-year hiatus, school districts could once again use general obligation bonds to finance school facilities. Bonds are a favorable method of financing, even though they require a two-thirds vote and proceeds cannot be used for items such as buses and furnishings. In 1986, 14 school districts offered bond initiatives. In 1987 and 1988, this number grew to 51 and 54 school districts, respectively. In November 1998, 36 school districts held bond elections.¹⁰⁶

Developer Fees

In 1978, the Wilsona School District was the first to use developer fees. These fees added about \$2,000 to the cost of a typical home in the Lancaster area. While school districts were exacting developer fees, there was no statute that explicitly permitted this activity. The Legislature standardized the authority by giving school districts direct authority to charge developer fees. School districts welcomed developer fees especially because they did not require an election, and the funds associated with the fees could be used for a wide variety of facilities that were associated with enrollment growth. In response to a growing number of complaints from developers, the Legislature capped the amount that could be collected in 1986. Proposition 1A prohibited local agencies from using the inadequacy of school facilities as a reason for not approving housing development projects. The authority to raise developer fees was placed with the State Allocation Board. However, developer fees generally are not enough to cover the full costs of constructing a school.

Certificates of Participation

Certificates of Participation (COPs) are another, though complicated, tool for districts to raise money without voter consent. The most common arrangement is that the district leases a new school owned by another government agency or a nonprofit agency, which in turn raises the capital to build the school by selling shares (certificates of participation). In the long run, lien revenues COPs are remarkably like bonds. One disadvantage of the COP arrangement is that it does not provide a new revenue source for the lease payments. Funds usually come from the school district's general fund.

Mello-Roos

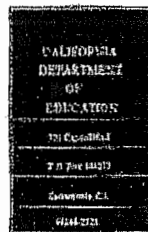
The Mello-Roos Community Facilities Act, established in 1982, authorized school districts and local governments to form "community facilities districts." Subject to the approval of two-thirds of the voters, these special districts could sell bonds to raise revenues for the purpose of financing new buildings, or to rehabilitate existing school facilities. A majority of Mello-Roos districts are created in inhabitable areas that are proposed for development where voting is by the landowners. The district sets a specific tax per house.

EXHIBIT C

Fiscal Management Advisory 07-02



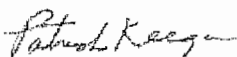
DELAINE EASTIN
State Superintendent of Public Instruction



FISCAL MANAGEMENT ADVISORY 97-02

October 30, 1997

TO: County and District Superintendents

FROM: 
Patrick Keegan, Deputy Superintendent
Finance, Technology, and Information Services

SUBJECT: Fees, Deposits, and Other Charges

School district administrators frequently ask the Department to provide additional guidance on the matter of fees. This Advisory which supersedes Fiscal Management Advisory 87-03 is provided for that purpose, and reflects the most recent legislation and California Supreme Court interpretations. The following narrative contains a number of conclusions based on legal references. Most of these references are to a particular case or opinion. Those conclusions without attribution represent the opinions of the Department's Legal Office.

TUITION, FEES, DEPOSITS, AND OTHER CHARGES IN CALIFORNIA PUBLIC SCHOOLS, K-12 AND ADULT SCHOOLS

I. A Free Public School System

"A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law."¹

With this language the State Board of Education made clear that fees are not to be imposed except where specifically authorized by law. This administrative regulation, or "law" of the State Board was promulgated based on the authority of Article IX, Section 5 of the California Constitution. Article IX, Section 5 provides for a free school system:

"The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

The State Supreme Court in 1874 held that this provision entitled students to be educated at public expense.²

The Attorney General has, in several opinions,³ consistently ruled that school districts do not have authority to levy fees for any elective or compulsory class. Further, districts may not require security deposits for locks, lockers, books, class apparatus, musical instruments, uniforms, or other equipment.

The administrative regulation noted above prohibited fees except those "...specifically authorized by law." Certain fees have been authorized by law since the rule was promulgated.

The 1984 California Supreme Court decision, Hartzell v. Connell,⁴ raises serious questions about the imposition of a non-statutory fee for extracurricular activities. The lead opinion acknowledges that fees may be charged for "recreational" activities but not for "educational" activities. Extracurricular activities are described in the opinion as an integral component of public education; they are a part of the educational program according to this decision.

The court held that the "...imposition of fees for educational activities offered by public high school districts violates the free school guarantee. The constitutional defect in such fees can neither be corrected by providing waivers to indigent students nor justified by pleading financial hardship."

¹Title 5 California Code of Regulations, Section 350

²Wade v. Flood, 48 Cal. 36, 51 (1874)

³Ops. Cal. Atty. Gen. No. NS-4114, 1942

⁴35 Cal. 3d 899 (1984)

II. Fees Authorized by Law

The Education Code specifically authorizes certain fees. Except for home to school transportation fees discussed later, none of those Code sections have been challenged and the Hartzell v. Connell decision did not directly rule on their legality. Therefore, districts may continue to levy fees as authorized in the following Education Code sections:

- A. Fees that a district may collect for furnishing materials to a pupil for items the pupil has fabricated from such materials for his or her own use. Such fees may not exceed cost. (Education Code section 39526)
- B. Fees that a district may charge pupils for transportation to and from school under limited circumstances. (Education Code sections 38028, 39807.5 and 39837)
- C. Charges for food served to pupils. (Education Code sections 39870-39874, 39876)
- D. Charges to the parent or guardian of any pupil who loses a book, defaces books or other school property. Liability limits for lost items or damage are adjusted annually by the State Superintendent of Public Instruction pursuant to statute. (Education Code section 48904)
- E. Charges for field trips or excursions, principally for transportation. The authority to charge a fee for field trips or excursions is not directly stated in the Education Code. Rather, it provides that "No pupil shall be prevented from making the field trip or excursion because of lack of sufficient funds." (Education Code section 35330)
- F. Districts must make medical, hospital, or accident insurance available to pupils who may be injured while participating in field trips. The cost of the insurance may be paid by the pupil or his parents. (Education Code section 35331)
- G. Governing boards may expend from the general fund of the district any money which is budgeted for community services to establish and maintain community service classes. They may charge student fees not to exceed the cost of maintaining such classes. (Education Code section 51815)
- H. A governing board may charge a tuition fee to adults for any class except classes in English and citizenship for foreigners, classes in elementary subjects, and classes for which high school credit is granted when taken by a person not holding a high school diploma. (Education Code section 52612)

- I. Districts must provide, and each member of an athletic team must have, accidental death, injury and medical insurance coverage. The cost of such insurance may be paid by the pupil unless the pupil is unable to pay for such insurance. (Education Code sections 32220-32224)
- J. A school district may require a deposit from a borrower of school band instruments, music, uniforms, and other regalia for use on an excursion to a foreign country. (Education Code section 40015)
- K. Pupils whose parents are actual and legal residents of an adjacent foreign country or an adjacent state shall be charged a tuition fee. (Education Code sections 48050 and 48052)
- L. The regulations of the governing board may provide for the sale of materials purchased from the incidental expense account to pupils in classes for adults, for use in connection with such classes. The proceeds of all such sales shall be deposited in that account (Education Code section 52615). A high school district board may charge for textbooks used in classes for adults or impose a refundable deposit on loaned books. (Education Code section 60410)
- M. The governing board of a school district may sell class material to persons enrolled in classes for adults. This may include materials necessary for the making of articles by students enrolled in adult education. The materials shall be sold at not less than the cost to the district; any article made shall be the property of the person who made it. (Education Code section 39527)
- N. The governing board of any elementary, high, or unified school district may charge a fee for school camp programs, provided that payment of such fee is not mandatory. No pupil shall be denied the opportunity to participate in a school camp program because of non-payment of the fee. (Education Code section 35335)
- O. Families utilizing child care and development services shall be charged a fee by the school district, but no fees shall be assessed against families whose children are enrolled in the state preschool program, or for such services provided to severely handicapped children (Education Code sections 8263(c)(f) and 8250(d)). Standards for fees appear in Education Code section 8265. The school district may also impose a fee for a program of supervision of children before and after school. (Education Code section 8487 and 8488)
- P. School districts may offer a fingerprint program for children in kindergarten or newly enrolled children and shall assess a fee to the parent or guardian who chooses to participate. (Education Code section 32390)

III. District Obligation to Provide Without Charge.

The opinions of the Attorney General mentioned earlier indicate that charges may not be levied for the following:

- A. A deposit in the nature of a guarantee that the district would be reimbursed for loss to the district on account of breakage, damage to, or loss of school property.
- B. An admission charge to an exhibit, fair, theater or similar activity for instruction or extracurricular purposes when a visit to such places is part of the district's educational program.
- C. A tuition fee or charge as a condition to enrollment in any class or course of instruction, including a fee for attendance in a summer or vacation school, a registration fee, a fee for a catalog of courses, a fee for an examination in a subject, a late registration or program change fee, a fee for the issuance of a diploma or certificate, or a charge for lodging.
- D. Membership fees in a student body or any student organization as a condition for enrollment or participation in athletic or other curricular or extracurricular activities sponsored by the school.
- E. Education Code section 48053 prohibits charging an apprentice, or his or her parents or guardian, for admission or attendance in any class.
- F. Textbooks and workbooks must be furnished without charge by elementary and high school districts except for classes for adults. A charge may not be made for their use (Education Code sections 60070 and 60410).

Education Code section 40011 provides:

"Writing and drawing paper, pens, inks, blackboard erasers, crayons, lead pencils, and other necessary supplies for the use of the schools, shall be furnished under direction of the governing board of the school district."

The Attorney General has issued an opinion interpreting this language. He was asked specifically whether a student could be required to furnish any or all of the following:

- A. Art material for art classes and mechanical drawing sets
- B. Cloth to be used in dressmaking classes and wood for carpentry classes
- C. Gym suits and shoes for physical education classes

- D. Bluebooks in which to write a final examination
- E. Paper on which to write a theme or report when such theme or report is a required assignment.

The Attorney General concluded that all the above-mentioned materials were "necessary supplies" and as such had to be furnished by the school district. He reasoned that the articles listed in A, B, C, and D, "appear to be supplies that must be available to students in order to participate in regular classroom work in the particular subjects involved." As to E, the Attorney General stated that "paper to be used on which to write a theme or report must also be furnished when required as a part of the classroom activity."⁵

The Attorney General limited his discussion to the questions specifically asked and did not state what materials a district is not obligated to furnish. However:

"[s]upplies,...must be furnished free of cost to students when the supplies are what might be termed 'school supplies' and are necessary in order for the students to pursue a course of study."

The Attorney General's use of the term "school supplies" is meant to exclude from the district's obligation those items or materials which, although necessary for class participation, are essential regardless of whether or not a person is a student. For example, a school district would not be obligated to furnish corrective lenses, clothes, and so forth. Such items are needed whether or not one is a student.

Specifically with respect to gym clothes, Education Code section 49066(b) states that: "No grade of a pupil participating in a physical education class, however, may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil," such as, for example, lack of funds.

It should be determined whether a fee for a particular item is specifically authorized by statute. If not, it should be determined whether a particular item is required by law to be furnished free or whether it comes under the category of "necessary supplies." If it does, then the district must furnish the item without charge.

It is the position of the Department that a school district may require its students to purchase their own gym clothes of a district specified design and color so long as the design and color are of a type sold for general wear outside of school. Once the required gym uniforms become specialized in terms of included logos, school name or other characteristics not found on clothing for general use outside of school, they are school supplies and the district must provide those uniforms free of charge.

It is the opinion of the Department's legal office that a school district may not charge a fee or require students to purchase necessary materials even if the

⁵Ops. Cal Atty. Gen. No. NS-4414, 1942

district maintains a special fund to assist students with financial need or waives such fee or charge for students with financial need. The fee or charge still remains a condition for all other students not so assisted. The court in Hartzell v. Connell, discussed below, held that a fee-waiver policy for needy students does not save the fee.

IV. Extracurricular Activities

On April 20, 1984, the California Supreme Court decided, in Hartzell v. Connell 35 Cal. 3d 899, that a public school district may not charge fees for educational programs simply because they are denominated "extracurricular." As expressed by the lead opinion, the court concluded that "the imposition of fees as a precondition for participation in non-statutory educational programs offered by public high schools on a noncredit basis violates the free schools guarantee of the California Constitution and the prohibition against school fees contained in Title 5, Section 350 of the California Administrative Code." (now California Code of Regulations).

Some significant observations by the various justices and ramifications of the decision are as follows:

- A. The lead opinion was written by Chief Justice Bird with Justices Broussard and Reynoso concurring specifically. The approach taken to the issue by the Chief Justice holds that the free school guarantee extends to all activities which constitute an integral, fundamental part of elementary and secondary education or which amount to necessary elements of any school's activity. The opinion concludes that extracurricular activities constitute an integral component of public education.
- B. The lead opinion holds that fee based extracurricular activities are also illegal under Title 5 California Code of Regulations 350 (5 CCR 350) which prohibits the imposition of "...any fee, deposit, or other charge not specifically authorized by law."
- C. Apart from the fee issue, this particular holding has wide reaching significance. Along with constitutional provisions and statutes, any regulation adopted by the State Board of Education or Superintendent of Public Instruction is a "law." Education Code section 35160, the so-called "permissive code" authority allows school districts to carry on any activity or act in any manner "...which is not in conflict with or inconsistent with, or preempted by, any law..."
- D. As noted above, several provisions of the Education Code permit school districts to impose charges or fees, e.g.: Section 35330 (field trips and excursions), Section 48909 (charge for lost textbook), Section 35335 (school camps), Sections 32220-32224 (requires members of athletic teams to purchase death, accident and hospital insurance), Section 40015 (deposit for use of a school musical instrument), Section 39804 (pupil transportation), and so forth. In

his separate opinion, in which he concurs in the judgment, Justice Kaus raised the question whether, under the decision, any of the statutory fees and charges (Paragraph II, supra) would be unconstitutional. Because none of the statutory fees were in issue, the court made no ruling in that respect. The Hartzell decision is binding precedent for invalidation of any non-statutory fees of the type examined by that court. Except for home to school transportation fees (Section 39807.5), the constitutionality of the statutory fees and charges is yet to be judicially decided.

- E. In a footnote the lead opinion states that the: "[e]ducational activities are to be distinguished from activities which are purely recreational in character. Examples of the latter might include attending weekend dances or athletic events." This statement may cause future litigation on the issue of whether the challenged fee based activity is educational or recreational. The issue is complicated by the fact that while citing an athletic event as possibly being recreational, the court invalidated a fee based athletic activity because it was held to be educational. This could be reconciled by interpreting the footnote as allowing a fee if the participation is solely as a spectator.
- F. The defendants argued that their fee-waiver policy for needy students satisfies the requirements of the free school requirement. They suggested that the right to be educated at public expense amounts merely to a right not to be financially prevented from enjoying educational opportunities. The court answered that such an argument plainly contradicts the plain free school language of the Constitution.

V. Home to School Transportation Fees

Education Code section 39807.5 allows school districts to charge parents a fee for home to school transportation provided to their children by the district. On a constitutional challenge the California Supreme Court in Arcadia School District v. State Department of Education,⁶ upheld the transportation fee statute. According to the court, permitting school districts to charge parents and guardians for the transportation of students to and from school does not violate the California Constitution free school guarantee. Unlike the extracurricular activities held to be free in Hartzell v. Connell (supra), transportation is neither an educational activity nor an essential part of school activity. Home to school transportation is not included within the free school guarantee.

⁶2 Cal.4th 251 (1992)

VI. Tuition for Summer School.

No statute specifically authorizes tuition for summer school. Therefore, tuition or any fee or charge is prohibited under Section 350 of Title 5 California Code of Regulations (supra at page 1), which according to the court in Hartzell v. Connell (supra), is a law within the meaning of the so-called permissive provisions of Education Code section 35160.

VII. Community Service Classes

The governing board of a school district is authorized to maintain community service classes and to charge fees to cover the costs of maintaining such classes (Education Code sections 51810 and 51815). These classes may be convened at any time during the school year as may be determined by the governing board (Education Code section 51812).

Community service classes are not intended to teach required courses that students in grades K-12 must complete as part of their instructional programs. Community service classes usually include classes in music, drama, art, handicraft, science, literature, nature study, nature contacting, aquatic sports, athletics, and other such classes of general interest to the community (See Education Code, section 51810). These classes are primarily intended for adults and are open only to those minors whom the governing board believes will profit from such classes (Education Code, section 51811). It is the Department's position, therefore, that community service classes may not be used as summer schools for K-12 students, except for the incidental attendance of students with special interest in the subjects being taught.

VIII. Summer Schools Conducted Under Contract by Private Parties

The provisions of law relating to contracts whereby private parties conduct a portion of the educational program are not entirely clear. Neither the California Constitution nor the Education Code specifically prohibits contracts for educational services. Education Code section 35160 authorizes districts to engage in any activity not prohibited by law.

Section 6, Article IX, of the California Constitution prohibits a school district from transferring, directly or indirectly, any part of the public school system, or the placing of any part of the public school system under the jurisdiction of any authority other than a public school authority. This constitutional provision was explained in CTA v. Fullerton.⁷ That case involved a school district which let a contract for a private vendor to conduct its driver training program. The court held that the district had not transferred a part of the school system, but only a part of the curriculum. The court's reasoning is that the curriculum is only a function of the system and not a part of the system. This reasoning would seem also to validate contracting for a summer school program. However, in discussing this constitutional prohibition, the court stated that the Constitution would be violated if the control and management of the driver training program were to be transferred to a private authority. This would be true because the various

⁷82 Cal.App.3d 249, 1978

administrative units authorized to maintain and administer the curriculum with the public school system constitute, along with the curriculum, a part of the system. Thus, contracting for a summer school program would be valid under Article IX, Section 6 only if the school district maintains exclusive control and management of the educational program.

The requirement for the maintenance of control and management, however, places the contracting district in a legally impossible position when tuition fees are charged. If the contractor providing the program charges tuition the district might thereby be in violation of the prohibition against tuition charges.

IX. Leasing School Buildings for Educational Use.

The Education Code provides authority for school districts to lease, or allow the use of, unneeded school buildings and classroom space, or to enter into joint occupancy or joint use agreements with private entities including private schools. (Education Code sections 39360, 39379, 39380, 39381, 39440, 39444, 39470, and 40040, et seq.)

When authorizing school buildings to be used by another entity for a summer school program, however, the district should consider the following:

- A. When leasing to a sectarian organization, the district must avoid violating the religious establishment prohibition of the First Amendment to the United States Constitution. According to the California Attorney General, a school district cannot lease or loan vacant classrooms to a sectarian institution for religious purposes while public school is concurrently in session.⁸
- B. The use granted under the Civic Center Act must not result in a monopoly for the benefit of any person or organization. (Education Code section 40041 et seq.) (Effective 1/1/98 renumbered to 38130)

X. Charter Schools.

Education Code section 47605(d) prohibits a charter school from charging tuition, but does not mention fees or other charges. Should it be argued that a certain educationally based fee or other charge is not in the nature of a tuition, the charter school would, nevertheless, be prohibited from assessing them. Although a charter school is exempt from the laws governing school districts (Education Code section 47610), the California Constitution, which is the highest law of the state, cannot be rendered inapplicable by the Legislature. Therefore, any tuition, fee or other charge relating to the charter school's educational program is prohibited by the free school guarantee of the California Constitution Article IX, Section 5, as interpreted in Hartzell v. Connell, supra.

⁸60 Ops. Cal. Atty. Gen. 269

XI. Educational Clinics.

A certified clinic may not charge any fee for services to any pupil or to the parent, guardian, or custodian of any pupil for which the clinic receives reimbursement (Education Code section 58557)

The purpose of this Advisory is to inform school districts and county superintendents of the existing law involving fees in the schools and of the various cases and opinions on the subject. It is not intended to create any new law or to create any new obligations and should not be used as a basis for any legal action. It is not intended to create any new obligations and should not be used as a basis for any legal action. It is not intended to create any new obligations and should not be used as a basis for any legal action.

Questions about this advisory may be directed to the Department's Legal Office 916-657-2452.

SixTen and Associates

Mandate Reimbursement Services

WEITH B. PETERSEN, MPA, JD, President
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February 23, 2004

RECEIVED

FEB 25 2004

COMMISSION ON
 STATE MANDATES

Paula Higashi, Executive Director
 Commission on State Mandates
 U.S. Bank Plaza Building
 980 Ninth Street, Suite 300
 Sacramento, California 95814

Re: Test Claim 02-TC-43
 Clovis Unified School District
Hazardous Material Assessments

Dear Ms. Higashi:

I have received the additional Memorandum of the Department of Toxic Substances Control ("DTSC") dated February 6, 2004, to which I now respond on behalf of the test claimant.

The DTSC, which is in the pleasant position of being able to charge school districts and other government agencies for the cost of its services, suggests at page 5, that school districts fund their hazardous material costs (and all other school facilities construction) through "general obligation bonds, Mello-Roos, developer fees, proceeds from the sale of surplus property and federal grants." This presumes that these other "sources" are available to fund mandated activities, rather than the purpose the legislature intended.

In Butt v. State of California (1992) 4 Cal.4th 668¹, the Supreme Court acknowledged that public education is a constitutional obligation of the state and that the opportunity to receive schooling must be made to all on an equal basis. (Opinion, at 680-681) The court then reminded us that, in Serrano II², the court had struck down the then existing State public school financing scheme, which caused the amount of basic revenues per pupil to vary substantially among the respective districts depending on their taxable property values. (Opinion, at 683)

¹ A copy of Butt v. California is attached to test claimants response dated February 20, 2004, as Exhibit "A".

² Serrano v. Priest (1971) 5 Cal.3d-584

The DTSC's suggestion that school districts fund their hazardous material costs (and all other school facilities construction) through "general obligation bonds, Mello-Roos, developer fees, and proceeds from the sale of surplus property brings us back pre-Serrano. A school district which can no longer issue general obligation bonds would be unable to provide adequate housing for its children. A school district in a blighted or fully-developed area would not have the opportunity to assess developer fees and would be unable to provide needed facilities for its pupils. Likewise, a school district that does not have surplus property to sell would have to deny its students the new sites and buildings that the district may so desperately need. Since the quality of school facilities would then depend on the wealth of each individual district, DTSC's argument violates the equal protection laws of the State constitution. Article 1, §7, subdivisions (a)(b); Article IV, §16, subdivision (a).

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Hazardous Materials Preparation 02-TC-43
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of February 23, 2004, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278



U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.



FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.



OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

____ (Describe)

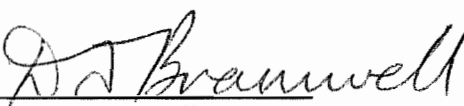


A copy of the transmission report issued by the transmitting machine is attached to this proof of service.



PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 2/23/04, at San Diego, California.



Diane Bramwell

Commission on State Mandates

Original List Date: 7/8/2003 Mailing Information: Other
Last Updated:
List Print Date: 08/27/2003 **Mailing List**
Claim Number: 02-TC-43
Issue: Hazardous Materials Assessments

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen SixTen & Associates 5252 Balboa Avenue, Suite 807 San Diego, CA 92117	Claimant Representative Tel: (858) 514-8605 Fax: (858) 514-8645
--	--

Mr. Bill McGuire Clovis Unified School District 1450 Herndon Avenue Clovis, CA 93611-0599	Claimant Tel: (559) 327-9000 Fax: (559) 327-9129
--	---

Ms. Hameet Barkschat Mandate Resource Services 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
--	--

Mr. Paul Minney Spector, Middleton, Young & Minney, LLP 7 Park Center Drive Sacramento, CA 95825	Tel: (916) 646-1400 Fax: (916) 646-1300
---	--

Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 987 Sun City, CA 92586	Tel: (909) 672-9964 Fax: (909) 672-9963
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Mr. Steve Smith Mandated Cost Systems, Inc. 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: (916) 669-0888 Fax: (916) 669-0889
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Fax: (916) 327-0225

Ms. Antonette Cordero

Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Tel:
Fax:

COMMISSION ON STATE MANDATES

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SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

January 21, 2010

1
EXHIBIT N

Mr. Michael Johnston
Clovis Unified School District
1450 Herndon Ave.
Clovis, CA 93661-0599

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: Notice of Consolidation of Test Claims and Hearing Date
Hazardous Materials Assessments (02-TC-43) and
School Facilities Funding Requirements (02-TC-30)
Clovis Unified School District, Claimant

Dear Mr. Johnston:

After reviewing the *Hazardous Materials Assessments* Test Claim (02-TC-43) and the *School Facilities Funding Requirements Test Claim* (02-TC-30), Commission staff finds that they share common issues, allegations and involve some of the same statutes. Specifically, the test claims include statutes and executive orders that address how school districts receive state aid for school site acquisition and school construction. To ensure complete and fair consideration of these claims, they shall be consolidated pursuant to my authority under California Code of Regulations, title 2, section 1183.06, and effective 10 days from the service of this notice.

For future correspondence, the test claims will be designated *School Facilities Funding Requirements*, 02-TC-30 and 02-TC-43. A consolidated mailing list is enclosed. This test claim is tentatively set for hearing on July 30, 2010.

As provided in the Commission's regulations, this action and decision of the executive director may be appealed to the Commission for review. Please refer to California Code of Regulations, title 2, section 1181, subdivision (c).

Please contact me at (916) 323-8210 if you have any questions or concerns regarding this matter.

Sincerely,

PAULA HIGASHI
Executive Director

Attachment: Description of Test Claims

cc: Mailing list (enclosed)

Hazardous Materials Assessments (02-TC-43)

Education Code Sections 17072.13, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, and Health and Safety Code Sections 25358.7 and 25358.7.1 as added and amended by Statutes 1976, Chapter 557; Statutes 1977, Chapter 242; Statutes 1978, Chapter 362; Statutes 1982, Chapter 735; Statutes 1990, Chapter 1602; Statutes 1991, Chapter 1183; Statutes 1996, Chapter 277; Statutes 1999, Chapters 992 and 1002; Statutes 2000, Chapter 443; Statutes 2001, Chapters 159, 422, and 865; and Statutes 2002, Chapter 935.

School Facilities Funding Requirements (02-TC-30)

Education Code Sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, and 100620 as added and amended by Statutes 1996, Chapter 277; Statutes 1997, Chapters 513, 893, and 940; Statutes 1998, Chapters 407, 485, 691, 741, 848, 941, 957, and 1076; Statutes 1999, Chapters 133, 709, 858, and 992; Statutes 2000, Chapters 44, 193, 530, 590, and 753; Statutes 2001, 132, 159, 194, 647, 725, and 734; Statutes 2002, Chapters 33, 199, 935, 1075, and 1168; and California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70; and Implementing Guidelines Sections: Substantial Progress and Expenditure Audit Guide of May 2003; School Facility Program Guidebook of January 2003; State Relocatable Classroom Program Handbook of January 2003; and The Lease-Purchase Applicant Handbook of April 1988.

Commission on State Mandates

Original List Date: 6/26/2003
Last Updated: 9/9/2009
List Print Date: 01/21/2010
Claim Number: 02-TC-30 and 02-TC-43
Issue: School Facilities Funding Requirements

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Mr. Jim Soland Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: (916) 319-8310 Fax: (916) 324-4281
Mr. Mike Brown School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: (916) 669-5116 Fax: (888) 487-6441
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Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: (916) 446-7517 Fax: (916) 446-2011
Mr. Michael Johnston Clovis Unified School District 1450 Herndon Ave Clovis, CA 93611-0599	Tel: (559) 327-9000 Fax: (559) 327-9129

Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: (916) 454-7310 Fax: (916) 454-7312
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: (866) 481-2621 Fax: (866) 481-2682
Ms. Carol Bingham California Department of Education (E-08) Fiscal Policy Division 1430 N Street, Suite 5602 Sacramento, CA 95814	Tel: (916) 324-4728 Fax: (916) 319-0116
Ms. Jill Bowers Office of the Attorney General (D-08) 1300 I Street, Suite 125 Sacramento, CA 95814	Tel: (916) 323-1948 Fax: (916) 324-5567
Mr. David E. Scribner Max8550 2200 Sunrise Boulevard, Suite 220 Gold River, CA 95670	Tel: (916) 852-8970 Fax: (916) 852-8978
Mr. Joe Rombold School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: (916) 669-5116 Fax: (888) 487-6441
Mr. David Cichella California School Management Group 3130-C Inland Empire Blvd. Ontario, CA 91764	Tel: (209) 834-0556 Fax: (209) 834-0087
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: (916) 324-0256 Fax: (916) 323-6527
Ms. Jeannie Oropeza Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: (916) 445-0328 Fax: (916) 323-9530
Ms. Jolene Tollenaar MGT of America 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: (916) 443-9136 Fax: (916) 443-1766
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 449-5252
Mr. Keith B. Petersen SixTen & Associates 3270 Arena Blvd., Suite 400-363 Sacramento, CA 95834	Tel: (916) 419-7093 Fax: (916) 263-9701

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
TE: (916) 323-3562
(916) 445-0278

E-mail: csminfo@csm.ca.gov

April 27, 2010

EXHIBIT O

Mr. Michael Johnston
Clovis Unified School District
1450 Herndon Ave.
Clovis, CA 93661-0599

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: Request for Clarification on Test Claim Filing
School Facilities Funding Requirements, 02-TC-30 and 02-TC-43
Clovis Unified School District, Claimant

Dear Mr. Johnston:

Commission staff is reviewing the *School Facilities Funding Requirements (02-TC-30 and 02-TC-43)* test claim filings and needs further clarification from the district regarding the code sections and statutes that were pled in 02-TC-43.

Health and Safety Code sections 25358.7 and 25358.7.1 are pled, but the statutes that added or amended these sections are not pled. Additionally, Statutes 1991, chapter 1183 is pled, but this statute does not amend any of the code sections pled.

To ensure complete and fair consideration of your claim, please respond within thirty (30) days or no later than May 27, 2010, indicating which statutes that add or amend Health and Safety Code sections 25358.7 and 25358.7.1 are alleged to contain a mandate, and which specific sections of Statutes 1991, chapter 1183 are alleged to contain a mandate.

Please be advised that this test claim is tentatively set for hearing on December 2 or 3, 2010.

Please contact Heather Halsey at (916) 323-3562 if you have any questions regarding this matter.

Sincerely,

PAULA HIGASHI
Executive Director

J:\mandates\2002\tc\02tc43\corres\clarificationltr

Commission on State Mandates

Original List Date: 6/26/2003
Last Updated: 3/29/2010
List Print Date: 04/27/2010
Claim Number: 02-TC-30 and 02-TC-43
Issue: School Facilities Funding Requirements

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Norma Casas San Diego Unified School District Finance and Business Services Grants-Mandates Costs-Position Control 4100 Normal Street, Room 3160 San Diego, CA 92103	Tel: (619) 725-7568 Fax: (619) 725-7569
Ms. Angie Teng State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: (916) 323-6527 Fax:
Ms. Jill Kanemasu State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: (916)445-8757 Fax:
Mr. Patrick Day San Jose Unified School District 855 Lenzen Avenue San Jose, CA 95126-2736	Tel: (408) 535-6572 Fax: (408) 535-6692
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: (916) 323-5849 Fax: (916) 327-0832
Mr. Jim Soland Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: (916) 319-8310 Fax: (916) 324-4281
Mr. Mike Brown School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: (916) 669-5116 Fax: (888) 487-6441
Mr. Arthur Palkowitz Stutz Artiano Shinoff & Holtz 2488 Historic Decatur Road, Suite 200 San Diego, CA 92106	Tel: (619) 232-3122 Fax: (619) 232-3264

Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: (951) 303-3034 Fax: (951) 303-6607
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: (916) 446-7517 Fax: (916) 446-2011
Mr. Michael Johnston Clovis Unified School District 1450 Herndon Ave Clovis, CA 93611-0599	Tel: (559) 327-9000 Fax: (559) 327-9129
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Mr. David E. Scribner Max8550 2200 Sunrise Boulevard, Suite 240 Gold River, California 95670	Tel: (916) 852-8970 Fax: (916) 852-8978
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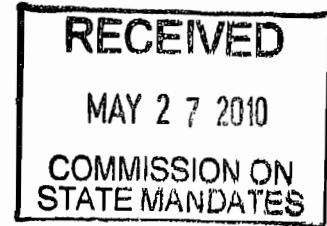
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EXHIBIT P

May 26, 2010



Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

**RE: School Facilities Funding Requirement, 02-TC-40; 02-TC-43
Response to Staff Comments dated April 27, 2010
Clovis Unified School District, Claimant**

Dear Ms. Higashi:

In response to the Commission's letter dated April 27, 2010 requesting clarification of the test claim filing of School Facilities Funding Requirements, claimant submits the following information in support of their request to amend the above mentioned test claim as follows:

Written Narrative; Declaration; Documentation; Claim Certification pertaining to the following Statutes and Code Sections.

A. The statutes that add or amend Health & Safety Code sections 25358.7 and 25358.7.1 are Statutes 1999 Chapter 23 (SB 47).

B. In Statutes 1991, Chapter 1183 (AB 928) the following sections contain a mandate:

1. Education Code section 39003; Section 1
(Repealed by Stats.1996, c. 277 (S.B.1562), § 6, operative Jan. 1, 1998)

2. Education Code section 39120; Section 1, 2.
(Repealed by Stats.1996, c. 277 (S.B.1562), § 6, operative Jan. 1, 1998)

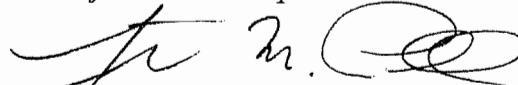
3. Public Resources Code section 21151.4, Section 17.
(Amended Stats.2004, c. 689 (S.B.945), § 5; Stats.2008, c. 148 (A.B.2720), § 1.)

4. Public Resources Code section 21151.8, Section 18.
(Amended Stats.2003, c. 668 (S.B.352), § 3; Stats.2007, c. 130 (A.B.299), § 206; Stats.2008,

c. 148 (A.B.2720), § 2.)

Very truly yours,

STUTZ ARTIANO SHINOFF & HOLTZ
A Professional Corporation



Arthur M. Palkowitz

AMP/lm
Enclosures

1. TEST CLAIM TITLE

SCHOOL FACILITIES FUNDING
REQUIREMENTS, 02-TC-30 AND 02-TC-43

2. CLAIMANT INFORMATION

CLOVIS UNIFIED SCHOOL DISTRICT
Name of Local Agency or School District

Steve Ward
Claimant Contact

Assistant Superintendent of Business Services
Title

1450 Herndon Avenue
Street Address

Clovis, CA 93611
City, State, Zip

559-327-9127
Telephone Number

559-327-9129
Fax Number

steward@cusd.com
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Arthur M. Palkowitz
Claimant Representative Name

Attorney at Law
Title

Stutz Artiano Shinoff & Holtz, APC
Organization

2488 Historic Decatur Road, Suite 200
Street Address

San Diego, CA 92106
City, State, Zip

619-232-3122
Telephone Number

619-232-3264
Fax Number

apalkowitz@stutzartiano.com
E-Mail Address

<i>For CSM Use Only</i>	
Filing Date:	RECEIVED MAY 27 2010 COMMISSION ON STATE MANDATES
Test Claim #:	

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Test Claim/Amendment

A. Statutes 1999 Chapter 23 (SB 47):
 1. Health & Safety Code section 25358.1
 2. Health & Safety Code section 25358.7.1

B. Statutes 1991 Chapter 1183 (AB 928):
 1. Education Code section 39003; Section 1 (Repealed by Stats.1996, c. 277 (S.B.1562), § 6, operative Jan. 1, 1998)
 2. Education Code section 39120; Section 1,2. (Repealed by Stats. 1996, c. 277 (S.B.1562), § 6, operative Jan. 1, 1998)
 3. Public Resources Code section 21151.4, Section 17. (Amended Stats.2004, c. 689 (S.B.945), § 5; Stats.2008, c. 148 (A.B.2720), § 1.)
 4. Public Resources Code section 21151.8, Section 18. (Amended Stats.2003, c. 668 (S.B.352), § 3; Stats.2007, c. 130 (A.B.299), § 206; Stats.2008, c. 148 (A.B.2720), § 2.)

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:
5. Written Narrative: pages 1 to 28
6. Declarations: pages 29 to 50
7. Documentation: pages 51 to 51

Test Claim Name: **School Facilities Funding Requirements (02-TC-30 and 02-TC-43)**
Claimant: **Clovis Unified School District**

Page 1

Section Number: 5
Heading: WRITTEN NARRATIVE

Amendment To Test Claim:

A. Statutes 1999 Chapter 23 (SB 47):

1. Health & Safety Code section 25358.1
2. Health & Safety Code section 25358.7.1

B. Statutes 1991 Chapter 1183 (AB 928):

1. Education Code section 39003; Section 1
(Repealed by Stats.1996, c. 277 (S.B.1562), § 6, operative Jan. 1, 1998)

2. Education Code section 39120; Section 1, 2.
(Repealed by Stats.1996, c. 277 (S.B.1562), § 6, operative Jan. 1, 1998)

3. Public Resources Code section 21151.4, Section 17.
(Amended Stats.2004, c. 689 (S.B.945), § 5; Stats.2008, c. 148 (A.B.2720), § 1.)

4. Public Resources Code section 21151.8, Section 18.
(Amended Stats.2003, c. 668 (S.B.352), § 3; Stats.2007, c. 130 (A.B.299), § 206; Stats.2008, c. 148 (A.B.2720), § 2.)

Section (A)

That the actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

The new activities that arise from the mandate:

1999 Statutes Chapter 23 (SB 47)

Health & Safety Code section 25358.1 and Health & Safety Code section 25358.7.1 have been previously pled in the test claim. Claimant hereby amends the test claim to include 1999 Statutes Chapter 23 (SB 47).

Among other activities alleged in the original filing, this bill would require the department and the regional board to provide specified information to the affected community and to develop a public participation work plan, and would provide for the establishment of community advisory groups under specified conditions. The bill would authorize a community advisory group to request a technical assistance grant for a site. The department and the State Water Resources Control Board would be required to create 2 community service offices, by July 1, 2000, to perform specified duties.

<< CA HEALTH & S § 25358.1 >>

25358.1. (a) The department, a representative of the department, or any person designated by the director may take the actions specified in this section only if there is a reasonable basis to believe that there may be a release or threatened release of a hazardous substance, and only for the purpose of determining under this chapter the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this chapter.

(b) Any officer or employee of the department, a representative of the director, or a person designated by the director may require any potentially responsible party, or any person who has, or may have, acquired information relevant to any of the following matters in the course of a commercial, ownership, or contractual relationship with any potentially responsible party, to furnish, upon reasonable notice, information or documents relating to the following matters:

(1) The identification, nature, and quantity of materials which have been, or are, generated, treated, stored, or disposed of at a hazardous substance release site or which have been, or are, transported to a hazardous substance release site.

(2) The nature or extent of a release or a threatened release of a hazardous substance at, or from, a hazardous substance release site.

(c) A person who is required to provide information pursuant to subdivision (b) shall, in accordance with subdivision (h), allow the officer, employee, representative, or designee, upon reasonable notice and at reasonable times, to have access to, and copy, all records relating to the hazardous substances for purposes of assisting the department in determining the need for an action in response to a release or threatened release pursuant to this chapter.

(d) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), enter, at reasonable times, any of the following properties:

(1) Any nonresidential establishment or other place or property where any hazardous substances

may be, or have been, produced, stored, treated, disposed of, or transported from.

(2) Any nonresidential establishment or other place or property from which, or to which, a hazardous substance has been, or may have been, released.

(3) Any nonresidential establishment or other place or property where a hazardous substance release is, or may be, threatened.

(4) Any nonresidential establishment or other place or property where entry is needed to determine the need for a response action, or the appropriate remedial action, to effectuate a response action under this chapter.

(5) Any residential place or property which, if it were a nonresidential establishment or other place or property, would otherwise meet the criteria described in paragraphs (1) to (4), inclusive, if the department, representative, or person designated by the director is able to establish, based upon reasonably available evidence, that hazardous substances have been released onto or under the residential place or real property and if entry is made only at reasonable times and after reasonable notification to the owners and occupants.

(e) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), carry out any of the following activities:

(1) Inspect and obtain samples from any establishment or other place or property specified in subdivision (d) or from any location of any suspected hazardous substance.

(2) Inspect and obtain samples of any substances from any establishment or place or property specified in subdivision (d).

(3) Inspect and obtain samples of any containers or labeling for the suspected hazardous substances, and samples of the soil, vegetation, air, water, and biota on the premises.

(4) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous substances.

(5) Survey and determine the topographic, geologic, and hydrogeologic features of the land.

(6) Photograph any equipment, sample, activity, or environmental condition described in paragraphs (2) to (5) inclusive.

(f)(1) If photographs are to be taken pursuant to paragraph (6) of subdivision (e), the department shall do all of the following:

(A) Comply with all procedures established pursuant to subdivision (b) of Section 25358.2.

(B) Notify the person whose facility is photographed prior to public disclosure of the photographs.

(C) Upon the request of the person owning the facility, submit a copy of any photograph to the person for the purpose of determining whether trade secret information, as defined in Section 25358.2, or facility security, would be revealed by the photograph.

(2) "Disclosure," as used in Section 25358.2, for purposes of this paragraph, does not include the review of the photograph by a court of competent jurisdiction or by an administrative law judge. A court or judge may review the photograph in camera.

(g) An officer, employee, representative, or designee who enters a place, establishment, or property pursuant to this section shall make a reasonable effort to inform the owner or the owners' authorized representative of the inspection and shall provide split samples to the owner or the representative upon request.

(h) If the owner or the owner's authorized representative does not voluntarily grant access to a place, establishment, or property pursuant to this section, the officer, employee, representative, or designee shall first obtain a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, if there is an emergency posing an immediate threat to public health and safety, the officer, employee, representative, or designee may enter the place, establishment, or property without the consent of the owner or owner's authorized representative and without the issuance of a warrant.

(i) The department, and any person authorized by the department to enter upon any lands for the purpose of taking removal or remedial action pursuant to this chapter, shall not be held liable, in either a civil or criminal proceeding, for trespass or for any other acts which are necessary to carry out the corrective action.

<< CA HLTH & S § 25358.7.1 >>

25358.7.1. (a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory committee. The department or regional board shall

also advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment. If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site or a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the petitioners or the legislative body to establish a community advisory group to review the response action at the site.

(b) To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(1) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(2) Individuals from the local business community.

(3) Local political or government agency representatives.

(4) Local citizen, civic, environmental, or public interest group members residing in the community.

(c) The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

(1) The department or regional boards.

(2) Representatives of local environmental regulatory agencies.

(3) The potentially responsible parties or other persons who are conducting the response action.

(d) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 25358.7. Nothing in this section shall affect the status of any citizen advisory group formed before the enactment of this section, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board.

The new activities that arise from the mandate:
1991 Statutes Chapter 1183 (AB 928)

This bill would additionally provide that before the governing board approves a school construction project or the acquisition of a schoolsite, or before an environmental impact report or negative declaration is approved for a school construction project or the purchase of a schoolsite, the lead agency is also required to identify facilities which might be reasonably anticipated to handle acutely hazardous materials, substances, or waste, thereby imposing a state-mandated local program. The bill would include an additional finding which the governing board would be authorized to make, if these facilities exist, concerning the corrective measures which these facilities are required to take. The bill would require specified local agencies which receive a request to provide information concerning these facilities to respond in 30 days, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

This bill would require that notice to be given prior to approving an application for a source which emits hazardous air emissions which is located within 1,000 feet of a school, as defined, and would require the notice to be distributed to additional persons, thereby imposing a state-mandated local program. The bill would authorize the preparation of the notice under prescribed circumstances. The bill would make the notice requirements inapplicable if the air pollution control officer makes specified determinations.

The bill would define school for purposes of the RMPP procedures and would authorize the administering agency to grant a one-time extension of the deadline to submit a corrected RMPP. The bill would require the administering agency to review any claim for a trade secret protection and to segregate properly substantiated trade secret information from the information to be made public. The bill would impose new duties upon administering agencies, thereby imposing a state-mandated local program.

The bill would require the school district to make the information necessary to mail notices required by these provisions available to the air pollution control officer and would allow the notices to be distributed to the children to be given to their parents.

The bill would require applicants for a permit to certify whether the project is located within 1,000 feet of a school, and would authorize denial of the permit upon misrepresentation of that fact.

SECTION 1. Section 39003 of the Education Code is amended to read:

<< CA EDUC § 39003 >>

39003. The governing board of a school district shall not approve a project involving the

(2) "Hazardous substance" <<-* * *->> <<+means any substance+>> defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" <<-* * *->> <<+means any material+>> defined <<-* * *->> <<+pursuant to+>> subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" <<-* * *->> <<+means any waste+>> defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" <<-* * *->> <<+means any site+>> defined in Section 25114 of the Health and Safety Code.

<<+(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.+>>

<<+(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.+>>

SEC. 2. Section 39120 of the Education Code is amended to read:

<< CA EDUC § 39120 >>

SEC. 1. Section 39120 of the Education Code is amended to read:

(b) The lead agency<<+, as defined in Section 21067 of the Public Resources Code,+>> preparing the environmental impact report or negative declaration has consulted with the <<-* * *->> <<+administering agency+>> in which the proposed schoolsite is located <<-* * *->> and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions<<+, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought+>>.

(c) The governing board of the school district makes <<+one+>> of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but <<-* * *->> <<+one of the following conditions applies:+>>

<<+(A) T+>>he health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

<<+(B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied,

result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.+>>

SEC. 2. Section 39120 of the Education Code is amended to read:

39120. <<+(a)+>> The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency <<+comply+>> with the same requirements specified in <<+subdivision (a) of+>> Section 39003 for schoolsite acquisition.

<<+(b) For purposes of this section, the acceptance of construction bids shall constitute approval of the project.+>>

SEC. 17. Section 21151.4 of the Public Resources Code is amended to read:

21151.4. No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within <<+ 1/4+>> of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air <<-* * *->> <<+ emission, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than the quantity specified in subdivision (a) of+>> Section <<-* * *->> <<+ 25536 of the Health and Safety Code, which may pose a health or safety hazard to persons who would attend or would be employed at the school,+>> unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

SEC. 18. Section 21151.8 of the Public Resources Code is amended to read:

21151.8. (a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless <<-* * *->> <<+all of the following occur:+>> <<+(1) T+>>he environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

<<+(A)+>> The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

<<+(B)+>> A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

<<+(C)+>> A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

<<+(2)+>> The lead agency preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the lead agency shall include a list of the locations for which information is sought.+>>

<<+(3)+>> The governing board of the school district makes one of the following written findings:+>>

<<+(A)+>> Consultation identified no such facilities specified in paragraph (2).+>>

<<+(B)+>> The facilities specified in paragraph (2) exist, but one of the following conditions applies:+>>

<<+(i)+>> The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.+>>

<<+(ii)+>> Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.+>>

<<+(4)+>> Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency which does not respond within 30 days.+>>

<<+(b)+>> If a lead agency has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility specified in paragraph (2) of subdivision (a).+>>

<<+(c)+>> As used in this section <<+and Section 21151.4, the following definitions shall apply+>>:

- (1) "Hazardous substance" <<-* * *->> <<+means any substance+>> defined in Section 25316 of the Health and Safety Code.
- (2) "Acutely hazardous material" <<-* * *->> <<+means any material+>> defined <<-* * *->> <<+pursuant to+>> subdivision (a) of Section 25532 of the Health and Safety Code.
- (3) "Hazardous waste" <<-* * *->> <<+means any waste+>> defined in Section 25117 of the Health and Safety Code.
- (4) "Hazardous waste disposal site" <<-* * *->> <<+means any site+>> defined in Section 25114 of the Health and Safety Code.
- <<+(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.+>>
- <<+(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.+>>
- <<+(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.+>>

AMENDED 2003 Cal. Legis. Serv. Ch. 668 (S.B. 352)

AN ACT to amend Section 21151.8 of the Public Resources Code, and Education Code Section 17213 relating to public schools.

This bill would, in addition, prohibit the approval by the governing board of a school district of a schoolsite that is within 500 feet from the edge of the closest traffic lane of a freeway or other busy traffic corridor, unless prescribed conditions are met and would make conforming and other technical, nonsubstantive changes.

This bill would define "facility" for this purpose and would require the lead agency to consult to identify freeways and other busy traffic corridors, as defined, large agricultural operations, and railyards, within 1/4 of a mile of the schoolsite, and would make conforming and other technical, nonsubstantive changes.

<< CA EDUC § 17213 >>

17213. The governing board of a school district may not approve a project involving the acquisition of a schoolsite by a school district, unless all of the following occur:

(a) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site* * *, unless if the site was a former solid waste disposal site, the governing board of the school district

concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the * * *Department of * * *Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood.

(b) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, in preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and other busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite* * *, that might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The school district, as the lead agency, shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified none of the facilities or significant pollution sources specified in subdivision (b).

(2) The facilities or other pollution sources specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another governmental entity that has jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(C) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(D) The governing board finds that neither of the conditions set forth in subparagraph (B) or (C)

can be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

SEC. 3. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) An environmental impact report or negative declaration * * *may not be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and,

if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the * * *Department of * * *Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite* * *, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes * * *a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor

traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

Amended Stats. 2004, c. 689 (S.B.945), § 5

This bill would, instead, specify that an environmental impact report shall not be certified and a negative declaration shall not be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle extremely hazardous substances in a quantity equal to or greater than a specified state threshold quantity prescribed by statute that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless specified conditions occur, including that the school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

SEC. 5. [FN1] Section 21151.4 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.4 >>

21151.4. An environmental impact report * * * shall not be certified and a negative declaration shall not be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school that might reasonably be anticipated to emit hazardous * * * air emissions, or that would handle * * * an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified * * * pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

- (a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.
- (b) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

SEC. 6. If AB 3090 is enacted on or before January 1, 2005, and amends Section 21087 of the Public Resources Code, then Section 4 of this bill, which would repeal Section 21087 of the Public Resources Code, shall not become operative; and, notwithstanding Section 9605 of the Government Code, this bill shall not chapter out the amendments to Section 21087 of the Public Resources Code made by AB 3090.

AMENDED 2007 Cal. Legis. Serv. Chapter 130 (AB 299) Section 206.

SEC. 206. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) An environmental impact report or negative declaration may not be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous * * *substances * * *or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an

actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency that does not respond within 30 days.

(b) If a school district, as a lead agency, has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Extremely hazardous substances" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have

been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit, or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

AMENDED 2008 Cal. Legis. Serv. Ch. 148 (A.B. 2720)

This bill would make technical, nonsubstantive changes in these provisions and would revise a cross-reference.

This bill would define "hazardous air emissions" and "extremely hazardous substances" for the purposes of that provision.

SECTION 1. Section 21151.4 of the Public Resources Code is amended to read:
<< CA PUB RES § 21151.4 >>

21151.4. (a) An environmental impact report shall not be certified or a negative declaration shall not be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

(1) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(2) The school district has been given written notification of the project not less than 30 days

prior to the proposed certification of the environmental impact report or approval of the negative declaration.

(b) As used in this section, the following definitions apply:

(1) "Extremely hazardous substance" means an extremely hazardous substance as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(2) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air of a substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

SEC. 2. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) An environmental impact report shall not be certified or a negative declaration shall not be approved for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2)(A) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely

(b) As used in this section* * *, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Extremely hazardous substances" means * * *an extremely hazardous substance as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency authorized pursuant to Section 25502 of the Health and Safety Code to implement and enforce Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit, or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

CA LEGIS 148 (2008)

(B) Existing Activites

A. Statutes 1999 Chapter 23 (SB 47):

West's Ann. Cal. Health & Safety Code § 25358.1 is a new code section, prior code section was repealed by former § 25358.1 by Stats.1997, c. 870 (S.B.660).

West's Ann.Cal.Health & Safety Code § 25358.7.1 was added by Stats.1999, c. 23 (S.B.47), § 2, eff. May 26, 1999.)

B. Statutes 1991 Chapter 1183 (AB 928):

1. Education Code section 39003; Section 1
2. Education Code section 39120; Section 1, 2
3. Public Resources Code section 21151.4, Section 17
4. Public Resources Code section 21151.8, Section 18.

Existing law generally requires all state agencies and local agencies to prepare, or to be prepared by contract, and certify the completion of, an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment. In other cases, a negative declaration is required. Existing law prohibits the governing board of a school district from approving the acquisition of a schoolsite or the construction of a new school building, unless the lead agency, as defined, consults with specified local agencies to identify facilities which might emit hazardous air emissions, and unless the governing board of the school district makes specified written findings concerning these facilities.

Existing law also prohibits the approval of an environmental impact report or negative declaration for a school construction project or purchase of a schoolsite unless facilities within a specified distance of the proposed schoolsite are identified which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, the governing board of the school district makes specified written findings and the environmental impact report or negative declaration includes information to determine if property proposed to be purchased, or to be constructed upon, is the site of a hazardous waste disposal site or solid waste disposal site, a hazardous substance release site, or a site which contains pipelines which carry hazardous substances, acutely hazardous materials, or hazardous waste. Existing law prohibits the approval of an environmental impact report or negative declaration for any project involving the construction or alteration of a facility which might emit hazardous air emissions within 1/4 mile of a school unless the lead agency consults with the school district, as specified.

Existing law requires a business which handles acutely hazardous materials to submit a registration form to the local administering agency, as defined, and, if the administering agency determines that there is a significant likelihood that the handler's use of an acutely hazardous

material may pose an acutely hazardous materials accident risk, the agency is required to require the preparation and submission of a risk management and prevention program (RMPP), in accordance with a specified timetable. Existing law requires cities and counties to include in the application for building permits a place to indicate whether the applicant is required to comply with specified requirements concerning business plans, the submission of RMPPs, and permits for construction or modification pursuant to the regulation of air pollution. A city or county is prohibited from issuing a final certificate of occupancy unless the applicant meets these requirements and from permitting a facility to be constructed within 1,000 feet of a school unless specified requirements are met.

Existing law requires the State Fire Marshal to prepare, adopt, and submit for approval to the State Building Standards Commission, building standards establishing minimum standards for fire prevention, as specified, and minimum requirements for the storage and handling in commercial buildings of acutely hazardous materials, as defined.

Existing law requires handlers or other specified persons to report hazardous material releases to an administering agency, which is defined as a department, office, or agency of a city or county.

Existing law prescribes civil penalties for violations of specified provisions requiring any business, as defined, to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material, in accordance with prescribed requirements.

Existing law requires an RMPP to give consideration to the proximity of the facility to schools and requires a handler to submit a corrected RMPP within 60 days after receiving a specified notice from the administering agency. Existing law requires the administering agency to follow specified procedures with regard to the protection of trade secrets.

Existing law requires an air pollution control officer, prior to approving a permit for a source that may emit air contaminants which is located within 1,000 feet of a school, to prepare and distribute a public notice, as specified.

- (4) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.
- (5) "Hazardous waste disposal site" has the same meaning as defined in Section 25114 of the Health and Safety Code.
- (2) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.
- (3) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.
- (4) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.
- (5) "Hazardous waste disposal site" has the same meaning as defined in Section 25114 of the Health and Safety Code.

West's Ann.Cal.Educ.Code § 39120

WEST'S ANNOTATED CALIFORNIA CODES
COPR. (c) WEST 1991 No Claim to Orig. Govt. Works
EDUCATION CODE
TITLE 2. ELEMENTARY AND SECONDARY ADMINISTRATION
DIVISION 3. LOCAL ADMINISTRATION
PART 23. SCHOOL FACILITIES
CHAPTER 2. CONSTRUCTION OF SCHOOL BUILDINGS
ARTICLE 2. PLANS

§ 39120. Construction of new school building; requirements for approval

The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency complies with the same requirements specified in Section 39003 for schoolsite acquisition.

1991 Pocket Part Credit(s)

(Added by Stats.1990, c. 1602 (S.B.2262), § 2.)

§ 39120. Filing of copy of plans with Department of General Services

The governing board of any school district shall, upon completion of any school building let pursuant to Sections 39140 to 39155, inclusive, file with the Department of General Services on ozalid type reproducible duplicate set of architect plans for the new school building plant.

(Stats.1976, c. 1010, § 2, operative April 30, 1977.)

West's Ann.Cal.Pub.Res.Code § 21151.4

WEST'S ANNOTATED CALIFORNIA CODES
PUBLIC RESOURCES CODE
DIVISION 13. ENVIRONMENTAL QUALITY
CHAPTER 4. LOCAL AGENCIES

§ 21151.4. Construction or alteration of a facility within one-fourth mile of a school; reasonable anticipation of release of hazardous air emissions; approval of environmental impact report or negative declaration

No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions as defined in Section 21151.3 unless both of the following occur:

- (a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.
- (b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

1991 Pocket Part Credit(s)

(Added by Stats.1988, c. 1589, § 14.) West's Ann. Cal. Pub. Res. Code § 21151. CA PUB RES § 21151.4
West's Ann.Cal.Pub.Res.Code § 21151.8

WEST'S ANNOTATED CALIFORNIA CODES
PUBLIC RESOURCES CODE
DIVISION 13. ENVIRONMENTAL QUALITY
CHAPTER 4. LOCAL AGENCIES

§ 21151.8. Schoolsite acquisition or construction; environmental impact report or negative declaration; hazardous waste or solid waste disposal sites; hazardous substance release sites.

(a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless the environmental impact report or negative declaration includes information which is needed to determine if the the property proposed to be purchased, or to be constructed upon, is any of the following:

- (1) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) As used in this section:

(1) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" has the same meaning as defined in Section 25114 of the Health and Safety Code.

1991 Pocket Part Credit(s)

(Added by Stats.1990, c. 1602 (S.B.2262), § 3.) West's Ann. Cal. Pub. Res. Code § 21151.8; CA PUB RES § 21151.8

(C) The estimated increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate is approximately five thousand dollars (\$5,000).

(D) The estimated increased costs incurred by the claimant during the fiscal year immediately following the fiscal year for which the claim the claim was filed is approximately five thousand dollars (\$5,000).

(E) It is estimated the statewide costs will exceed one million dollars for all local agencies or school districts to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim the claim was filed

(F) Dedicated state funds: None available.
Dedicated federal funds: None available.
Other nonlocal agency funds: None available.
The local agency's general purpose funds: None available.
Fee authority to offset costs: None available.

(G) Unknown at this time.

Section Number: 6.

Heading: **DECLARATIONS:**

(A) It is estimated the increased costs that will be incurred by the claimant to implement the alleged mandate is approximately \$5,000 to \$10,000.

(B) Identify all local, state or federal funds and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs:

Possible funding sources outside of general fund: special reserve, non-capital projects funds, deferred maintenance funds.

(C) New activities

- A. Statutes 1999 Chapter 23 (SB 47):
 - 1. Health & Safety Code section 25358.1
 - 2. Health & Safety Code section 25358.7.1

- B. Statutes 1991 Chapter 1183 (AB 928):
 - 1. Education Code section 39003; Section 1
 - 2. Education Code section 39120; Section 1, 2
 - 3. Public Resources Code section 21151.4, Section 17
 - 4. Public Resources Code section 21151.8, Section 18.

<< CA HEALTH & S § 25358.1 >>

25358.1. (a) The department, a representative of the department, or any person designated by the director may take the actions specified in this section only if there is a reasonable basis to believe that there may be a release or threatened release of a hazardous substance, and only for the purpose of determining under this chapter the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this chapter.

(b) Any officer or employee of the department, a representative of the director, or a person designated by the director may require any potentially responsible party, or any person who has, or may have, acquired information relevant to any of the following matters in the course of a commercial, ownership, or contractual relationship with any potentially responsible party, to furnish, upon reasonable notice, information or documents relating to the following matters:

(1) The identification, nature, and quantity of materials which have been, or are, generated, treated, stored, or disposed of at a hazardous substance release site or which have been, or are, transported to a hazardous substance release site.

(2) The nature or extent of a release or a threatened release of a hazardous substance at, or from, a hazardous substance release site.

(c) A person who is required to provide information pursuant to subdivision (b) shall, in accordance with subdivision (h), allow the officer, employee, representative, or designee, upon reasonable notice and at reasonable times, to have access to, and copy, all records relating to the hazardous substances for purposes of assisting the department in determining the need for an action in response to a release or threatened release pursuant to this chapter.

(d) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), enter, at reasonable times, any of the following properties:

(1) Any nonresidential establishment or other place or property where any hazardous substances may be, or have been, produced, stored, treated, disposed of, or transported from.

(2) Any nonresidential establishment or other place or property from which, or to which, a hazardous substance has been, or may have been, released.

(3) Any nonresidential establishment or other place or property where a hazardous substance release is, or may be, threatened.

(4) Any nonresidential establishment or other place or property where entry is needed to determine the need for a response action, or the appropriate remedial action, to effectuate a response action under this chapter.

(5) Any residential place or property which, if it were a nonresidential establishment or other place or property, would otherwise meet the criteria described in paragraphs (1) to (4), inclusive, if the department, representative, or person designated by the director is able to establish, based upon reasonably available evidence, that hazardous substances have been released onto or under the residential place or real property and if entry is made only at reasonable times and after reasonable notification to the owners and occupants.

(e) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), carry out any of the following activities:

(1) Inspect and obtain samples from any establishment or other place or property specified in subdivision (d) or from any location of any suspected hazardous substance.

(2) Inspect and obtain samples of any substances from any establishment or place or property specified in subdivision (d).

(3) Inspect and obtain samples of any containers or labeling for the suspected hazardous substances, and samples of the soil, vegetation, air, water, and biota on the premises.

(4) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous substances.

(5) Survey and determine the topographic, geologic, and hydrogeologic features of the land.

(6) Photograph any equipment, sample, activity, or environmental condition described in paragraphs (2) to (5) inclusive.

(f)(1) If photographs are to be taken pursuant to paragraph (6) of subdivision (e), the department shall do all of the following:

(A) Comply with all procedures established pursuant to subdivision (b) of Section 25358.2.

(B) Notify the person whose facility is photographed prior to public disclosure of the photographs.

(C) Upon the request of the person owning the facility, submit a copy of any photograph to the person for the purpose of determining whether trade secret information, as defined in Section 25358.2, or facility security, would be revealed by the photograph.

(2) "Disclosure," as used in Section 25358.2, for purposes of this paragraph, does not include the review of the photograph by a court of competent jurisdiction or by an administrative law judge. A court or judge may review the photograph in camera.

(g) An officer, employee, representative, or designee who enters a place, establishment, or property pursuant to this section shall make a reasonable effort to inform the owner or the owners' authorized representative of the inspection and shall provide split samples to the owner or the representative upon request.

(h) If the owner or the owner's authorized representative does not voluntarily grant access to a place, establishment, or property pursuant to this section, the officer, employee, representative, or designee shall first obtain a warrant pursuant to Title 13 (commencing with Section 1822.50) of

Part 3 of the Code of Civil Procedure. However, if there is an emergency posing an immediate threat to public health and safety, the officer, employee, representative, or designee may enter the place, establishment, or property without the consent of the owner or owner's authorized representative and without the issuance of a warrant.

(i) The department, and any person authorized by the department to enter upon any lands for the purpose of taking removal or remedial action pursuant to this chapter, shall not be held liable, in either a civil or criminal proceeding, for trespass or for any other acts which are necessary to carry out the corrective action.

<< CA HLTH & S § 25358.7.1 >>

25358.7.1. (a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory committee. The department or regional board shall also advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment. If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site or a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the petitioners or the legislative body to establish a community advisory group to review the response action at the site.

(b) To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(1) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(2) Individuals from the local business community.

(3) Local political or government agency representatives.

(4) Local citizen, civic, environmental, or public interest group members residing in the community.

(c) The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

- (1) The department or regional boards.
- (2) Representatives of local environmental regulatory agencies.
- (3) The potentially responsible parties or other persons who are conducting the response action.
- (d) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 25358.7. Nothing in this section shall affect the status of any citizen advisory group formed before the enactment of this section, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board.

The new activities that arise from the mandate:
1991 Statutes Chapter 1183 (AB 928)

This bill would additionally provide that before the governing board approves a school construction project or the acquisition of a schoolsite, or before an environmental impact report or negative declaration is approved for a school construction project or the purchase of a schoolsite, the lead agency is also required to identify facilities which might be reasonably anticipated to handle acutely hazardous materials, substances, or waste, thereby imposing a state-mandated local program. The bill would include an additional finding which the governing board would be authorized to make, if these facilities exist, concerning the corrective measures which these facilities are required to take. The bill would require specified local agencies which receive a request to provide information concerning these facilities to respond in 30 days, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

This bill would require that notice to be given prior to approving an application for a source which emits hazardous air emissions which is located within 1,000 feet of a school, as defined, and would require the notice to be distributed to additional persons, thereby imposing a state-mandated local program. The bill would authorize the preparation of the notice under prescribed circumstances. The bill would make the notice requirements inapplicable if the air pollution control officer makes specified determinations.

The bill would define school for purposes of the RMPP procedures and would authorize the administering agency to grant a one-time extension of the deadline to submit a corrected RMPP. The bill would require the administering agency to review any claim for a trade secret protection and to segregate properly substantiated trade secret information from the information to be made public. The bill would impose new duties upon administering agencies, thereby imposing a state-mandated local program.

The bill would require the school district to make the information necessary to mail notices required by these provisions available to the air pollution control officer and would allow the notices to be distributed to the children to be given to their parents.

The bill would require applicants for a permit to certify whether the project is located within 1,000 feet of a school, and would authorize denial of the permit upon misrepresentation of that fact.

SECTION 1. Section 39003 of the Education Code is amended to read:

<< CA EDUC § 39003 >>

39003. The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency<<+, as defined in Section 21067 of the Public Resources Code,+>> preparing the environmental impact report or negative declaration has consulted with the <<-* * *->> <<+administering agency+>> in which the proposed schoolsite is located <<-* * *->> and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions<<+, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought+>>.

(c) The governing board of the school district makes <<+one+>> of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but <<-* * *->> <<+one of the following conditions applies:+>>

<<+(A) T+>>he health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

<<+(B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.+>>

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution <<+control+>> officer, hazardous air emissions <<-* * *->> also <<+means+>> emissions into the ambient air from any substance identified in <<+subdivisions (a) to (f), inclusive, of+>> Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" <<-* * *->> <<+means any substance+>> defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" <<-* * *->> <<+means any material+>> defined <<-* * *->> <<+pursuant to+>> subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" <<-* * *->> <<+means any waste+>> defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" <<-* * *->> <<+means any site+>> defined in Section 25114 of the Health and Safety Code.

<<+(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.+>>

<<+(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.+>>

SEC. 2. Section 39120 of the Education Code is amended to read:

<< CA EDUC § 39120 >>

SEC. 1. Section 39120 of the Education Code is amended to read:

(b) The lead agency<<+, as defined in Section 21067 of the Public Resources Code,+>> preparing the environmental impact report or negative declaration has consulted with the <<-* * *->> <<+administering agency+>> in which the proposed schoolsite is located <<-* * *->> and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions<<+, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought+>>.

(c) The governing board of the school district makes <<+one+>> of the following written findings:

- (1) Consultation identified none of the facilities specified in subdivision (b).
- (2) The facilities specified in subdivision (b) exist, but <<-* * *->> <<+one of the following conditions applies:+>>

<<+(A) T+>>he health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

<<+(B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.+>>

SEC. 2. Section 39120 of the Education Code is amended to read:

39120. <<+(a)+>> The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency <<+comply+>> with the same requirements specified in <<+subdivision (a) of+>> Section 39003 for schoolsite acquisition.

<<+(b) For purposes of this section, the acceptance of construction bids shall constitute approval of the project.+>>

SEC. 17. Section 21151.4 of the Public Resources Code is amended to read:

21151.4. No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within <<+ 1/4+>> of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air <<-* * *->> <<+ emission, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than the quantity specified in subdivision (a) of+>> Section <<-* * *->> <<+ 25536 of the Health and Safety Code, which may pose a health or safety hazard to persons who would attend or would be employed at the school,+>> unless both of the following occur:

- (a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

SEC. 18. Section 21151.8 of the Public Resources Code is amended to read:

21151.8. (a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless <<-* * *->> <<+all of the following occur:+>> <<+(1) T+>>he environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

<<+(A)+>> The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

<<+(B)+>> A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

<<+(C)+>> A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

<<+(2) The lead agency preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the lead agency shall include a list of the locations for which information is sought.+>>

<<+(3) The governing board of the school district makes one of the following written findings:+>>

<<+(A) Consultation identified no such facilities specified in paragraph (2).+>>

<<+(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:+>>

<<+(i) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.+>>

<<+(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the

proposed school. If the governing board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.+>>

<<+(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency which does not respond within 30 days.+>>

<<+(b) If a lead agency has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility specified in paragraph (2) of subdivision (a).+>>

<<+(c)+>> As used in this section <<+and Section 21151.4, the following definitions shall apply+>>:

(1) "Hazardous substance" <<-* * *->> <<+means any substance+>> defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" <<-* * *->> <<+means any material+>> defined <<-* * *->> <<+pursuant to+>> subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" <<-* * *->> <<+means any waste+>> defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" <<-* * *->> <<+means any site+>> defined in Section 25114 of the Health and Safety Code.

<<+(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.+>>

<<+(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.+>>

<<+(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.+>>

AMENDED 2003 Cal. Legis. Serv. Ch. 668 (S.B. 352)

AN ACT to amend Section 21151.8 of the Public Resources Code, relating to public schools.

This bill would, in addition, prohibit the approval by the governing board of a school district of a schoolsite that is within 500 feet from the edge of the closest traffic lane of a freeway or other busy traffic corridor, unless prescribed conditions are met and would make conforming and other technical, nonsubstantive changes.

This bill would define "facility" for this purpose and would require the lead agency to consult to identify freeways and other busy traffic corridors, as defined, large agricultural operations, and railyards, within 1/4 of a mile of the schoolsite, and would make conforming and other technical, nonsubstantive changes.

<< CA EDUC § 17213 >>

17213. The governing board of a school district may not approve a project involving the acquisition of a schoolsite by a school district, unless all of the following occur:

(a) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site* * *, unless if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the * * *Department of * * *Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood.

(b) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, in preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and other busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite* * *, that might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The school district, as the lead agency, shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified none of the facilities or significant pollution sources specified in subdivision (b).

(2) The facilities or other pollution sources specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another governmental entity that has jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(C) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(D) The governing board finds that neither of the conditions set forth in subparagraph (B) or (C) can be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

SEC. 3. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) An environmental impact report or negative declaration * * * may not be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the * * * Department of * * * Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite* * *, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes * * * a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency that does not respond within 30 days.

(b) If a school district, as a lead agency, has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

Amended Stats. 2004, c. 689 (S.B.945), § 5

This bill would, instead, specify that an environmental impact report shall not be certified and a negative declaration shall not be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle extremely hazardous substances in a quantity equal to or greater than a specified state threshold quantity prescribed by statute that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless specified conditions occur, including that the school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

SEC. 5. [FN1] Section 21151.4 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.4 >>

21151.4. An environmental impact report * * * shall not be certified and a negative declaration shall not be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school that might reasonably be anticipated to emit hazardous * * * air emissions, or that would handle * * * an extremely hazardous substance or a mixture containing

extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified * * * pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

SEC. 6. If AB 3090 is enacted on or before January 1, 2005, and amends Section 21087 of the Public Resources Code, then Section 4 of this bill, which would repeal Section 21087 of the Public Resources Code, shall not become operative; and, notwithstanding Section 9605 of the Government Code, this bill shall not chapter out the amendments to Section 21087 of the Public Resources Code made by AB 3090.

AMENDED 2007 Cal. Legis. Serv. Chapter 130 (AB 290) Section 206.

SEC. 206. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) An environmental impact report or negative declaration may not be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous * * * substances * * * or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration

shall be conclusively presumed to comply with this section as to the area of responsibility of any agency that does not respond within 30 days.

(b) If a school district, as a lead agency, has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Extremely hazardous substances" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit, or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

AMENDED 2008 Cal. Legis. Serv. Ch. 148 (A.B. 2720)

This bill would make technical, nonsubstantive changes in these provisions and would revise a cross-reference.

This bill would define "hazardous air emissions" and "extremely hazardous substances" for the purposes of that provision.

SECTION 1. Section 21151.4 of the Public Resources Code is amended to read:
<< CA PUB RES § 21151.4 >>

21151.4. (a) An environmental impact report shall not be certified or a negative declaration shall not be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

(1) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(2) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

(b) As used in this section, the following definitions apply:

(1) "Extremely hazardous substance" means an extremely hazardous substance as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(2) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air of a substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

SEC. 2. Section 21151.8 of the Public Resources Code is amended to read:
<< CA PUB RES § 21151.8 >>

21151.8. (a) An environmental impact report shall not be certified or a negative declaration shall not be approved for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2)(A) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous substances or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(B) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to subparagraph (A) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with subparagraph (A) as to the area of responsibility of an agency that does not respond within 30 days.

(C) If the school district, as a lead agency, has carried out the consultation required by subparagraph (A), the environmental impact report or the negative declaration shall be conclusively presumed to comply with subparagraph (A), notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in subparagraph (A).

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also

make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii), or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of overriding considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

* * *

(b) As used in this section* * *, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Extremely hazardous substances" means * * *an extremely hazardous substance as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency authorized pursuant to Section 25502 of the Health and Safety Code to implement and enforce Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit, or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous

Test Claim Name: **School Facilities Funding Requirements (02-TC-30 and 02-TC-43)**
Claimant: **Clovis Unified School District**

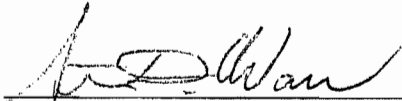
Page 50

substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

CA LEGIS 148 (2008)

(D) I declare under the penalty of perjury based on information and belief and under the laws of the State of California that the foregoing is true and correct. Executed this 24 day of May, 2010, at Clovis, California.



Steve Ward

Section Number: 7.

Heading: Documentation

(A)

Statutes 1999 Chapter 23 (SB 47):

1. Health & Safety Code section 25358.1
2. Health & Safety Code section 25358.7.1

Statutes 1991 Chapter 1183 (AB 928):

1. Education Code section 39003; Section 1
(Repealed by Stats.1996, c. 277 (S.B.1562), § 6, operative Jan. 1, 1998)

2. Education Code section 39120; Section 1, 2.
(Repealed by Stats.1996, c. 277 (S.B.1562), § 6, operative Jan. 1, 1998)

3. Public Resources Code section 21151.4, Section 17.
(Amended Stats.2004, c. 689 (S.B.945), § 5; Stats.2008, c. 148 (A.B.2720), § 1.)

4. Public Resources Code section 21151.8, Section 18.
(Amended Stats.2003, c. 668 (S.B.352), § 3; Stats.2007, c. 130 (A.B.299), § 206; Stats.2008, c. 148 (A.B.2720), § 2.)

(B) Not applicable.

(C) Not applicable.

(D) Not applicable.

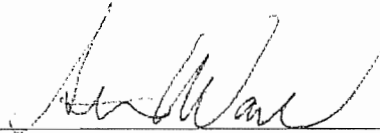
8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

STEVE WARD

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

ASSOCIATE SUPERINTENDENT OF ADMINISTRATIVE SERVICES

Print or Type Title

MAY 24, 2010

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

CALIFORNIA 1999 LEGISLATIVE SERVICE
 1999 Portion of 1999-2000 Regular Session

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Additions are indicated by <<+ Text +>>; deletions by <<- * * * ->>. Changes in tables are made but not highlighted.

CHAPTER 23
 S.B. No. 47
 HAZARDOUS SUBSTANCES--CARPENTER-PRESLEY-TENNER HAZARDOUS SUBSTANCE ACCOUNT
 ACT--GENERAL AMENDMENTS

AN ACT to repeal and add Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, relating to hazardous substances, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State May 26, 1999.]
 LEGISLATIVE COUNSEL'S DIGEST

SB 47, Sher. Hazardous substance account: extension.

(1) Under prior law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, which was repealed on January 1, 1999, with certain exceptions, imposed liability for hazardous substance removal or remedial actions and required the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection and for the priority ranking of hazardous substance release sites for removal or remedial action under the act. The act required the department or, if appropriate, a California regional water quality control board, to prepare or approve remedial action plans for each listed site and provided for an arbitration process for the apportionment of liability for removal or remedial actions. The act authorized the department to expend the funds in the Toxic Substances Control Account in the General Fund, upon appropriation by the Legislature, to pay for, among other things, removal and remedial actions related to the release of hazardous substances. However, certain provisions of the act, including the Johnston-Filante Hazardous Substance Cleanup Bond Act of 1984 and related provisions, will not be repealed until the date when the bonds issued and sold pursuant to the bond act have been paid and the General Fund reimbursed.

Among other things, the act annually appropriated \$5,000,000 from the Hazardous Substance Clearing Account to pay the principal of, and interest on, bonds issued and sold pursuant to the bond act and continuously appropriated \$1,000,000 from the Toxic Substances Control Account to the department as a reserve account for emergencies. The act also continuously appropriated certain funds deposited in a subaccount for removal and remedial actions at a specific site and funds in a subaccount established by the Controller for site operation and maintenance. The act authorized a person to apply to the State Board of Control for compensation of a loss caused by the release of a

hazardous substance, and provided that any person who knowingly gives, or causes to be given, any false information as a part of a claim for compensation is guilty of a misdemeanor.

This bill would repeal, reenact, and revise the act, thereby extending the effect of the act indefinitely. This bill would revise the term "operation and maintenance" and would define the terms "response," "respond," "response action," and "site."

The bill would direct the department or California regional water quality board to require a responsible party who is required to comply with operation and maintenance requirements to demonstrate and maintain financial assurance, in a specified manner, except as specified. The bill would require the remedial action plan to evaluate each alternative remedial action considered and rejected by the department or a regional board and to include specified information regarding those alternatives. The bill would require the department to issue orders for removal or remedial actions to the largest manageable number of potentially responsible parties, after considering specified factors, and would exempt certain determinations made by the department, when issuing those orders, from judicial review. The bill would require that any response action taken or approved pursuant to the act be based upon, and be no less stringent than, specified federal regulations and state statutes, regulations, and policies, and would require a health or ecological risk assessment prepared in conjunction with such a response action to meet specified criteria and include specified assumptions.

The bill would require the department and the regional board to provide specified information to the affected community and to develop a public participation work plan, and would provide for the establishment of community advisory groups under specified conditions. The bill would authorize a community advisory group to request a technical assistance grant for a site. The department and the State Water Resources Control Board would be required to create 2 community service offices, by July 1, 2000, to perform specified duties.

The bill would require the Attorney General, at the request of the department, to recover, pursuant to state or federal law, any costs incurred by the department or regional board in carrying out the act. The bill would exempt certain owners of property from liability for groundwater releases, except as specified.

The bill would require the department to propose a final administrative or judicial expedited settlement with potentially responsible parties who have contributed a minimal amount of hazardous substances to a site.

The bill would establish the Orphan Share Reimbursement Trust Fund in the State Treasury and would authorize the administrator of the fund to expend the money in that fund, upon appropriation by the Legislature, for specified purposes, including the reimbursement of the orphan share of a site, as defined. The bill would provide that the provisions establishing the fund and the related provisions would not become operative until the operative date of a statute that becomes operative on or after January 1, 2000, creates a position in state government known as the Administrator of the Orphan Share Reimbursement Trust Fund to be appointed by the Governor and subject to confirmation by the Senate, and either appropriates funds to implement those provisions or establishes a revenue source for the fund, or both. The bill would provide for the suspension of the operation of those provisions under specified conditions.

The bill would make an appropriation by reenacting the continuous appropriations specified above. The bill, by reenacting the act, would also extend that misdemeanor provision, thereby imposing a state-mandated local program by creating a new crime.

The bill would provide that any action taken pursuant to the former act by the department, a California regional water quality control board, or any other state or local agency, would remain in effect on and after January 1, 1999, and be subject to the act, as reenacted by this bill. The bill would provide that it does not terminate, affect, or modify any proceeding, order, or agreement issued or entered into by the department, the regional board, by any other state or local agency pursuant to the former act or any rights or obligations arising out of a bond issue and that the reenacted act would apply retroactively, on and after January 1, 1999, to those proceedings, orders, agreements, or bonds.

The bill would require that funds expended by the department to pay the costs of carrying out actions to remove hazardous substances from sites of illegal drug laboratories during the period from January 1, 1999, until the effective date of the bill, to be paid from a specified appropriation made in the Budget Act of 1998, and would provide for the transfer of a specified amount of funds expended by the department from that appropriation.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

<< Repealed: CA HLTH & S §§ 25300, 25301, 25310, 25311, 25312, 25313, 25313.5, 25314, 25315, 25316, 25317, 25317.5, 25318, 25318.5, 25319, 25319.5, 25320, 25321, 25322, 25322.1, 25322.2, 25323, 25323.1, 25323.5, 25323.6, 25324, 25325, 25326, 25326.5, 25326.6, 25327, 25330, 25330.2, 25330.4, 25330.5, 25331, 25334, 25334.5, 25334.6, 25334.7, 25335, 25336, 25337, 25342, 25342.2, 25343, 25350, 25351.1, 25351.2, 25351.5, 25351.6, 25351.7, 25351.8, 25352, 25353, 25354, 25354.5, 25355, 25355.5, 25355.6, 25355.7, 25355.8, 25356, 25356.1, 25356.2, 25356.3, 25356.4, 25356.5, 25356.6, 25356.7, 25356.8, 25356.9, 25356.10, 25357, 25357.5, 25358, 25358.1, 25358.2, 25358.3, 25358.4, 25358.5, 25358.6, 25358.7, 25358.9, 25359, 25359.1, 25359.2, 25359.3, 25359.4, 25359.4.5, 25359.5, 25359.6, 25359.7, 25360, 25360.1, 25360.2, 25360.3, 25360.4, 25361, 25362, 25363, 25364, 25364.1, 25364.7, 25365, 25365.6, 25366, 25366.5, 25367, 25368, 25368.1, 25368.2, 25368.3, 25368.4, 25368.5, 25368.6, 25368.7, 25368.8, 25369, 25369.1, 25370, 25372, 25373, 25374, 25375, 25375.5, 25376, 25377, 25378, 25379, 25380, 25381, 25382, 25385, 25385.1, 25385.2, 25385.3, 25385.4, 25385.5, 25385.6, 25385.7, 25385.8, 25385.9, 25386, 25386.1, 25386.2, 25386.25, 25386.3,

25386.4, 25386.5, 25386.6, 25395, 25395.1, 25395.2, 25395.3, 25395.4, 25395.5,
25395.6, 25395.7, 25395.8, 25395.9, 25395.10, 25395.11, 25395.12, 25395.13,
25395.14, 25395.15 >>

SECTION 1. Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code is repealed.

SEC. 2. Chapter 6.8 (commencing with Section 25300) is added to Division 20 of the Health and Safety Code, to read:

<< CA HLTH & S pr. 25300 (c. hd.) >>

CHAPTER 6.8. HAZARDOUS SUBSTANCE ACCOUNT
Article 1. Short Title and Legislative Intent

<< CA HLTH & S § 25300 >>

25300. This chapter shall be known and may be cited as the Carpenter-Presley-Tanner Hazardous Substance Account Act.

<< CA HLTH & S § 25301 >>

25301. It is the intent of the Legislature to do all of the following:

(a) Establish a program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to the public health or the environment.

(b) Compensate persons, under certain circumstances, for out-of-pocket medical expenses and lost wages or business income resulting from injuries proximately caused by exposure to releases of hazardous substances.

(c) Make available adequate funds in order to permit the State of California to assure payment of its 10-percent share of the costs mandated pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

Article 2. Definitions

<< CA HLTH & S § 25310 >>

25310. The definitions set forth in this article shall govern the interpretation of this chapter. Unless the context requires otherwise and except as provided in this article, the definitions contained in Section 101 of the federal act (42 U.S.C. Sec. 9601) shall apply to the terms used in this chapter.

<< CA HLTH & S § 25311 >>

25311. "Contract competitor" means any person competing for a state contract pursuant to subdivision (c) of Section 25358.3.

<< CA HLTH & S § 25312 >>

25312. "Department" means the Department of Toxic Substances Control.

<< CA HLTH & S § 25313 >>

25313. "Director" means the Director of Toxic Substances Control.

<< CA HLTH & S § 25314 >>

25314. "Feasibility study" means the identification and evaluation of technically feasible and effective remedial action alternatives to protect public health and the environment, at a hazardous substance release site, or other activities deemed necessary by the department for the development of a remedial action plan.

<< CA HLTH & S § 25315 >>

25315. "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

<< CA HLTH & S § 25316 >>

25316. "Hazardous substance" means:

(a) Any substance designated pursuant to Section 1321 (b) (2) (A) of Title 33 of the United States Code.

(b) Any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the federal act (42 U.S.C. Sec. 9602).

(c) Any hazardous waste having the characteristics identified under or listed pursuant to Section 6921 of Title 42 of the United States Code, but not including any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.) has been suspended by act of Congress.

(d) Any toxic pollutant listed under Section 1317 (a) of Title 33 of the United States Code.

(e) Any hazardous air pollutant listed under Section 7412 of Title 42 of the United States Code.

(f) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to Section 2606 of Title 15 of the United States Code.

(g) Any hazardous waste or extremely hazardous waste as defined by Sections 25117 and 25115, respectively, unless expressly excluded.

<< CA HLTH & S § 25317 >>

25317. "Hazardous substance" does not include:

(a) Petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in subdivisions (a) to (f), inclusive, of Section 25316, and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), or the ash produced by a resource recovery facility utilizing a municipal solid waste stream.

(b) Nontoxic, nonflammable, noncorrosive stormwater runoff drained from underground vaults, chambers, or manholes into gutters or storm sewers.

<< CA HLTH & S § 25318.5 >>

25318.5. "Operation and maintenance" means those activities initiated or continued at a hazardous substance release site following completion of a removal or remedial action that are deemed necessary by the department or regional board in order to protect public health or safety or the environment, to maintain the effectiveness of the removal or remedial action at the site, or to achieve or maintain the removal or remedial action standards and objectives established by the final remedial action plan or final removal action work plan applicable to the site.

<< CA HLTH & S § 25319 >>

25319. "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities, to the extent permitted by law.

<< CA HLTH & S § 25319.5 >>

25319.5. "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past waste management practices have resulted in the release or threatened release of hazardous substances that pose a threat to public health or the environment.

<< CA HLTH & S § 25319.6 >>

25319.6. "Regional board" means a California regional water quality control board.

<< CA HLTH & S § 25320 >>

25320. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

<< CA HLTH & S § 25321 >>

25321. "Release" does not include any of the following:

(a) Any release that results in exposure to persons solely within a workplace, with respect to a claim those exposed persons may assert against their employer.

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.

(c) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. Sec. 2011, et seq.), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 2210 of Title 42 of the United States Code or, for the purposes of Section 104 of the federal act (42 U.S.C. Sec. 9604) or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under Section 7912(a)(1) or 7942(a) of Title 42 of the United States Code, which sections are a part of the Uranium Mill Tailings Radiation Control Act of 1978.

(d) The normal application of fertilizer, plant growth regulants, and pesticides.

<< CA HLTH & S § 25322 >>

25322. "Remedy" or "remedial action" includes all of the following:

(a) Those actions that are consistent with a permanent remedy, that are taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance into the environment, as further defined by Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)), except that any reference in Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)) to the President, relating to determinations regarding the relocation of residents, businesses, and community facilities shall, for the purposes of this chapter, be deemed to be a reference to the Governor and any other reference in that section to the President shall, for the purposes of this chapter, be deemed a reference to the Governor, or the director, if designated by the Governor.

(b) Those actions that are necessary to monitor, assess, and evaluate a release or a threatened release of a hazardous substance.

(c) Site operation and maintenance.

<< CA HLTH & S § 25322.1 >>

25322.1. "Remedial design" means the detailed engineering plan to implement the remedial action alternative or initial remedial measure approved by the department.

<< CA HLTH & S § 25322.2 >>

25322.2. "Remedial investigation" means those actions deemed necessary by the department to determine the full extent of a hazardous substance release at a site, identify the public health and environment threat posed by the release, collect data on possible

remedies, and otherwise evaluate the site for purposes of developing a remedial action plan.

<< CA HLTH & S § 25323 >>

25323. "Remove" or "removal" includes the cleanup or removal of released hazardous substances from the environment or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage which may otherwise result from a release or threatened release, as further defined by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).

<< CA HLTH & S § 25323.1 >>

25323.1. "Removal action work plan" means a work plan prepared or approved by the department or a California regional water quality control board that is developed to carry out a removal action, in an effective manner, that is protective of the public health and safety and the environment. The removal action work plan shall include a detailed engineering plan for conducting the removal action, a description of the onsite contamination, the goals to be achieved by the removal action, and any alternative removal options that were considered and rejected and the basis for that rejection.

<< CA HLTH & S § 25323.3 >>

25323.3. "Response," "respond," or "response action" have the same meanings as defined in Section 9701(25) of the federal act (42 U.S.C. Sec. 9701(25)). The enforcement and oversight activities of the department and regional board are included within the meaning of "response," "respond," or "response action."

<< CA HLTH & S § 25323.5 >>

25323.5. (a)(1) "Responsible party" or "liable person," for the purposes of this chapter, means those persons described in Section 107(a) of the federal act (42 U.S.C. Sec. 9607(a)).

(2)(A) Notwithstanding paragraph (1), but except as provided in subparagraph (B), a person is not a responsible party or liable person, for purposes of this chapter, for the reason that the person has developed or implemented innovative investigative or innovative remedial technology with regard to a release site, if the use of the technology has been approved by the department for the release site and the person would not otherwise be a responsible party or liable person. Upon approval of the use of the technology, the director shall acknowledge, in writing, that, upon proper completion of the innovative investigative or innovative remedial action at the release site, the immunity provided by this subparagraph shall apply to the person.

(B) Subparagraph (A) does not apply in any of the following cases:

(i) Conditions at the release site have deteriorated as a result of the negligence of the person who developed or implemented the innovative investigative or innovative remedial technology.

(ii) The person who developed or implemented the innovative investigative or innovative remedial technology withheld or misrepresented information that was relevant to the potential risks or harms of the technology.

(iii) The person who implemented the innovative investigative or innovative remedial technology did not follow the implementation process approved by the department.

(b) For the purposes of this chapter, the defenses available to a responsible party or liable person shall be those defenses specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

(c) Any person who unknowingly transports hazardous waste to a solid waste facility pursuant to the exemption provided in subdivision (e) of Section 25163 shall not be considered a responsible party for purposes of this chapter solely because of the act of transporting the waste. Nothing in this subdivision shall affect the liability of this person for his or her negligent acts.

<< CA HLTH & S § 25323.9 >>

25323.9. "Site" has the same meaning as the term "facility" is defined by Section 101(9) of the federal act (42 U.S.C. Sec. 9601(9)).

<< CA HLTH & S § 25324 >>

25324. "State account" means the Toxic Substances Control Account established pursuant to Section 25173.6, except that in Section 25334 and Article 7.5 (commencing with Section 25385), "state account" means the Hazardous Substance Account established pursuant to Section 25330. Notwithstanding any other provision of this section, any costs incurred and payable from the Hazardous Substance Account, the Hazardous Waste Control Account, or the Site Remediation Account prior to July 1, 1998, to implement this chapter, as it read prior to January 1, 1999, or Chapter 6.85 (commencing with Section 25396), shall be recoverable from the liable person or persons pursuant to Section 25360 as if the costs were incurred and payable from the state account.

<< CA HLTH & S § 25325 >>

25325. "Federally permitted release" has the same meaning as defined in Section 101(10) of the federal act (42 U.S.C. Sec. 9601(10)).

<< CA HLTH & S § 25326 >>

25326. "A release authorized or permitted pursuant to state law" means any release into the environment which is authorized by statute, ordinance, regulation, or rule of any state, regional, or local agency or government or by any specific permit, license, or similar authorization from such an agency, including one of the foregoing, that recognizes a standard industry practice, including variances obtained from the agency which allow operations for facilities during a period of time when releases from the facilities do not conform with relevant statutes, ordinances, regulations, or rules. The term includes a federally permitted release, as defined by Section 25325, and releases that are in accordance with any court order or consent decree.

<< CA HLTH & S § 25326.5 >>

25326.5. "Site cleanup evaluation" means an evaluation by the department of the effectiveness of a removal or remedial action conducted by a responsible party, to reduce or eliminate actual or potential public health and environmental threats posed by a hazardous substance release site if the action itself is not the subject of oversight by the department.

<< CA HLTH & S § 25327 >>

25327. "Tier" means a grouping of hazardous substance release sites that require removal and remedial actions, that are listed alphabetically, and that are of a roughly equivalent priority for removal and remedial action.

Article 3. Hazardous Substance Account

<< CA HLTH & S § 25330 >>

25330. There is in the General Fund the Hazardous Substance Account which shall be administered by the director. In addition to any other money appropriated by the Legislature to the account, the following amounts shall be deposited in the account:

- (a) Any interest earned on money deposited in the account.
- (b) Any money transferred from the state account pursuant to Section 25173.6 or 25336.

<< CA HLTH & S § 25330.2 >>

25330.2. Funds in the state account appropriated for removal or remedial action pursuant to this chapter are available for encumbrance for three fiscal years subsequent to the fiscal year in which the funds are appropriated and are available for disbursement in liquidation of encumbrances pursuant to Section 16304.1 of the Government Code.

<< CA HLTH & S § 25330.4 >>

25330.4. (a) Notwithstanding any other provision of law, the Controller shall establish a separate subaccount in the state account, for any funds received from a settlement agreement or the General Fund for a removal or remedial action to be performed at a specific site.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for those removal or remedial actions are hereby continuously appropriated to the department, without regard to fiscal years, for removal or remedial action at the specific site, and for administrative costs associated with the removal or remedial action at the specific site.

(c) Notwithstanding any other provision of law, money in the subaccount for those removal or remedial actions shall not revert to the General Fund or be transferred to any other

fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for removal or remedial action at the specific sites.

(e) At the conclusion of all removal or remedial actions at the specific site, any unexpended funds in any subaccounts established pursuant to this section shall be transferred to the subaccount for site operation and maintenance established pursuant to Section 25330.5, if necessary, for those activities at the site, or, if not needed for site operation and maintenance at the site, to the Toxic Substances Control Account.

<< CA HLTH & S § 25330.5 >>

25330.5. (a) The Controller shall establish a separate subaccount for site operation and maintenance in the state account. All of the following amounts shall be deposited in the subaccount:

- (1) Funds received from responsible parties for site operation and maintenance.
- (2) Funds received from the federal government pursuant to the federal act for site operation and maintenance.
- (3) Funds received from cities, counties, or any other state or local agency for site operation and maintenance.
- (4) Funds appropriated from the state account by the Legislature for site operation and maintenance.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for site operation and maintenance are hereby continuously appropriated to the department, without regard to fiscal years, for site operation and maintenance, and for administrative costs associated with site operation and maintenance.

(c) Notwithstanding any other provision of law, money in the subaccount for site operation and maintenance shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for site operation and maintenance.

<< CA HLTH & S § 25331 >>

25331. The state account may sue and be sued in its own name.

<< CA HLTH & S § 25334 >>

25334. There is within the state account, the Hazardous Substance Clearing Account, which shall be used to pay the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385). Notwithstanding Section 25351, all of the following moneys shall be deposited in the account for the payment of the principal of, and interest on, bonds:

- (a) Transfers from the Superfund Bond Trust Fund made pursuant to Section 25385.8.
- (b) Amounts received pursuant to Sections 25356.4 and 25360, as specified in those sections, if the expenditures for removal or remedial actions were paid from the proceeds of the bonds sold pursuant to Article 7.5 (commencing with Section 25385).
- (c) Federal moneys received pursuant to the federal act which are designated to be used for removal or remedial actions paid for by proceeds from the bonds issued pursuant to Article 7.5 (commencing with Section 25385).
- (d) Any moneys appropriated by the Legislature for the payment of the principal of, and interest on, these bonds.
- (e) Any moneys derived from the premiums and accrued interest on these bonds.

<< CA HLTH & S § 25334.7 >>

25334.7. (a) The department shall report to the Governor and the Legislature on the progress of the cleanup of the San Gabriel Valley groundwater sites in Los Angeles County, and on the progress of enforcement actions relating to those sites, in the biennial report specified in Section 25178. The report shall include, but not be limited to, all of the following:

- (1) State expenditures and planned expenditures.
 - (2) Actions accomplished at the sites.
 - (3) Actions planned, including a time schedule for the accomplishment of planned actions.
- (b) The report may be prepared in cooperation with other state and federal agencies involved with the sites, and shall include a summary of the activities of those additional agencies.

<< CA HLTH & S § 25336 >>

25336. There shall be deposited in the Hazardous Substance Account any money

transferred, upon appropriation by the Legislature, from the state account. Those moneys may be expended for repayment of principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385), and for all other purposes for which the Hazardous Substance Account or the state account may be used pursuant to Article 7.5 (commencing with Section 25385).

<< CA HLTH & S § 25337 >>

25337. (a) There is in the General Fund the Site Remediation Account, which shall be administered by the director. The account shall be funded by money transferred from the state account, upon appropriation by the Legislature. Consistent with the requirements of Section 114(c) of the federal act (42 U.S.C. Sec. 9614(c)), the moneys in the account may be expended by the department, upon appropriation by the Legislature, for direct site remediation costs.

(b)(1) For purposes of this section, "direct site remediation costs" means payments to contractors for investigations, characterizations, removal, remediation, or long-term operation and maintenance at sites contaminated or suspected of contamination by hazardous materials, where those actions are authorized pursuant to this chapter.

(2) "Direct site remediation costs" also means the state-mandated share pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(3) "Direct site remediation costs" does not include the department's administrative expenses or the department's expenses for staff to perform oversight of investigations, characterizations, removals, remediations, or long-term operation and maintenance.

Article 4. Fees

<< CA HLTH & S § 25342 >>

25342. The Director of Finance shall schedule in the annual Budget Act the projects proposed in any fiscal year, that will incur direct costs for removal and remedial actions at hazardous substance release sites.

<< CA HLTH & S § 25343 >>

25343. (a) Except as provided in subdivisions (b) and (c), any potentially responsible party at a site, or any person who has notified the department of that person's intent to undertake removal or remediation at a site, shall reimburse the department, pursuant to Chapter 6.66 (commencing with Section 25269), for the costs incurred by the department for its oversight of any preliminary endangerment assessment at that site.

(b) This section does not apply to any notice of intent submitted to the department prior to July 1, 1998. Any person who submitted such a notice shall pay the fee, if not already paid, as required by this section as it read on December 31, 1997, unless the department and that person mutually agree to enter into a reimbursement agreement in lieu of any unpaid portion of the required fee.

(c) The changes made in this section by Chapter 870 of the Statutes of 1997 do not require

amendment of, or otherwise affect, any agreement entered into prior to July 1, 1998, pursuant to which any person has agreed to reimburse the department for the costs incurred by the department for its oversight of a preliminary endangerment assessment.

Article 5. Uses of the State Account

<< CA HLTH & S § 25350 >>

25350. For response actions taken pursuant to the federal act, only those costs for actions that are consistent with the priorities, guidelines, criteria, and regulations contained in the national contingency plan, as revised and republished pursuant to Section 105 of the federal act (42 U.S.C. Sec. 9605), shall qualify for appropriation by the Legislature and expenditure by the director pursuant to Sections 25351, 25352, and 25354. For response actions not taken pursuant to the federal act or for response actions taken that are not specifically addressed by the priorities, guidelines, criteria, and regulations contained in the national contingency plan, as revised and republished, the costs thereof shall also qualify for appropriation by the Legislature and expenditure by the department pursuant to Sections 25351, 25352, and 25354 provided they are, to the maximum extent possible, consistent with the priorities, guidelines, criteria, and regulations contained in the national contingency plan for similar releases, situations, or events. No response actions taken pursuant to this chapter by the department or regional or local agencies shall duplicate federal response actions.

<< CA HLTH & S § 25351.1 >>

25351.1. Notwithstanding Section 13340 of the Government Code, there is hereby transferred annually from the Hazardous Substance Account to the Hazardous Substance Clearing Account, and appropriated therefrom, an amount of not more than five million dollars (\$5,000,000) which is required to pay the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385) to the extent that the funds in the Hazardous Substance Clearing Account and the Superfund Bond Trust Fund are insufficient to pay the principal of, and interest on, these bonds.

<< CA HLTH & S § 25351.2 >>

25351.2. (a) A city or county may initiate a removal or remedial action for a site listed pursuant to Section 25356 in accordance with this section. Except as provided in subdivision (d), the city or county shall, before commencing the removal or remedial action, take all of the following actions:

(1) The city or county shall notify the department of the planned removal or remedial action. Upon receiving this notification, the department shall make a reasonable effort to notify any person identified by the department as a potentially responsible party for the site. If a potentially responsible party is taking the removal or remedial action properly and in a timely fashion, or if a potentially responsible party will commence such an action within 60 days of this notification, the city or county may not initiate a removal or remedial action pursuant to this section.

(2) If a potentially responsible party for the site has not taken the action specified in paragraph (1), the city or county shall submit the estimated cost of the removal or remedial action to the department, which shall, within 30 days after receiving the

estimate, approve or disapprove the reasonableness of the cost estimate. If the department disagrees with the cost estimate, the city or county and the department shall, within 30 days, attempt to enter into an agreement concerning the cost estimate.

(3) The city or county shall demonstrate to the department that it has sufficient funds to carry out the approved removal or remedial action without taking into account any costs of the action that may be, or have been, paid by a potentially responsible party.

(b) If the director approves the request of the city or county to initiate a removal or remedial action and a final remedial action plan has been issued pursuant to Section 25356.1 for the hazardous substance release site, the city or county shall be deemed to be acting in place of the department for purposes of implementing the remedial action plan pursuant to this chapter.

(c) Upon reimbursing a city or county for the costs of a removal or remedial action, the department shall recover these costs pursuant to Section 25360.

(d) In order for a city or county to be reimbursed for the costs of a removal or remedial action incurred by the city or county from the Hazardous Substance Cleanup Fund, the city or county shall obtain the approval of the director before commencing the removal or remedial action. The director shall grant an approval only when all actions required by law prior to implementation of a remedial action plan have been taken.

<< CA HLTH & S § 25351.5 >>

25351.5. The department shall adopt any regulations necessary to carry out its responsibilities pursuant to this chapter, including, but not limited to, regulations governing the expenditure of, and accounting procedures for, moneys allocated to state, regional, and local agencies pursuant to this chapter.

<< CA HLTH & S § 25351.6 >>

25351.6. Notwithstanding Section 16304 of the Government Code, the funds deposited in the Hazardous Substance Cleanup Fund are available, upon appropriation by the Legislature, for encumbrance without regard to fiscal years.

<< CA HLTH & S § 25351.7 >>

25351.7. Any treatment, storage, transfer, or disposal facility built on the Stringfellow Quarry Class I Hazardous Waste Disposal Site, that was built for the purpose of a remedial or removal action at that site, shall only be used to treat, store, transfer, or dispose of hazardous substances removed from that site.

<< CA HLTH & S § 25351.8 >>

25351.8: Notwithstanding any other provision of law, including, but not limited to, Sections 25334.5 and 25356, the department shall place the highest priority on taking removal and remedial actions at the Stringfellow Quarry Class I Hazardous Waste Disposal Site and shall devote sufficient resources to accomplish the tasks required by this section.

<< CA HLTH & S § 25352 >>

25352. Money deposited in the state account may also be appropriated by the Legislature to the department on a specific site basis for the following purposes:

(a) For all costs incurred in restoring, rehabilitating, replacing, or acquiring the equivalent of, any natural resource injured, degraded, destroyed, or lost as a result of any release of a hazardous substance, to the extent the costs are not reimbursed pursuant to the federal act and taking into account processes of natural rehabilitation, restoration, and replacement.

(b) For all costs incurred in assessing short-term and long-term injury to, degradation or destruction of, or any loss of any natural resource resulting from a release of a hazardous substance, to the extent that the costs are not reimbursed pursuant to the federal act. No costs may be incurred for any release of a hazardous substance from any facility or project pursuant to subdivision (a) or this subdivision for injury, degradation, destruction, or loss of any natural resource where the injury, degradation, destruction, or loss was specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement prepared under the authority of the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), or was identified as a significant environmental effect to the natural resources which cannot be avoided in an environmental impact report prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and a decision to grant a permit, license, or similar authorization for any facility or project is based upon a consideration of the significant environmental effects to the natural resources, and the facility or project was otherwise operating within the terms of its permit, license, or similar authorization at the time of release.

(c) Notwithstanding Section 25355, the Governor, or the authorized representative of the state, shall act on behalf of the public as trustee of the natural resources to recover costs expended pursuant to subdivision (a) or (b).

<< CA HLTH & S § 25353 >>

25353. (a) Except as provided in (b), the department may not expend funds from the state account or the Hazardous Substance Cleanup Fund for a removal or remedial action with respect to a hazardous substance release site owned or operated by the federal government or a state or local agency at the time of disposal to the extent that the federal government or the state or local agency would otherwise be liable for the costs of that action, except that the department may expend those funds, upon appropriation by the Legislature, to oversee the carrying out of a removal or remedial action at the site by another party.

(b) Except as provided in subdivision (f), the department may expend funds from the state account or the Hazardous Substance Cleanup Fund, upon appropriation by the Legislature, to take a removal or remedial action at a hazardous substance release site which was owned or operated by a local agency at the time of release, if all of the following requirements are met:

(1) The department has substantial evidence that a local agency is not the only responsible party for the site.

(2) The department has issued a cleanup order to, or entered into an enforceable agreement with, the local agency pursuant to Section 25355.5 and has made a final determination that the local agency is not in compliance with the order or enforceable agreement.

(c) The department shall recover any funds expended pursuant to subdivision (a) or (b) to the maximum possible extent pursuant to Section 25360.

(d) If a local agency is identified as a potentially responsible party in a remedial action plan prepared pursuant to Section 25356.1, and the department expends funds pursuant to this chapter to pay for the local agency's share of the removal and remedial action, the expenditure of these funds shall be deemed to be a loan from the state to the local agency. If the department determines that the local agency is not making adequate progress toward repaying the loan made pursuant to this section, the State Board of Equalization shall, upon notice by the department, withhold the unpaid amount of the loan, in increments from the sales and use tax transmittals made pursuant to Section 7204 of the Revenue and Taxation Code, to the city or county in which the local agency is located. The State Board of Equalization shall structure the amounts to be withheld so that complete repayment of the loan, together with interest and administrative charges, occurs within five years after a local agency has been notified by the department of the amount which it owes. The State Board of Equalization shall deposit any funds withheld pursuant to this section in the Hazardous Substance Clearing Account for the purposes specified in Section 25334, if the department expended the funds from the Hazardous Substance Cleanup Fund, or into the state account, if the department expended the funds from the state account.

(e) The department may not expend funds from the state account or the Hazardous Substance Cleanup Fund for the purposes specified in Section 25352 where the injury, degradation, destruction, or loss to natural resources, or the release of a hazardous substance from which the damages to natural resources resulted, has occurred prior to September 25, 1981.

(f) The department may not expend funds from the state account or the Hazardous Substance Cleanup Fund for a removal or remedial action at any waste management unit owned or operated by a local agency if it meets both of the following conditions:

(1) It is classified as a class III waste management unit pursuant to Subchapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Administrative Code.

(2) It was in operation on or after January 1, 1988.

<< CA HLTH & S § 25354 >>

25354. (a) There is hereby continuously appropriated from the state account to the department the sum of one million dollars (\$1,000,000) for each fiscal year as a reserve account for emergencies, notwithstanding Section 13340 of the Government Code. The department shall expend moneys available in the reserve account only for the purpose of taking immediate corrective action necessary to remedy or prevent an emergency resulting from a fire or an explosion of, or human exposure to, hazardous substances

caused by the release or threatened release of a hazardous substance.

(b) (1) Notwithstanding any other provision of law, the department may enter into written contracts for corrective action taken or to be taken pursuant to subdivision (a).

(2) Notwithstanding any other provision of law, the department may enter into oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when, in the judgment of the department, immediate corrective action is necessary to remedy or prevent an emergency specified in subdivision (a).

(3) The contracts made pursuant to this subdivision, whether written or oral, may include provisions for the rental of tools or equipment, either with or without operators furnished, and for the furnishing of labor and materials necessary to accomplish the work.

(4) If the department finds that the corrective action includes the relocation of individuals, the department may contract with those individuals for out-of-pocket expenses incurred in moving for an amount of not more than one thousand dollars (\$1,000).

(c) The department shall include in the biennial report specified in Section 25178 an accounting of the moneys expended pursuant to this section. Once the appropriation made pursuant to subdivision (a) is fully expended, the director may file a report with the Legislature if it is in session or, if it is not in session, with the Committee on Rules of the Assembly and the Senate as to the moneys expended pursuant to this section. The Legislature may appropriate moneys from the state account, in addition to those moneys appropriated pursuant to subdivision (a), to the department for the purpose of taking corrective action pursuant to subdivision (a).

(d) Except as provided in subdivision (c), the amount deposited in the reserve account and appropriated pursuant to this section shall not exceed one million dollars (\$1,000,000) in any fiscal year. On June 30 of each year, the unencumbered balance of the reserve account shall revert to and be deposited in the state account.

<< CA HLTH & S § 25354.5 >>

25354.5. (a) Any state or local law enforcement officer or investigator or other law enforcement agency employee who, in the course of an official investigation or enforcement action regarding the manufacture of any illegal controlled substance, comes in contact with, or is aware of, the presence of a substance that the person suspects is a hazardous substance at a site where an illegal controlled substance is or was manufactured, shall notify the department for the purpose of taking removal action, as necessary, to prevent, minimize, or mitigate damage that might otherwise result from the release or threatened release of the hazardous substance, except for samples required to be kept for evidentiary purposes.

(b) (1) Notwithstanding any other provision of law, upon receipt of a notification pursuant to subdivision (a), the department shall take removal action, as necessary, with respect to any hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, a material intended to be used in the unlawful manufacture of a controlled substance, or a waste material from the unlawful manufacture of a controlled substance. The department may expend funds appropriated from the Illegal

Drug Lab Cleanup Account created pursuant to subdivision (e) to pay the costs of removal actions required by this section. The department may enter into oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when, in the judgment of the department, immediate corrective action to a hazardous substance subject to this section is necessary to remedy or prevent an emergency.

(2) The department shall, as soon as the information is available, report the location of any removal action that will be carried out pursuant to paragraph (1), and the time that the removal action will be carried out, to the local environmental health officer within whose jurisdiction the removal action will take place, if the local environmental officer does both of the following:

(A) Requests, in writing, that the department report this information to the local environmental health officer.

(B) Provides the department with a single 24-hour telephone number to which the information can be reported.

(c)(1) For purposes of Chapter 6.5 (commencing with Section 25100) or this chapter, any person who is found to have operated a site for the purpose of manufacturing an illegal controlled substance or a precursor of an illegal controlled substance is the generator of any hazardous substance at, or released from, the site that is subject to removal action pursuant to this section.

(2) During the removal action, for purposes of complying with the manifest requirements in Section 25160, the department, the county health department, the local environmental health officer, or their designee may sign the hazardous waste manifest as the generator of the hazardous waste. In carrying out that action, the department, the county health department, the local environmental health officer, or their designee shall be considered to have acted in furtherance of their statutory responsibilities to protect the public health and safety and the environment from the release, or threatened release, of hazardous substances, and the department, the county health department, the local environmental health officer, or their designee are not responsible parties for the release or threatened release of the hazardous substances.

(3) The officer, investigator, or agency employee specified in subdivision (a) is not a responsible party for the release or threatened release of any hazardous substances at, or released from, the site.

(d) The department may adopt regulations to implement this section in consultation with appropriate law enforcement and local environmental agencies.

(e) The Illegal Drug Lab Cleanup Account is hereby created in the General Fund and the department may expend any money in the account, upon appropriation by the Legislature, to carry out the removal actions required by this section. The account shall be funded by moneys appropriated directly from the General Fund.

(f) The responsibilities assigned to the department by this section apply only to the extent that sufficient funding is made available for that purpose.

<< CA HLTH & S § 25355 >>

25355. (a) The Governor is responsible for the coordination of all state response actions for sites identified in Section 25356 in order to assure the maximum use of available federal funds.

(b) The director may initiate removal or remedial action pursuant to this chapter unless these actions have been taken, or are being taken properly and in a timely fashion, by any responsible party.

(c) (1) At least 30 days before initiating removal or remedial actions, the department shall make a reasonable effort to notify the persons identified by the department as potentially responsible parties and shall also publish a notification of this action in a newspaper of general circulation pursuant to the method specified in Section 6061 of the Government Code. This subdivision does not apply to actions taken pursuant to subdivision (b) of Section 25358.3 or immediate corrective actions taken pursuant to Section 25354. A responsible party may be held liable pursuant to this chapter whether or not the person was given the notice specified in this subdivision.

(2) (A) Notwithstanding subdivision (a) of Section 25317, any person may voluntarily enter into an enforceable agreement with the department pursuant to this subdivision that allows removal or remedial actions to be conducted under the oversight of the department at sites with petroleum releases from sources other than underground storage tanks, as defined in Section 25299.24.

(B) If the department determines that there may be an adverse impact to water quality as a result of a petroleum release, the department shall notify the appropriate regional board prior to entering into the enforceable agreement pursuant to subparagraph (A). The department may enter into an enforceable agreement pursuant to subparagraph (A) unless, within 60 days of the notification provided by the department, the regional board provides the department with a written notice that the regional board will assume oversight responsibility for the removal or remedial action.

(C) Agreements entered into pursuant to this paragraph shall provide that the party will reimburse the department for all costs incurred including, but not limited to, oversight costs pursuant to the enforceable agreement associated with the performance of the removal or remedial actions and Chapter 6.66 (commencing with Section 25269).

(d) The department shall notify the owner of the real property of the site of a hazardous substance release within 30 days after listing a site pursuant to Section 25356, and at least 30 days before initiating a removal or remedial action pursuant to this chapter, by sending the notification by certified mail to the person to whom the real property is assessed, as shown upon the last equalized assessment roll of the county, at the address shown on the assessment roll. The requirements of this subdivision do not apply to actions taken pursuant to subdivision (b) of Section 25358.3 or to immediate corrective actions taken pursuant to Section 25354.

<< CA HLTH & S § 25355.2 >>

25355.2. (a) Except as provided in subdivision (c), the department or the regional board shall require any responsible party who is required to comply with operation and

maintenance requirements as part of a response action, to demonstrate and to maintain financial assurance in accordance with this section. The responsible party shall demonstrate financial assurance prior to the time that operation and maintenance activities are initiated and shall maintain it throughout the period of time necessary to complete all required operation and maintenance activities.

(b)(1) For purposes of subdivision (a), the responsible party shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) As an alternative to the requirement of paragraph (1), a responsible party may demonstrate and maintain financial assurance by means of a financial assurance mechanism other than those listed in paragraph (1), if the alternative financial assurance mechanism has been submitted to, and approved by, the department or the regional board as being at least equivalent to the financial assurance mechanisms specified in paragraph (1). The department or the regional board shall evaluate the equivalency of the proposed alternative financial assurance mechanism principally in terms of the certainty of the availability of funds for required operation and maintenance activities and the amount of funds that will be made available. The department or the regional board shall require the responsible party to submit any information necessary to make a determination as to the equivalency of the proposed alternative financial assurance mechanism.

(c) The department or the regional board shall waive the financial assurance required by subdivision (a) if the department or the regional board makes one of the following determinations:

(1) The responsible party is a small business and has demonstrated all of the following:

(A) The responsible party cannot qualify for any of the financial assurance mechanisms set forth in subdivisions (b), (c), and (d) of Section 66265.143 of Title 22 of the California Code of Regulations.

(B) The responsible party financially cannot meet the requirements of subdivision (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

(C) The responsible party is not capable of meeting the eligibility requirements set forth in subdivision (e) of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) The responsible party is a small business and has demonstrated that the responsible party financially is not capable of establishing one of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations while at the same time financing the operation and maintenance requirements applicable to the site.

(3) The responsible party is not separately required to demonstrate and maintain a financial assurance mechanism for operation and maintenance activities at a site because of all of the following conditions:

- (A) The site is a multiple responsible party site.
- (B) Financial assurance that operation and maintenance activities at the site will be carried out is demonstrated and maintained by a financial assurance mechanism established jointly by all, or some, of the responsible parties.
- (C) The financial assurance mechanism specified in subparagraph (B) meets the requirements of subdivisions (a) and (b).
- (d) The department or the regional board shall withdraw a waiver granted pursuant to paragraph (1) or (2) of subdivision (c) if the department or the regional board determines that the responsible party that obtained the waiver no longer meets the eligibility requirements for the waiver.
- (e) Notwithstanding Section 7550.5 of the Government Code, on or before January 15, 2001, the department shall report to the Legislature all of the following:
- (1) The number of requests the department and the regional boards have received for waivers from the financial assurance requirements of this section during the period between the effective date of the act that enacts this section and January 1, 2001.
- (2) The disposition of the requests that were received and the reasons for granting the waivers that were allowed and rejecting the waivers that were disallowed.
- (3) The total number of businesses or other entities that were required by this section to demonstrate and maintain financial assurance, the number of businesses or other entities that were able to comply with the requirement, the number that were unable to comply and the reasons why they could not or did not comply, and the history of compliance with this chapter and Chapter 6.5 (commencing with Section 25100) by responsible parties that requested waivers.
- (4) Financial assurance mechanisms other than the financial assurance mechanisms referenced in paragraph (1) of subdivision (b) that may be available to responsible parties.
- (f) For purposes of this section, "small business" is a business that meets the requirements set forth in subdivision (d) of Section 14837 of the Government Code.

<< CA HLTH & S § 25355.5 >>

25355.5. (a) Except as provided in subdivisions (b), (c), and (d), no money shall be expended from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund for removal or remedial actions on any site selected for inclusion on the list established pursuant to Section 25356, unless the department first takes both of the following actions:

(1) The department issues one of the following orders or enters into the following agreement:

(A) The department issues an order specifying a schedule for compliance or correction

pursuant to Section 25187.

(B) The department issues an order establishing a schedule for removing or remedying the release of a hazardous substance at the site, or for correcting the conditions that threaten the release of a hazardous substance. The order shall include, but is not limited to, requiring specific dates by which necessary corrective actions shall be taken to remove the threat of a release, or dates by which the nature and extent of a release shall be determined and the site adequately characterized, a remedial action plan shall be prepared, the remedial action plan shall be submitted to the department for approval, and a removal or remedial action shall be completed.

(C) The department enters into an enforceable agreement with a potentially responsible party for the site that requires the party to take necessary corrective action to remove the threat of the release, or to determine the nature and extent of the release and adequately characterize the site, prepare a remedial action plan, and complete the necessary removal or remedial actions, as required in the approved remedial action plan.

Any enforceable agreement entered into pursuant to this section may provide for the execution and recording of a written instrument that imposes an easement, covenant, restriction, or servitude, or combination thereof, as appropriate, upon the present and future uses of the site. The instrument shall provide that the easement, covenant, restriction, or servitude, or combination thereof, as appropriate, is subject to the variance or removal procedures specified in Sections 25233 and 25234. Notwithstanding any other provision of law, an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section and recorded so as to provide constructive notice runs with the land from the date of recordation, is binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, or lessees of the owners, heirs, successors, and assignees, and is enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(2) The department determines, in writing, that the potentially responsible party or parties for the hazardous substance release site have not complied with all of the terms of an order issued pursuant to subparagraph (A) or (B) of paragraph (1) or an agreement entered into pursuant to subparagraph (C) of paragraph (1). Before the department determines that a potentially responsible party is not in compliance with the order or agreement, the department shall give the potentially responsible party written notice of the proposed determination and an opportunity to correct the noncompliance or show why the order should be modified. After the department has made the final determination that a potentially responsible party is not in compliance with the order or agreement, the department may expend money from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund for a removal or remedial action.

(b) Subdivision (a) does not apply, and money from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund shall be available, upon appropriation by the Legislature, for removal or remedial actions, if any of the following conditions apply:

(1) The department, after a reasonable effort, is unable to identify a potential responsible party for the hazardous substance release site.

(2) The department determines that immediate corrective action is necessary, as provided

in Section 25354.

(3) The director determines that removal or remedial action at a site is necessary because there may be an imminent and substantial endangerment to the public health or welfare or to the environment.

(c) Notwithstanding subdivision (a), the department may expend funds, upon appropriation by the Legislature, from the Hazardous Substance Cleanup Fund or the Hazardous Substance Account to conduct activities necessary to verify that an uncontrolled release of hazardous substances has occurred at a suspected hazardous substance release site, to issue an order or enter into an enforceable agreement pursuant to paragraph (1) of subdivision (a), and to review, comment upon, and approve or disapprove remedial action plans submitted by potentially responsible parties subject to the orders or the enforceable agreement.

(d) Notwithstanding subdivision (a), the department may expend funds, upon appropriation by the Legislature, from the Hazardous Substance Cleanup Fund or the Hazardous Substance Account, to provide for oversight of removal and remedial actions, or, if the site is also listed on the federal act (42 U.S.C. Sec. 9604(c)(3)), to provide the state's share of a removal or remedial action.

(e) A responsible party who fails, as determined by the department in writing, to comply with an order issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or to comply with all of the terms of an enforceable agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a), shall be deemed, for purposes of subdivision (b) of Section 25355, to have failed to take action properly and in a timely fashion with respect to a hazardous substance release or a threatened release.

<< CA HLTH & S § 25355.6 >>

25355.6. (a) The State Water Resources Control Board or a California regional water quality control board that has jurisdiction over a hazardous substance release site pursuant to Division 7 (commencing with Section 13000) of the Water Code may refer the site to the department as a candidate for listing pursuant to Section 25356. After determining that the site meets the criteria adopted pursuant to subdivision (a) of Section 25356, the department may place the site on the list of sites subject to this chapter and establish its priority ranking pursuant to Section 25356.

(b) If a hazardous substance release site is referred to the department and is listed pursuant to subdivision (a), the department may expend money from the state account or the Hazardous Substance Cleanup Fund for removal or remedial action at the site, upon appropriation by the Legislature, without first issuing an order or entering into an agreement pursuant to paragraph (1) of subdivision (a) of Section 25355.5, if all of the following apply:

(1) The State Water Resources Control Board or a California regional water quality control board has issued either a cease and desist order pursuant to Section 13301 of the Water Code or a cleanup and abatement order pursuant to Section 13304 of the Water Code to the potentially responsible party for the site.

(2) The State Water Resources Control Board or the California regional water quality

control board has made a final finding that the potentially responsible party has not complied with the order issued pursuant to paragraph (1).

(3) The State Water Resources Control Board or the California regional water quality control board has notified the potentially responsible party of the determination made pursuant to paragraph (2) and that the hazardous substance release site has been referred to the department pursuant to subdivision (a).

(c) If a hazardous substance release site is referred to the department pursuant to subdivision (a), and the department makes either of the following determinations, the department shall notify the appropriate California regional water quality control board and the State Water Resources Control Board:

(1) The department determines that the site does not meet the criteria established pursuant to subdivision (a) and the site cannot be placed, pursuant to Section 25356, on the list of sites subject to this chapter.

(2) The department determines that a removal or remedial action at the site will not commence for a period of one year from the date of listing due to a lack of funds or the low priority of the site.

(d) If a California regional water resources control board or the State Water Resources Control Board receives a notice pursuant to subdivision (c), the regional board or state board may take any further action concerning the hazardous substance release site which the regional board or state board determines to be necessary or feasible, and which is authorized by this chapter or Division 7 (commencing with Section 13000) of the Water Code.

<< CA HLTH & S § 25355.7 >>

25355.7. The department and the State Water Resources Control Board concurrently shall establish policies and procedures consistent with this chapter that the department's representatives shall follow in overseeing and supervising the activities of responsible parties who are carrying out the investigation of, and taking removal or remedial actions at, hazardous substance release sites. The policies and procedures shall be consistent with the policies and procedures established pursuant to Section 13307 of the Water Code, and shall include, but are not limited to, all of the following:

(a) The procedures the department will follow in making decisions as to when a potentially responsible party may be required to undertake an investigation to determine if a hazardous substance release has occurred.

(b) Policies for carrying out a phased, step-by-step investigation to determine the nature and extent of possible soil and groundwater contamination at a site.

(c) Procedures for identifying and utilizing the most cost-effective methods for detecting contamination and carrying out removal or remedial actions.

(d) Policies for determining reasonable schedules for investigation and removal or remedial action at a site. The policies shall recognize the dangers to public health

and the environment posed by a release and the need to mitigate those dangers, while taking into account, to the extent possible, the financial and technical resources available to a responsible party.

<< CA HLTH & S § 25355.8 >>

25355.8. (a) The department shall not agree to oversee the preparation of, or to review, a preliminary endangerment assessment for property if action is, or may be, necessary to address a release or threatened release of a hazardous substance, and the department shall not issue a letter stating that no further action is necessary with regard to property, unless the person requesting the department action does either of the following:

(1) Provides the department with all of the following:

(A) Proof of the identity of all current record owners of fee title to the property and their mailing addresses.

(B) Written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by the requesting person.

(C) An acknowledgment of the receipt of the notice required in subparagraph (B), from the property owners or proof that the requesting person has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

(2) Proof of the identity of all current record owners of fee title to the property and proof that the requesting person has made reasonable efforts to locate the property owners and was unable to do so.

(b) The department shall take all reasonable steps necessary to accommodate property owner participation in the site remediation process and shall consider all input and recommendations received from the owner of property which is the subject of the proposed action.

(c) This section only applies to instances where a person requests the department to oversee the preparation of, or to review, a preliminary endangerment assessment, or requests the department to issue a letter stating that no further action is necessary with regard to property. Nothing in this section imposes a condition upon, limits, or impacts in any way, the department's authority to compel any potentially responsible party to take any action in response to a release or threatened release of a hazardous substance or to recover costs incurred from any potentially responsible party.

<< CA HLTH & S § 25356 >>

25356. (a) The department shall adopt, by regulation, the criteria for the selection and for the priority ranking of sites pursuant to subdivision (b), for response action under this chapter, and shall adopt criteria for the assignment of sites to one of the three tiers pursuant to subdivision (b). The criteria shall take into account the pertinent factors relating to the public health and the environment, which shall include, but are not limited to, potential hazards to public health and environment, the risk

of fire or explosion, toxic hazards, the extent to which the deferral of a response action will result, or is likely to result, in a rapid increase in cost, or in hazard to human health and the environment, and the criteria established pursuant to Section 105(8) of the federal act (42 U.S.C. Sec. 9605(8)). The criteria may include a minimum hazard threshold, below which sites shall not be listed pursuant to this section, if the sites are subject to the authority of the department to order response action, or similar action, pursuant to Chapter 6.5 (commencing with Section 25100).

(b) (1) The department shall publish and revise, at least annually, a listing of the sites subject to this chapter. The sites shall be categorized and placed on one of the following lists:

(A) A list of the hazardous substance release sites for which the department has identified a responsible party, and the responsible party is in compliance, as determined by the department, with an order issued, or an enforceable agreement entered into, pursuant to subdivision (a) of Section 25355.5. The department shall publish the list of sites under this subparagraph in an appendix to the site-specific plan of expenditures prepared pursuant to Section 25334.5.

(B) A list of the hazardous substance release sites for which all of the following apply:

(i) The department has not been able to identify a responsible party or the responsible party is not in compliance, as determined by the department, with an order issued, or an enforceable agreement entered into, pursuant to subdivision (a) of Section 25355.5.

(ii) The nature and extent of the hazardous substance release at the site has not been adequately characterized by the responsible party or the department.

The department shall characterize a site on the list before ranking the site on the list described in subparagraph (C).

(C) A list of the hazardous substance release sites that were previously listed pursuant to subparagraph (A), if the sites have been adequately characterized but the responsible parties are not in compliance with an order or enforceable agreement issued or entered into pursuant to subdivision (a) of Section 25355.5, or sites that were previously listed pursuant to subparagraph (B) but which have since been adequately characterized by the department. Sites on the list specified in this subparagraph shall be ranked numerically in accordance with the criteria adopted for the priority ranking of sites.

(2) The department shall assign each site listed pursuant to subparagraphs (B) and (C) of paragraph (1), sites listed on the National Priorities List pursuant to the federal act, and sites that are federal military facilities to one of three tiers for the purpose of informing the public of the relative hazard of the sites. The listing of sites by tiers shall be widely disseminated to the public. The "priority one" tier shall include any site that poses a known or probable immediate threat to public health through direct human contact, explosions, fires, or acutely serious air emissions, has a high potential to contaminate or to continue to contaminate groundwater resources that are present or possible future sources of drinking water, or any site for which the costs for response action pose the risk of increasing rapidly if response action is deferred. The "priority two" tier shall include any site that poses a substantial but less immediate threat to public health and safety or the environment. The "priority three" tier shall include

any site that will require response action, but presents only a limited and defined threat to human health or the environment. Priority two and three tiers may contain sites formerly listed in tiers one or two for which direct human health threats have been removed and at which physical deterioration in environmental quality has been stabilized. For the purpose of this paragraph, in informing the public of the relative environmental and public health threats posed by a site, the department shall list sites alphabetically within each of the three tiers. The department shall periodically update the list of sites by tiers to reflect new information regarding existing sites or the addition of new sites requiring response action. No site listed pursuant to subparagraph (A) of paragraph (1) shall be listed pursuant to this subdivision.

(c) Hazardous substance release sites listed by the department pursuant to subdivision (b) are subject to this chapter and all actions carried out in response to hazardous substance releases or threatened releases at listed sites shall comply with the procedures, standards, and other requirements set forth in this chapter or established pursuant to the requirements of this chapter.

(d) The department's development and publication of the listings of sites, pursuant to subdivision (b) and the adoption of a minimum hazard threshold and the classification of a site as within that threshold pursuant to subdivision (a), are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) Funds appropriated to the department for remedial action shall be expended in conformance with the priority ranking of sites, as established on the list of sites specified in subparagraph (C) of paragraph (1) of subdivision (b), except that funds appropriated for remedial action may be expended without conforming to the priority ranking if either of the following apply:

(1) The funds are necessary to monitor removal or remedial actions conducted by private parties listed pursuant to subparagraph (A) of paragraph (1) of subdivision (b) or the state funds are necessary for the state share of a removal or remedial action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(2) The funds are used for either of the following purposes:

(A) To assess, evaluate, and characterize the nature and extent of a hazardous substance release on sites listed pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(B) To carry out activities pursuant to subparagraph (B) or (C) of paragraph (1) of subdivision (b), or subdivision (c) or (d) of, Section 25355.5.

(f) Funds may be expended on more than one site on the list specified in subparagraphs (B) and (C) of paragraph (1) of subdivision (b) at any one time. In addition, funds may be expended for oversight of any activities conducted by a responsible party on more than one site on the list specified in subparagraph (A) of paragraph (1) of subdivision (b) at any one time.

(g) This section does not require the department to characterize every site listed pursuant to subparagraph (C) of paragraph (1) of subdivision (b) before the department

may begin removal or remedial actions at sites listed pursuant to subparagraph (C) of paragraph (1) of subdivision (b).

(h) The department, or, if appropriate, the California regional water quality control board, is the state agency with sole responsibility for ensuring that required action in response to a hazardous substance release or threatened release at a listed site is carried out in compliance with the procedures, standards, and other requirements set forth in this chapter, and shall, as appropriate, coordinate the involvement of interested or affected agencies in the response action.

<< CA HLTH & S § 25356.1 >>

25356.1. (a) For purposes of this section, "regional board" means a California regional water quality control board and "state board" means the State Water Resources Control Board.

(b) Except as provided in subdivision (h), the department, or, if appropriate, the regional board shall prepare or approve remedial action plans for all sites listed pursuant to Section 25356.

(c) A potentially responsible party may request the department or the regional board, when appropriate, to prepare or approve a remedial action plan for any site not listed pursuant to Section 25356, if the department or the regional board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the regional board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt. This subdivision does not affect the authority of any regional board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

(d) All remedial action plans prepared or approved pursuant to this section shall be based upon Section 25350, Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), and any amendments thereto, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional board shall consider scientific data and reports which may have a relationship to the site.

(2) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or the regional board shall consider the extent to which remedial action measures are available that use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions that do not use this treatment. The department or the regional board shall not select remedial action measures which use offsite transport and disposal of

untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(4) Site-specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost-effectiveness of alternative remedial action measures. In evaluating the cost-effectiveness of proposed alternative remedial action measures, the department or the regional board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(6) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(e) A remedial action plan prepared pursuant to this section shall include the basis for the remedial action selected and shall include an evaluation of each alternative considered and rejected by the department or the regional board for a particular site. The plan shall include an explanation for rejection of alternative remedial actions considered but rejected. The plan shall also include an evaluation of the consistency of the selected remedial action with the requirements of the federal regulations and the factors specified in subdivision (d), if those factors are not otherwise adequately addressed through compliance with the federal regulations. The remedial action plan shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties which may have been released, or may otherwise be immune, from liability pursuant to this chapter or any other provision of law. Before adopting a final remedial action plan, the department or the regional board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information which is necessary to address the issues which concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics

of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 25358.7.

(f) After complying with subdivision (e), the department or the regional board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional board shall then issue the final remedial action plan.

(g)(1) A potentially responsible party named in the final remedial action plan issued by the department or the regional board may seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure within 30 days after the final remedial action plan is issued by the department or the regional board. Any other person who has the right to seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure shall do so within one year after the final remedial action plan is issued. No action may be brought by a potentially responsible party to review the final remedial action plan if the petition for writ of mandate is not filed within 30 days of the date that the final remedial action plan was issued. No action may be brought by any other person to review the final remedial action plan if the petition for writ of mandate is not filed within one year of the date that the final remedial action plan was issued. The filing of a petition for writ of mandate to review the final remedial action plan shall not stay any removal or remedial action specified in the final plan.

(2) For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional board, as the case may be.

(3) This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 25385.6.

(h)(1) This section does not require the department or a regional board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment or, if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than one million dollars (\$1,000,000). The department or a regional board shall prepare or approve a removal action workplan for all sites where a nonemergency removal action is proposed and where a remedial action plan is not required. For sites where removal actions are planned and are projected to cost less than one million dollars (\$1,000,000), the department or a regional board shall make the local community aware of the hazardous substance release site and shall prepare, or direct the parties responsible for the removal action to prepare, a community profile report to determine the level of public interest in the removal action. Based on the level of expressed interest, the department or regional board shall take appropriate action to keep the community informed of project activity and to provide opportunities for public comment which may include conducting a public meeting on proposed removal actions.

(2) A remedial action plan is not required pursuant to subdivision (b) if the site is

listed on the National Priority List by the Environmental Protection Agency pursuant to the federal act, if the department or the regional board concurs with the remedy selected by the Environmental Protection Agency's record of decision. The department or the regional board may sign the record of decision issued by the Environmental Protection Agency if the department or the regional board concurs with the remedy selected.

(3) The department may waive the requirement that a remedial action plan meet the requirements specified in subdivision (d) if all of the following apply:

(A) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Section 25356.

(B) The responsible party submits to the department, in a form acceptable to the department, all of the following:

(i) A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.

(ii) A listing of the alternative remedial measures which were considered by the responsible party in selecting the proposed removal action.

(iii) A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.

(iv) A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(C) The department determines that the remedial action plan provides protection of human health and safety and for the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with subdivision (c).

(D) The total cost of the removal action is less than two million dollars (\$2,000,000).

(4) For purposes of this section, the cost of a removal action includes the cleanup of removal of released hazardous substances from the environment or the taking of other actions which are necessary to prevent, minimize, or mitigate damage which may otherwise result from a release or threatened release, as further defined by Section 9601 (23) of Title 42 of the United States Code.

(5) Paragraph (2) of this subdivision does not apply to a removal action paid from the Hazardous Substance Cleanup Fund.

(i) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to any action or failure to act by a regional board pursuant to this section.

<< CA HLTH & S § 25356.1.3 >>

25356.1.3. (a) In exercising its authority at a hazardous substance release site pursuant to subdivision (a) of Section 25355.5 or 25358.3, the department shall issue orders to the largest manageable number of potentially responsible parties after considering all of the following:

- (1) The adequacy of the evidence of each potentially responsible party's liability.
- (2) The financial viability of each potentially responsible party.
- (3) The relationship or contribution of each potentially responsible party to the release, or threat of release, of hazardous substances at the site.
- (4) The resources available to the department.

(b) The department shall schedule a meeting pursuant to Section 25269.5 and notify all identified potentially responsible parties of the date, time, and location of the meeting.

(c) A person issued an order pursuant to Section 25355.5 or 25358.3 may identify additional potentially responsible parties for the site to which the order is applicable and may request the department to issue an order to those parties. The request shall include, with appropriate documentation, the factual and legal basis for identifying those parties as potentially responsible parties for the site. The department shall review the request and accompanying information and, within a reasonable period of time, determine if there is a factual and legal basis for identifying other persons as potentially responsible parties, and notify the person that made the request of the action the department will take in response to the request.

(d) Any determination made by the department regarding the largest manageable number of potentially responsible parties or the identification of other persons as potentially responsible parties pursuant to this section is not subject to judicial review. This subdivision does not affect the rights of any potentially responsible party or the department under any other provision of this chapter.

<< CA HLTH & S § 25356.1.5 >>

25356.1.5. (a) Any response action taken or approved pursuant to this chapter shall be based upon, and be no less stringent than, all of the following requirements:

(1) The requirements established under federal regulation pursuant to Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended.

(2) The regulations established pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent that the department or the regional board determines that those regulations, plans, and policies do not require a less stringent level of

remediation than the federal regulations specified in paragraph (1) and to the degree that those regulations, plans, and policies do not authorize decisionmaking procedures that may result in less stringent response action requirements than those required by the federal regulations specified in paragraph (1).

(3) Any applicable provisions of this chapter, to the extent those provisions are consistent with the federal regulations specified in paragraph (1) and do not require a less stringent level of remediation than, or decisionmaking procedures that are at variance with, the federal regulations set forth in paragraph (1).

(b) Any health or ecological risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall be based upon Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), the policies, guidelines, and practices of the United States Environmental Protection Agency developed pursuant to the federal act, and the most current sound scientific methods, knowledge, and practices of public health and environmental professionals who are experienced practitioners in the fields of epidemiology, risk assessment, environmental contamination, ecological risk, fate and transport analysis, and toxicology. Risk assessment practices shall include the most current sound scientific methods for data evaluation, exposure assessment, toxicity assessment, and risk characterization, documentation of all assumptions, methods, models, and calculations used in the assessment, and any health risk assessment shall include all of the following:

(1) Evaluation of risks posed by acutely toxic hazardous substances based on levels at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety.

(2) Evaluation of risks posed by carcinogens or other hazardous substances that may cause chronic disease based on a level that does not pose any significant risk to health.

(3) Consideration of possible synergistic effects resulting from exposure to, or interaction with, two or more hazardous substances.

(4) Consideration of the effect of hazardous substances upon subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations, that are identifiable as being at greater risk of adverse health effects due to exposure to hazardous substances than the general population.

(5) Consideration of exposure and body burden level that alter physiological function or structure in a manner that may significantly increase the risk of illness and of exposure to hazardous substances in all media, including, but not limited to, exposures in drinking water, food, ambient and indoor air, and soil.

(c) If currently available scientific data are insufficient to determine the level of a hazardous substance at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety, or the level that poses no significant risk to public health, the risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall be based on the level that is protective of public health, with an adequate margin of safety. This level shall be based exclusively on public health considerations, shall, to the extent scientific data are available,

take into account the factors set forth in paragraphs (1) to (5), inclusive, of subdivision (b), and shall be based on the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, fate and transport analysis, and toxicology.

(d) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall include the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.

<< CA HLTH & S § 25356.2 >>

25356.2. (a) There is hereby created in the Office of Environmental Health Hazard Assessment a Hazardous Substance Cleanup Arbitration Panel.

(b) The panel shall apportion liability for the costs of removal and remedial actions in accordance with Sections 25356.3 and 25356.4. All meetings and records of the panel are exempt from Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of, and Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code.

(c) The panel shall be comprised of independent private arbitrators who have applied to the Office of Environmental Health Hazard Assessment for membership on the panel. Panel members shall have (1) relevant arbitration background and (2) expertise in engineering, expertise in the physical, biological, or health sciences, or other relevant experience and qualifications. Three arbitrators shall be selected from the panel to apportion liability for a single hazardous wastesite. A majority of the arbitrators selected for a single site may apportion liability for the panel under this chapter.

(d) The arbitrators shall be selected for an individual hazardous wastesite as follows:

(1) One arbitrator shall be selected by the department or by the regional water quality control board.

(2) One arbitrator shall be selected by the potentially responsible party, or a majority of the potentially responsible parties, who have submitted to binding arbitration by the panel.

(3) The two arbitrators selected pursuant to paragraphs (1) and (2) shall jointly select a third arbitrator.

<< CA HLTH & S § 25356.3 >>

25356.3. (a) The department or the California regional water quality control board shall serve a copy by mail of the draft remedial action plan upon all potentially responsible parties identified in the plan. Within 15 days after the issuance of a final remedial action plan, any potentially responsible parties with aggregate alleged liability in excess of 50 percent of the costs of removal and remedial action, as set forth in the statement of reasons issued pursuant to subdivision (d) of Section 25356.1, but excluding any costs that are the subject of an agreement under which any party agrees to assume

liability for those costs, may convene an arbitration proceeding by agreeing to submit to binding arbitration by the panel. The filing of a demand to convene an arbitration panel shall not stay any removal or remedial actions specified in the plan. If an arbitration panel is convened pursuant to this section, any other potentially responsible party may elect to submit to binding arbitration by the panel. Any person submitting to arbitration under this section shall agree not to contest the fact of liability in the arbitration. The panel shall, and the parties are entitled to, address the proper apportionment of liability pursuant to subdivision (b). Submission to arbitration under this section is not an admission of liability for any other purpose or in any other proceeding, including a subsequent arbitration proceeding concerning the same site. The department or the regional water quality control board, whichever issued the final remedial action plan, shall participate in the arbitration proceedings to the same extent as the potentially responsible parties which have submitted to the arbitration.

(b) The panel shall apportion liability for the costs of all removal and remedial actions specified in the final remedial action plan.

(c) In panel proceedings, liability for the costs of removal and remedial actions shall be apportioned among all identifiable potentially responsible parties regardless of whether those parties are before the panel or have otherwise been released, or are immune, from liability pursuant to this chapter or any other provision of law. The panel shall apportion liability based on all of the following criteria:

- (1) The amount of hazardous substance for which each party may be responsible.
 - (2) The degree of toxicity of the hazardous substance.
 - (3) The degree of involvement of the potentially responsible parties in the generation, transportation, treatment, or disposal of the hazardous substance.
 - (4) The degree of care exercised by the potentially responsible parties with respect to the hazardous substances, taking into account the characteristics of the substance.
 - (5) The degree of cooperation by the potentially responsible parties with federal, state, and local officials to prevent harm to human health and the environment.
- (d) The panel may issue subpoenas and subpoenas duces tecum to require attendance of a person or the production of documents, at the request of any person identified as potentially responsible in the remedial action plan, on its own motion, or at the request of the department or the appropriate regional water quality control board. A person requesting a subpoena duces tecum shall comply with Section 1985 of the Code of Civil Procedure. The jurisdiction of subpoenas and subpoenas duces tecum issued by the panel extends to all parts of the state. The subpoenas and subpoenas duces tecum shall be served pursuant to Sections 1987 and 1988 of the Code of Civil Procedure.

If the panel determines that a person is refusing to respond to a subpoena or subpoena duces tecum, or is guilty of a misconduct during the arbitration and negotiation process, the panel shall certify the facts to the superior court of the county in which the site is located. The court shall thereupon issue an order directing the person to appear before the court and show cause why the person should not be punished for contempt pursuant to Section 1209 of the Code of Civil Procedure. The order and a copy of the certified

statement shall be served on the person, and thereafter the court shall have jurisdiction of the matter. The same proceedings shall be followed, the same penalties may be imposed, and the person charged may be purged of contempt in the same way as if the person has committed a contempt in the trial of a civil action before a superior court.

After receipt of documents pursuant to a subpoena duces tecum, any party may request the panel for a continuance for a reasonable period of time to review the documents prior to proceeding with the arbitration. The panel may grant a continuance for that purpose upon a showing of good cause.

(e) This chapter does not require a regional water quality control board or the State Water Resources Control Board to engage in arbitration pursuant to this section or Section 25356.2 for any enforcement action taken pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(f) The costs of conducting the arbitration shall be borne by the potentially responsible parties submitting to the arbitration pursuant to subdivision (a), except that any filing fees, witness fees, costs of discovery, or any other costs necessarily incurred by one party shall not be shared by any other party.

<< CA HLTH & S § 25356.4 >>

25356.4. (a) After making an apportionment of liability among the potentially responsible parties pursuant to Section 25356.3, the panel shall prepare a draft arbitration decision which contains a statement of reasons supporting the apportionment and shall circulate the draft arbitration decision for at least 30 days for public comment. After review and consideration of any public comment, the panel shall issue the final arbitration decision within 30 days after the comment period.

(b) Each potentially responsible party whose liability has been apportioned by the panel is liable to the department or the regional water quality control board for its apportioned share of the costs of all removal and remedial actions at the site which is the subject of the final remedial action plan issued pursuant to Section 25356.1. The department or the regional water quality control board and one or more potentially responsible parties may enter into a cleanup agreement which is consistent with the remedial action plan and which provides for the satisfaction of the liability of a potentially responsible party by the party's performance of specified removal or remedial actions at the site.

(c) The moneys in the state account or the Hazardous Substance Cleanup Fund may be expended, upon appropriation by the Legislature, to pay any share of those potentially responsible parties who did not submit to binding arbitration pursuant to Section 25356.3 or did not otherwise agree to pay the costs of the removal and remedial actions specified in the remedial action plan.

(d) The department or the regional water quality control board shall identify, and the Attorney General shall pursue recovery from, those potentially responsible parties who have not submitted to binding arbitration pursuant to Section 25356.3 or who have not discharged their obligations required by the final arbitration decision or the cleanup agreement.

(e) Advances from the state account, upon appropriation by the Legislature, shall be made available, where appropriate, to those responsible parties who are required by a cleanup agreement to perform specified removal or remedial actions pursuant to the remedial action plan. Moneys from the Hazardous Substance Cleanup Fund may be expended by the department, upon appropriation by the Legislature, to make advances, where appropriate, to responsible parties who are required by a cleanup agreement to perform specified removal or remedial actions pursuant to the remedial action plan, for the purposes specified in Section 25385.6.

<< CA HLTH & S § 25356.5 >>

25356.5. The department shall include in the biennial report specified in Section 25178 an accounting of all of the following:

(a) The actual funds expended for each site listed during the preceding two years pursuant to Section 25356.

(b) Removal and remedial actions at hazardous substance release sites pursuant to Section 25356.

(c) The state's efforts to obtain available federal funds for the purposes of this chapter.

(d) Federal funds which have been obtained by, or committed to, the state for purposes of this chapter.

(e) The state's efforts to obtain contributions to removal or remedial actions from potentially responsible parties.

<< CA HLTH & S § 25356.6 >>

25356.6. (a) Notwithstanding any other provision of state law or any local ordinance or regulation, except as provided in subdivision (b), to encourage the prompt and effective cleanup of hazardous substance release sites, a potentially responsible party has no additional civil liability to any governmental entity under state or local law, for any prior acts or omissions associated with the conditions addressed in the remedial action plan which is the subject of the arbitration decision, if the potentially responsible party has submitted to binding arbitration and has discharged its obligations under the arbitration decision, either by paying that party's apportioned share of the costs of all removal and remedial actions to the department or the regional water quality control board, or by performing the specified removal and remedial actions pursuant to a cleanup agreement. The release from liability specified in this section is conditioned on complete implementation of the remedial action plan, including, where appropriate, adequate sampling, testing, and maintenance of the site to which the remedial action plan is applicable to ensure that the level of cleanup required is achieved and maintained. However, this section does not affect the liability of any person for costs recoverable under Section 25352, unless these costs are specifically addressed in the arbitration decision or cleanup agreement. Where these costs are not addressed in the arbitration decision or cleanup agreement, the liability for these costs shall be determined pursuant to the applicable sections of this chapter and may be apportioned among the potentially responsible parties pursuant to Sections 25356.3 and 25356.4.

(b) The department, the California regional water quality control board, any party to the arbitration decision, or any party substantially affected by the arbitration decision may petition the panel to modify the apportionment of liability in an arbitration decision. Upon a showing of a material change in the facts known to the parties to the arbitration decision at the time it was issued, the panel shall modify the apportionment of liability specified in the arbitration decision, as appropriate, to reflect these changed facts. Upon a showing of a material change in the facts known to the department at the time it issued the final remedial action plan, or the discovery of new facts, the department or regional board shall modify the remedial action plan, as appropriate, to reflect new or additional facts. The arbitration panel shall then modify its arbitration decision to reflect any modification of the remedial action plan made by the department.

(c) This section does not affect the existing rights of any individual to recover civil damages or to obtain equitable relief against any person, including a potentially responsible party, for physical injury or property damage caused by the release of hazardous substances at the site covered by the arbitration decision or at any other location.

(d) A party who has submitted to arbitration pursuant to this article and whose liability has been apportioned by the arbitration panel in an arbitration proceeding may seek indemnity from any other person liable for the party's apportioned share of the removal and remedial actions taken at a site which is the subject of the arbitration decision, including any department, agency contractor, or any other governmental agency. A potentially responsible party who does not submit to binding arbitration pursuant to this article, but whose liability has been apportioned in the arbitration decision and is subsequently found liable under this chapter has no right to indemnification for any removal or remedial action which is the subject of the arbitration decision from any party to that arbitration decision who has discharged its obligation under the arbitration decision or the cleanup agreement.

<< CA HLTH & S § 25356.7 >>

25356.7. In order to encourage rapid resolution of differences among responsible parties and to speed the cleanup of sites, and notwithstanding any other provision of law, the following evidence is admissible in a court of law only to show the good faith of the parties who have discharged their obligations under an arbitration decision issued, or cleanup agreement entered into, pursuant to Section 25356.4 or that the following removal and remedial actions specified in the remedial action plan were to be performed:

(a) A preliminary allocation of responsibility pursuant to Section 25356.1.

(b) The fact that any person has either participated or has not participated in a panel arbitration proceeding.

(c) The fact that any person has voluntarily implemented a remedial action plan, regardless of whether the plan is final for purposes of Section 25356.1.

(d) Any finding of fact or conclusion of law by the panel, including the apportionment of liability pursuant to Section 25356.3.

(e) Admissions made during the arbitration proceeding.

(f) Documents prepared by a party which has submitted to binding arbitration if the documents are prepared after the remedial action plan has been issued, and if the documents are prepared solely for the arbitration.

<< CA HLTH & S § 25356.8 >>

25356.8. (a) Judicial review of the arbitration decision on the apportionment of liability is limited to a showing of fraud by a party to the arbitration proceeding or an abuse of discretion by the panel, or both.

(b) Judicial review of a decision by the department or the regional water quality control board modifying the remedial action plan pursuant to subdivision (b) of Section 25356.6 shall be conducted pursuant to Section 1085 of the Code of Civil Procedure and the standard of review shall be the same as that specified in subdivision (f) of Section 25356.1.

<< CA HLTH & S § 25356.9 >>

25356.9. (a) The provisions of this chapter relating to the preparation, approval, and issuance of remedial action plans and to procedures for the apportionment of liability by the Hazardous Substance Cleanup Arbitration Panel do not do either of the following:

(1) Apply to any actions taken pursuant to Chapter 6.5 (commencing with Section 25100).

(2) Prohibit the department or the Attorney General, upon the request of the department, from pursuing the remedies specified in subdivision (a) of Section 25358.3 when the director determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance.

(b) The department and the Attorney General may pursue any existing legal, equitable, or administrative remedies, pursuant to federal or state law, against any potentially responsible party named in a remedial action plan if the party does not submit to arbitration pursuant to Section 25356.3 or if the party has not discharged that party's obligations under an arbitration decision or cleanup agreement.

<< CA HLTH & S § 25356.10 >>

25356.10. The Office of Environmental Health Hazard Assessment shall adopt, and may, from time to time, modify, revise, or repeal, regulations, consistent with this article, to implement the provisions of this article concerning arbitration proceedings. The regulations may include, but are not required to be limited to, all of the following:

(a) The method of initiating arbitration.

(b) The place of hearing, based upon the convenience of the parties.

- (c) Procedures for the selection of neutral arbitrators.
- (d) Procedure for conducting hearings.
- (e) The providing of experts to assist the arbitrators if assistance is needed.
- (f) Procedures for reimbursing the expenses which the panel incurs in conducting arbitrations.

<< CA HLTH & S § 25357 >>

25357. Expenditures from the state account shall not be made in excess of the total amount of money in the state account at any one time. Expenditures in excess of such amount may be made only when additional money is collected or otherwise added to the state account.

<< CA HLTH & S § 25357.5 >>

25357.5. (a) In any judicial action under this chapter, judicial review of any issues concerning the adequacy of any response action taken or ordered by the department shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(b) If the court finds that the selection of the response action was not in accordance with law, the court shall award only the response costs or damages that are not inconsistent with the National Contingency Plan, as specified in Part 300 (commencing with Section 300.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations, and any other relief that is consistent with the National Contingency Plan.

(c) In reviewing an action brought by the department under this chapter, in which alleged procedural errors by the department are raised as a defense, the court may impose costs or damages only if the errors were serious and related to matters of central relevance to the action, so that the action would have been significantly changed had the errors not been made.

<< CA HLTH & S § 25358 >>

25358. The state shall actively seek to obtain all federal funds to which it is entitled under the federal act and shall take all actions necessary to enter into contractual or cooperative agreements under Sections 104 (c)(3) and 104 (d)(1) of the federal act (42 U.S.C. Sec. 9604 (c)(3) and 42 U.S.C. Sec. 9604 (d)(1)).

<< CA HLTH & S § 25358.1 >>

25358.1. (a) The department, a representative of the department, or any person designated by the director may take the actions specified in this section only if there is a reasonable basis to believe that there may be a release or threatened release of a hazardous substance, and only for the purpose of determining under this chapter the need for a response action, the choosing or taking of a response action, or otherwise

for the purpose of enforcing this chapter.

(b) Any officer or employee of the department, a representative of the director, or a person designated by the director may require any potentially responsible party, or any person who has, or may have, acquired information relevant to any of the following matters in the course of a commercial, ownership, or contractual relationship with any potentially responsible party, to furnish, upon reasonable notice, information or documents relating to the following matters:

(1) The identification, nature, and quantity of materials which have been, or are, generated, treated, stored, or disposed of at a hazardous substance release site or which have been, or are, transported to a hazardous substance release site.

(2) The nature or extent of a release or a threatened release of a hazardous substance at, or from, a hazardous substance release site.

(c) A person who is required to provide information pursuant to subdivision (b) shall, in accordance with subdivision (h), allow the officer, employee, representative, or designee, upon reasonable notice and at reasonable times, to have access to, and copy, all records relating to the hazardous substances for purposes of assisting the department in determining the need for an action in response to a release or threatened release pursuant to this chapter.

(d) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), enter, at reasonable times, any of the following properties:

(1) Any nonresidential establishment or other place or property where any hazardous substances may be, or have been, produced, stored, treated, disposed of, or transported from.

(2) Any nonresidential establishment or other place or property from which, or to which, a hazardous substance has been, or may have been, released.

(3) Any nonresidential establishment or other place or property where a hazardous substance release is, or may be, threatened.

(4) Any nonresidential establishment or other place or property where entry is needed to determine the need for a response action, or the appropriate remedial action, to effectuate a response action under this chapter.

(5) Any residential place or property which, if it were a nonresidential establishment or other place or property, would otherwise meet the criteria described in paragraphs (1) to (4), inclusive, if the department, representative, or person designated by the director is able to establish, based upon reasonably available evidence, that hazardous substances have been released onto or under the residential place or real property and if entry is made only at reasonable times and after reasonable notification to the owners and occupants.

(e) Any officer or employee of the department, representative of the director, or person

designated by the director may, in accordance with subdivision (h), carry out any of the following activities:

- (1) Inspect and obtain samples from any establishment or other place or property specified in subdivision (d) or from any location of any suspected hazardous substance.
- (2) Inspect and obtain samples of any substances from any establishment or place or property specified in subdivision (d).
- (3) Inspect and obtain samples of any containers or labeling for the suspected hazardous substances, and samples of the soil, vegetation, air, water, and biota on the premises.
- (4) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous substances.
- (5) Survey and determine the topographic, geologic, and hydrogeologic features of the land.
- (6) Photograph any equipment, sample, activity, or environmental condition described in paragraphs (2) to (5) inclusive.
 - (f)(1) If photographs are to be taken pursuant to paragraph (6) of subdivision (e), the department shall do all of the following:
 - (A) Comply with all procedures established pursuant to subdivision (b) of Section 25358.2.
 - (B) Notify the person whose facility is photographed prior to public disclosure of the photographs.
 - (C) Upon the request of the person owning the facility, submit a copy of any photograph to the person for the purpose of determining whether trade secret information, as defined in Section 25358.2, or facility security, would be revealed by the photograph.
 - (2) "Disclosure," as used in Section 25358.2, for purposes of this paragraph, does not include the review of the photograph by a court of competent jurisdiction or by an administrative law judge. A court or judge may review the photograph in camera.
- (g) An officer, employee, representative, or designee who enters a place, establishment, or property pursuant to this section shall make a reasonable effort to inform the owner or the owners' authorized representative of the inspection and shall provide split samples to the owner or the representative upon request.
- (h) If the owner or the owner's authorized representative does not voluntarily grant access to a place, establishment, or property pursuant to this section, the officer, employee, representative, or designee shall first obtain a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, if there is an emergency posing an immediate threat to public health and safety, the officer, employee, representative, or designee may enter the place, establishment, or property without the consent of the owner or owner's authorized representative and

without the issuance of a warrant.

(i) The department, and any person authorized by the department to enter upon any lands for the purpose of taking removal or remedial action pursuant to this chapter, shall not be held liable, in either a civil or criminal proceeding, for trespass or for any other acts which are necessary to carry out the corrective action.

<< CA HLTH & S § 25358.2 >>

25358.2. (a) "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, develop, or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(b) The department may disclose trade secrets received by the department pursuant to this chapter to authorized representatives, contractors, or other governmental agencies only in connection with the department's responsibilities pursuant to this chapter. The department shall establish procedures to ensure that these trade secrets are utilized only in connection with these responsibilities and are not otherwise disseminated without the consent of the person who provided the information to the department.

(c) The department may also make available to the Environmental Protection Agency any and all information required by law to be furnished to that agency. The sharing of information between the department and that agency pursuant to this section does not constitute a waiver by the department or any affected person of any privilege or confidentiality provided by law which pertains to the information.

(d) Any person providing information pursuant to subdivision (a) of Section 25358.1 shall, at the time of its submission, identify all information which the person believes is a trade secret. Any information or record not identified as a trade secret is available to the public, unless exempted from disclosure by other provisions of law.

(e) Any person who knowingly and willfully disseminates information protected by this section or procedures established by the department pursuant to subdivision (b) shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment.

<< CA HLTH & S § 25358.3 >>

25358.3. (a) Whenever the director determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance, the director may do any or all of the following:

(1) Order any responsible party or parties to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment.

No order under this section shall be made to an owner of real property solely on the basis of that ownership as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)). The director shall give the responsible party an opportunity to assert all defenses to the order.

(2) Take or contract for any necessary removal or remedial action.

(3) Request the Attorney General to secure such relief as may be necessary from the responsible party or parties to abate the danger or threat. The superior court of the county in which the threat or danger occurs shall have jurisdiction to grant the relief which the public interest and equities of the case may require to protect public health and welfare and the environment. Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction pursuant to subdivision (e).

(b) When the director determines that a release of a hazardous substance has occurred or is about to occur, the director may do any or all of the following:

(1) Undertake those investigations, monitoring, surveys, testing, and other information gathering necessary to identify the existence, source, nature, and extent of the hazardous substances involved and the extent of danger to the public health or environment.

(2) Undertake those planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations which are necessary or appropriate to plan and direct response actions, to recover the cost of those actions, and to enforce this chapter.

(c) Whenever there is a release or threatened release of a hazardous substance into the environment, the director may take or contract for any necessary removal or remedial action and may take or contract for any actions authorized by subdivision (b), in compliance with the provisions of this chapter, including, but not limited to, subdivision (b) of Section 25355.

(d) Any person bidding for a contract specified in subdivision (c) shall submit a disclosure statement, as specified by Section 25112.5, except for a federal, state, or local agency. The director may prohibit a person from bidding on such a contract if the director makes any of the following determinations:

(1) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has engaged in activities resulting in any federal or state conviction which are significantly related to the fitness of the bidder to perform the bidder's duties or activities under the contract. For purposes of this paragraph, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department may take pursuant to this subdivision relating to the department's refusal to permit a person to bid on the contract may be based upon a conviction for which any of the following has occurred:

(A) The time for appeal has elapsed.

(B) The judgment of conviction has been affirmed on appeal.

(C) Any order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code permitting that person to withdraw the plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(2) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has violated or failed to comply with this chapter or Chapter 6.5 (commencing with Section 25100) or Chapter 6.7 (commencing with Section 25280) of this division, the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Authorization Act of 1994, as amended (49 U.S.C. Sec. 5101 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or failure to comply shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(3) The director determines, in writing, that the bidder has had a license, permit, or registration for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous substances revoked or suspended.

(e) Whenever there is a release or threatened release of a hazardous substance, the director may request the Attorney General to secure such relief as may be necessary from the responsible party or parties to abate the release or threatened release. The superior court of the county in which the release or threatened release occurs has jurisdiction to grant that relief which the public interest and equities of the case may require to protect the public health and safety and the environment. Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction.

(f) Upon the failure of any person to comply with any order issued by the department pursuant to this section or Section 25355.5, the director may request the Attorney General to petition the superior court for the issuance of an injunction requiring that person to comply with the order. The superior court shall have jurisdiction to grant a temporary restraining order or a preliminary or permanent injunction.

(g) In any civil action brought pursuant to this chapter in which a temporary restraining order or a preliminary or permanent injunction is sought, the department shall prove

that the defendant is a responsible party and that there is a release or threatened release of a hazardous substance. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order or the preliminary or permanent injunction not be issued, or that the remedy at law is inadequate; and the temporary restraining order or the preliminary or permanent injunction shall issue without those allegations and without that proof.

<< CA HLTH & S § 25358.4 >>

25358.4. The analysis of any material that is required to demonstrate compliance with this chapter shall be performed by a laboratory accredited by the department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

<< CA HLTH & S § 25358.5 >>

25358.5. Any removal or remedial action taken or contracted by the department pursuant to Section 25354 or subdivision (a) of Section 25358.3 shall be exempt from all of the following provisions:

(a) State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code).

(b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(c) Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

<< CA HLTH & S § 25358.6 >>

25358.6. (a) The department may prequalify bidders for remedial or removal actions taken pursuant to Section 25354 or subdivision (a) of Section 25358.3. The department may reject the bid of any prospective bidder that has not been prequalified.

(b) To prequalify bidders, the department shall adopt and apply a uniform system of rating bidders. In order to obtain information for such rating, the department may require from prospective bidders answers to questions, including, but not limited to, questions about the bidder's financial ability, the bidder's experience in removal and remedial action involving hazardous substances, the bidder's past safety record, and the bidder's past performance on federal, state, or local government projects. The department may also require prospective bidders to submit financial statements.

(c) The department shall utilize the business financial data and information submitted by a bidder pursuant to subdivision (b) only for the purposes of prequalifying bidders pursuant to this section and shall not otherwise disseminate this data or information.

(d) The system of rating bidders may be adopted by the department as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, when these regulations are adopted as emergency regulations pursuant to Section 11349.6 of

the Government Code, the regulations shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. It is the intent of the Legislature that emergency regulations adopted pursuant to this subdivision shall remain in effect until the regulations are adopted as final regulations, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

<< CA HLTH & S § 25358.7 >>

25358.7. (a) The department or the regional board, as appropriate, shall take the actions specified in this section to provide an opportunity for meaningful public participation in response actions undertaken for sites listed pursuant to Section 25356.

(b) The department, or the regional board, as appropriate, shall conduct a baseline community survey as soon as possible after taking an action to investigate or remediate a hazardous substance release site listed pursuant to Section 25356. The purpose of this survey shall be to inform the public, and in particular, persons living in close proximity to the site, of the existence of the site and the department's or regional board's intentions to conduct an investigation and a remedial action, to determine the level of public interest and desire for involvement in this process, and to solicit and evaluate concerns and information regarding the site from the affected community. Based on the results of the baseline survey, the department or regional board shall develop a public participation work plan that shall establish appropriate communication and outreach measures commensurate with the level of interest expressed by survey respondents. The public participation work plan shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

(c) The department or regional board shall provide any person affected by a response action undertaken for sites listed pursuant to Section 25356 with the opportunity to participate in the department's or regional board's decisionmaking process regarding that action by taking all of the following actions:

(1) Provide that person with access to information which the department or regional board is required to release pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), relating to the action, except for the following:

(A) Trade secrets, as defined in subdivision (a) of Section 25358.2.

(B) Business financial data and information, as specified in subdivision (c) of Section 25358.6.

(C) Information which the department or regional board is prohibited from releasing pursuant to any state or federal law.

(2) The department or regional board shall provide factsheets, based on the expressed level of public interest, regarding plans to conduct the major elements of the site investigation and response actions. The factsheets shall present the relevant information in nontechnical language and shall be detailed enough to provide interested persons with a good understanding of the planned activities. The factsheets shall be

made available in languages other than English if appropriate.

(3) Provide the person notification, upon request, of any public meetings held by the department or regional board concerning the action.

(4) Provide the person the opportunity to attend and to participate at those public meetings.

(5) Based on the results of the baseline community survey, the department or regional board shall provide opportunities for public involvement at key stages of the response action process, including the health risk assessment, the preliminary assessment, the site inspection, the remedial investigation, and the feasibility study stages of the process. If the department or regional board determines that public meetings or other opportunities for public comment are not appropriate at any of the stages listed in this section, the department or regional board shall provide notice of that decision to the affected community.

(d) The department or regional board shall develop and make available to the public a schedule of activities for each site for which remedial action is expected to be taken by the department or regional board pursuant to this chapter and shall make available to the public any plan provided to the department or regional board by any responsible party, unless the department is prohibited from releasing the information pursuant to any state or federal law.

(e) In making decisions regarding the methods to be used for removal or remedial actions taken pursuant to this chapter, the department or regional board shall incorporate or respond in writing to the advice of persons affected by the actions.

(f) This section does not apply to emergency actions taken pursuant to Section 25354.

<< CA HLTH & S § 25358.7.1 >>

25358.7.1. (a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory committee. The department or regional board shall also advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment. If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site or a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the petitioners or the legislative body to establish a community advisory group to review the response action at the site.

(b) To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(1) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(2) Individuals from the local business community.

(3) Local political or government agency representatives.

(4) Local citizen, civic, environmental, or public interest group members residing in the community.

(c) The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

(1) The department or regional boards.

(2) Representatives of local environmental regulatory agencies.

(3) The potentially responsible parties or other persons who are conducting the response action.

(d) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 25358.7. Nothing in this section shall affect the status of any citizen advisory group formed before the enactment of this section, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board.

<< CA HLTH & S § 25358.7.2 >>

25358.7.2. (a) On or before July 1, 2000, the department and the State Water Resources Control Board shall establish two community service offices, one to serve northern California and the other to serve southern California. With regard to sites listed pursuant to Section 25356 where the department or regional board is taking action to investigate or remediate the site, the community assistance offices shall facilitate communication between the department or regional board, the responsible parties, and the affected community, including any community advisory group that may have been formed in the community where the hazardous substance release site is located.

(b) Notwithstanding subdivision (c) of Section 25390.3, the department and, if appropriate, the State Water Resources Control Board shall expend a total of four hundred thousand dollars (\$400,000) per year from the Orphan Share Reimbursement Trust Fund established pursuant to Article 7.8 (commencing with Section 25390) on the operation of the community service offices established pursuant to this section. The offices shall use these funds to provide direct technical and logistical support to any community advisory group established pursuant to Section 25358.7.1. Funds allocated pursuant to this subdivision shall supplement, and not supplant, any funds expended for the purposes of developing and implementing other public participation activities required to be undertaken pursuant to this chapter, including, but not limited to, activities undertaken pursuant to the National Contingency Plan or the public participation workplan required

to be adopted by the department pursuant to Section 25358.7.

(c) The State Water Resources Control Board may contract with the department to provide this service on behalf of a regional board if the State Water Resources Control Board finds that it would be more practical and economical to do so.

(d) In implementing this section, the department and the regional boards are not obligated to expend funds beyond the amounts appropriated in any fiscal year for purposes of developing and implementing public participation activities required by other provisions of this chapter unless the Orphan Share Reimbursement Trust Fund contains funding at the level specified in subdivision (b).

<< CA HLTH & S § 25358.8 >>

25358.8. A community advisory group established pursuant to Section 25358.7.1 may request, in writing, and a potentially responsible party or parties may fund, a technical assistance grant for a site for the purpose of providing technical assistance to the community advisory group.

<< CA HLTH & S § 25358.9 >>

25358.9. (a) To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department may exclude any portion of a response action conducted entirely onsite from the hazardous waste facility permit requirements of Section 25201 if both of the following apply:

(1) The removal or remedial action is carried out pursuant to a removal action work plan or a remedial action plan prepared pursuant to Section 25356.1.

(2) The removal action work plan or the remedial action plan requires that the response action complies with all laws, rules, regulations, standards, and requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the hazardous substance release site and with any other condition imposed by the department as necessary to protect public health and safety and the environment.

(b) The department may enforce in the court for the county in which a response action exempted pursuant to subdivision (a) is located any federal or state law, rule, regulation, standard, requirements, criteria, or limitation with which the remedial or removal action is required to comply. Any consent decree entered into pursuant to an enforcement action authorized by this subdivision shall require the parties to attempt expeditiously to informally resolve any disagreements concerning the implementation of the response action with the appropriate federal and state agencies and shall provide for administrative enforcement. The consent decree shall stipulate that the penalty for violation of the consent decree shall be an amount not more than twenty-five thousand dollars (\$25,000) per day, which may be enforced by the state. These penalties do not impair or affect the authority of the court to order compliance with the specific terms of the consent decree.

<< CA HLTH & S § 25359 >>

25359. (a) Any person who is liable for a release, or threat of a release, of hazardous substances and who fails, without sufficient cause, as determined by the court, to properly provide a removal or remedial action upon order of the director or the court, pursuant to Section 25358.3, is liable to the department for damages equal to three times the amount of any costs incurred by the state account pursuant to this chapter as a result of the failure to take proper action.

(b) No treble damages shall be imposed under this section against an owner of real property who did not generate, treat, transport, store, or dispose of any hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

<< CA HLTH & S § 25359.1 >>

25359.1. There shall be no recovery of punitive damages under Section 25359 for an injury to or loss of natural resources that occurred wholly before September 25, 1981. This section shall not be construed as precluding the recovery of punitive damages for injury to or loss of natural resources in an action brought pursuant to any other provision of law.

<< CA HLTH & S § 25359.2 >>

25359.2. Any person subject to a removal or remedial action order or other order issued pursuant to Section 25355.5 or 25358.3 who does not comply with that order without sufficient cause shall be subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of noncompliance. Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to Section 25359.3.

<< CA HLTH & S § 25359.3 >>

25359.3. (a) The department may issue a complaint to any person subject to a penalty pursuant to Sections 25359.2 and 25359.4. The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed penalty. The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing. Any person served with a complaint pursuant to this subdivision may, within 45 days after service of the complaint, request a hearing by filing a notice of defense with the department. A notice of defense is deemed to be filed within a 45-day period if it is postmarked within the 45-day period. If no notice of defense is filed within 45 days after service of the complaint, the department shall issue an order setting liability in the amount proposed in the complaint, unless the department and the party have entered into a settlement agreement, in which case the department shall issue an order setting liability in the amount specified in the settlement agreement. Where the party has not filed a notice of defense or where the department and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(b) Any hearing required under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all powers granted by those provisions. In making

a determination, the administrative law judge shall consider the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety or the environment, the violator's ability to pay the proposed penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

(c) All penalties collected under this section and Section 25359.2 shall be deposited in the Hazardous Substance Account and shall be available for expenditure by the department upon appropriation by the Legislature.

<< CA HLTH & S § 25359.4 >>

25359.4. (a) A person shall not release, or allow or cause a release of, a reportable quantity of a hazardous substance into the environment that is not authorized or permitted pursuant to state law.

(b) Any release of a reportable quantity of hazardous substance shall be reported to the department in writing within 30 days of discovery, unless any of the following apply:

- (1) The release is permitted or in the permit process.
- (2) The release is authorized by state law.
- (3) The release requires immediate reporting to the Office of Emergency Services pursuant to Section 11002 or 11004 of Title 42 of the United States Code, or pursuant to Section 25507.
- (4) The release has previously been reported to the department or the Office of Emergency Services.
- (5) The release occurred prior to January 1, 1994.

(c) For the purposes of this section, "reportable quantity" means either of the following:

- (1) The quantity of a hazardous substance established in Part 302 (commencing with Section 302.1) of Title 40 of the Code of Federal Regulations, the release of which requires notification pursuant to that part.
- (2) Any quantity of a hazardous substance that is not reportable pursuant to paragraph (1), but that may pose a significant threat to public health and safety or to the environment. The department may establish guidelines for determining which releases are reportable under this paragraph.

(d) The owner of property on which a reportable release has occurred and any person who releases, or causes a reportable release and who fails to make the written report required by subdivision (b), shall be liable for a penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate violation and for each day that a violation continues. Each day on which the released hazardous substance remains is a separate

violation unless the person has either filed the report or is in compliance with an order issued by a local, state, or federal agency with regard to the release.

(e) Liability under this section may be imposed in a civil action or may be administratively imposed by the department pursuant to Section 25359.3.

(f) If the violation of subdivision (b) results in, or significantly contributes to, an emergency, including, but not limited to, a fire, to which a county, city, or district is required to respond, the responsible party may be assessed the full cost of the emergency response by the city, county, or district.

<< CA HLTH & S § 25359.4.5 >>

25359.4.5. (a) A responsible party who has entered into an agreement with the department and is in compliance with the terms of that agreement, or who is in compliance with an order issued by the department, may seek, in addition to contribution, treble damages from any contribution defendant who has failed or refused to comply with any order or agreement, was named in the order or agreement, and is subject to contribution. A contribution defendant from whom treble damages are sought in a contribution action shall not be assessed treble damages by any court where the contribution defendant, for sufficient cause, as determined by the court, failed to comply with an agreement or with an order issued by the department, or where the contribution defendant is an owner of real property who did not generate, treat, transport, store, or dispose of the hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101 (35) and 107 (b) of the federal act (42 U.S.C. Secs. 9601 (35) and 9607 (b)), or where the principles of fundamental fairness would be violated, as determined by the court. A party seeking treble damages pursuant to this section shall show that the party, the department, or another entity provided notice, by means of personal service or certified mail, of the order or agreement to the contribution defendant from whom the party seeks treble damages.

(b) One-half of any treble damages awarded pursuant to this section shall be paid to the department, for deposit in the Hazardous Substance Account. Nothing in this subdivision affects the rights of any party to seek contribution pursuant to any other statute or under common law.

(c) A contribution defendant from whom treble damages are sought pursuant to this section shall be deemed to have acted willfully with respect to the conduct that gave rise to this liability for purposes of Section 533 of the Insurance Code.

<< CA HLTH & S § 25359.5 >>

25359.5. (a) After making a determination, based upon a preliminary site assessment that there has been a release of a hazardous substance on, under, or into the land on a site, the department or a county health officer shall order the property owner to secure the site if all of the following conditions apply to that site:

(1) The release does not comply with the terms of a current permit or interim status document or regulation of the department.

(2) The site poses a public health risk if human contact is made with the hazardous waste or the surrounding contaminated area.

(3) There is a likelihood of human or domestic animal contact.

(b) The order to secure the site shall require, within five days after receiving notification of the order, the posting of the site with signs. The order shall also require, within five days after receiving notification of the order, that the site be enclosed with a fence, unless it is physically and economically infeasible or unless the fencing is unnecessary because it will not alleviate the danger to the public health.

(c) If fencing is ordered, the fences shall be maintained at the site to prevent unauthorized persons from gaining access to the site. The signs shall be maintained and shall meet all of the following requirements:

(1) The signs shall be bilingual, appropriate to the local area, and may include international symbols, as required by the department.

(2) The signs shall have lettering which is legible from a distance of at least 25 feet.

(3) The signs shall read: "Caution: Hazardous Substance Area, Unauthorized Persons Keep Out" and shall have the name and phone number of the department or the county health officer that ordered the posting.

(4) The signs shall be visible from the surrounding contaminated area and posted at each route of entry into the site, including those routes which are likely to be used by unauthorized persons, at access roads leading to the site, and facing navigable waterways where appropriate.

(5) The signs shall be of a material able to withstand the elements.

(d) A property owner who fails to comply with an order of the department or the county health officer is subject to a civil penalty of up to twenty-five thousand dollars (\$25,000). In determining the amount of a civil penalty to be imposed, the court shall consider all relevant circumstances, including, but not limited to, the economic assets of the property owner and whether the property owner has acted in good faith.

If the property owner fails to secure and post the site, the department or the county health officer shall secure and post the site pursuant to subdivision (b) within 30 days of the expiration of the five-day period and shall seek recovery of the costs of that securing and posting from the property owner. If the site is an abandoned site, as defined in Section 25359.6, if the site cannot be traced to a specific owner, or if the owner has been declared bankrupt, the department or the county health officer shall secure and post the site, using any source of funds, pursuant to subdivision (b).

(e) The department or the county health officer shall advise other agencies on the public health risks and the need for fencing and posting of sites when those agencies confirm the release of a hazardous substance pursuant to subdivision (a).

(f) The remedies and penalties specified in this section and Section 25359.6 are in

addition to, and do not affect, any other remedies, enforcement actions, requirements, or penalties otherwise authorized by law.

<< CA HLTH & S § 25359.6 >>

25359.6. (a) The director shall notify, within 20 working days, each of the appropriate county health officers as to all the potential abandoned sites of which the department has knowledge or which the department is investigating for releases of hazardous substances that may have occurred or might be occurring at abandoned sites. The county health officers may request quarterly updates on the status of the investigations of these sites.

As used in this section, "abandoned site" means an inactive disposal, treatment, or storage facility which cannot, with reasonable effort, be traced to a specific owner, a site whose owner has been determined bankrupt, or a location where a hazardous substance has been illegally disposed.

(b) Within 10 working days of the identification of an abandoned site, the department or a county health officer shall notify the other agency of the status of the site. The department and the county health officer shall inform the other agency of orders to fence and post these sites and the status of compliance with those orders. The department or the county health officers may request quarterly updates of the testing, enforcement action, and remedial or removal actions that are proposed or ongoing.

<< CA HLTH & S § 25359.7 >>

25359.7. (a) Any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property shall, prior to the sale, lease, or rental of the real property by that owner, give written notice of that condition to the buyer, lessee, or renter of the real property. Failure of the owner to provide written notice when required by this subdivision to the buyer, lessee, or renter shall subject the owner to actual damages and any other remedies provided by law. In addition, where the owner has actual knowledge of the presence of any release of a material amount of a hazardous substance and knowingly and willfully fails to provide written notice to the buyer, lessee, or renter, as required by this subdivision, the owner is liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation.

(b) Any lessee or renter of real property who knows or has reasonable cause to believe that any release of a hazardous substance has come or will come to be located on or beneath that real property shall, within a reasonable period of time, either prior to the release or following the discovery by the lessee or renter of the presence or believed presence of the hazardous substance release, give written notice of that condition to the owner of the real property or to the lessor under the lessee's or renter's lease or rental agreement.

(1) A lessee or renter who fails to provide written notice when required by this subdivision to the owner or lessor is subject to actual damages and any other remedy provided by law.

(2) If the lessee or renter has knowledge of the presence of a release of a material

amount of a hazardous substance, or of a hazardous substance release that is required to be reported to a state or local agency pursuant to law, on or under the real property leased or rented by the lessee or renter and knowingly and willfully fails to provide written notice when required by this subdivision to the owner or lessor, both of the following shall apply:

(A) The failure is deemed to constitute a default, upon the owner's or lessor's written notice to the lessee or renter, under the lessee's or renter's lease or rental agreement, except that this subparagraph does not apply to lessees and renters of property used exclusively for residential purposes.

(B) The lessee or renter is liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation.

(3) A lessee or renter may cure a default under the lessee's or renter's lease or rental agreement which resulted from a violation of this subdivision, by promptly commencing and completing the removal of, or taking other appropriate remedial action with respect to, the hazardous substance release. The removal or remedial action shall be conducted in accordance with all applicable laws and regulations and in a manner which is reasonably acceptable to, and which is approved in writing by, the owner or lessor. This paragraph does not relieve the lessee or renter of any liability for actual damages or for any civil penalty for a violation of this subdivision.

Article 6. Recovery Actions

<< CA HLTH & S § 25360 >>

25360. (a) Any costs incurred by the department or regional board in carrying out this chapter shall be recoverable pursuant to state or federal law by the Attorney General, upon the request of the department or regional board, from the liable person or persons. The amount of any response action costs that may be recovered pursuant to this section shall include interest on any amount paid. The interest on amounts paid from the Hazardous Substance Cleanup Fund shall be calculated at a rate equal to the interest rate of the bonds sold pursuant to Article 7.5 (commencing with Section 25385) and interest on any amount paid from the state account or the Site Remediation Account shall be calculated at the rate of return earned on investment in the Surplus Money Investment Fund pursuant to Section 16475 of the Government Code.

(b) A person who is liable for costs incurred at a site shall have the liability reduced by any reimbursements that were actually paid by that person pursuant to this chapter in connection with that site, including any reimbursements paid pursuant to Section 25343.

(c) The amount of cost determined pursuant to this section shall be recoverable at the discretion of the department, either in a separate action or by way of intervention as of right in an action for contribution or indemnity. Nothing in this section deprives a party of any defense that the party may have.

(d) Money recovered by the Attorney General pursuant to this section shall be deposited in the state account, except that, if the costs incurred were paid from the Hazardous Substance Cleanup Fund, the Attorney General shall deposit the amounts recovered into

the Hazardous Substance Clearing Account. Money deposited in the Hazardous Substance Clearing Account pursuant to this section are available to pay the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385).

<< CA HLTH & S § 25360.1 >>

25360.1. Any monetary obligation to the department pursuant to Chapter 6.5 (commencing with Section 25100) or this chapter shall be subject to interest from the date of the demand at the same rate of return earned on investment in the Surplus Money Investment Fund pursuant to Section 16475 of the Government Code, except the department may waive the interest if the obligation is satisfied within 60 days from the date of invoice.

<< CA HLTH & S § 25360.2 >>

25360.2. (a) For purposes of this section, the following definitions apply:

(1) "Owner" means either (A) the owner of property who occupies a single-family residence constructed on the property, or (B) the owner of common areas within a residential common interest development who owns those common areas for the benefit of the residential homeowners. This paragraph does not include the developer of the common interest development.

(2) "Property" means either (A) real property of five acres or less which is zoned for, and on which has been constructed, a single-family residence, or (B) common areas within a residential common interest development.

(b) (1) Notwithstanding any other provision of this chapter, an owner of property that is the site of a hazardous substance release is presumed to have no liability pursuant to this chapter for either of the following:

(A) A hazardous substance release that has occurred on the property.

(B) A release of a hazardous substance to groundwater underlying the property if the release occurred at a site other than the property.

(2) The presumption may be rebutted as provided in subdivision (d).

(c) An action for recovery of costs or expenditures incurred from the state account or the Hazardous Substance Cleanup Fund pursuant to this chapter in response to a hazardous substance release shall not be brought against an owner of property unless the department first certifies that, in the opinion of the department, one of the following applies:

(1) The hazardous substance release that occurred on the property occurred after the owner acquired the property.

(2) The hazardous substance release that occurred on the property occurred before the owner acquired the property and at the time of acquisition the owner knew or had reason to know of the hazardous substance release.

(3) The owner of property where there has been a release of a hazardous substance to groundwater underlying the property took, or is taking, one or more of the following actions:

(A) Caused or contributed to a release of a hazardous substance to the groundwater.

(B) Fails to provide the department, or its authorized representative, with access to the property.

(C) Interferes with response action activities.

(d) In an action brought against an owner of property to recover costs or expenditures incurred from the state account or the Hazardous Substance Cleanup Fund pursuant to this chapter in response to a hazardous substance release, the presumption established in subdivision (b) may be rebutted if it is established by a preponderance of the evidence that the facts upon which the department made the certification pursuant to paragraph (1), (2), or (3) of subdivision (c) are true.

(e) Notwithstanding any other provision of this chapter, this section governs liability pursuant to this chapter for an owner of property, as defined in subdivision (a).

<< CA HLTH & S § 25360.3 >>

25360.3. (a) For the purposes of this section, the following terms have the following meaning:

(1) "Easement" means a conservation easement, as defined in Section 815.1 of the Civil Code.

(2) "Environmental assessment" means an investigation of real property, conducted by an independent qualified environmental consultant, to discover the presence or likely presence of a release or a threat of a release of a hazardous substance at, on, to, or from the real property. An environmental assessment shall include, but is not limited to, an investigation of the historical use of the real property, any prior releases, records, consultant reports and regulatory agency correspondence, a visual survey of the real property, and, if warranted, sampling and analytical testing.

(3) "Owner" means either of the following:

(A) An independent special district, as defined in Section 56044 of the Government Code.

(B) An entity or organization that holds an easement.

(4) "Property" means either of the following:

(A) Real property acquired by a special district by means of a gift or donation for which an environmental assessment was completed prior to the transfer or conveyance of the real property to the special district.

(B) An easement for which an environmental assessment was completed prior to the transfer or conveyance of the easement to an entity or organization authorized to accept the easement pursuant to Section 815.3 of the Civil Code.

(b) (1) Notwithstanding any other provision of this chapter, if an environmental assessment of property discovers no evidence of the presence or likely presence of a release or a threat of a release of a hazardous substance, and a hazardous substance release is subsequently discovered on, to, or from that property, the owner of that property is entitled to a rebuttable presumption, affecting the burden of producing evidence, that the owner is not a liable person or responsible party for purposes of this chapter. An owner is entitled to this presumption whether the action is brought by the state or by a private party seeking contribution or indemnification.

(2) In an action brought against an owner of property to recover costs or expenditures incurred from the state account or the Hazardous Substance Cleanup Fund pursuant to this chapter in response to a hazardous substance release, the presumption may be rebutted if it is established by a preponderance of the evidence that the facts upon which the department made the certification pursuant to paragraph (1), (2), (3), or (4) of subdivision (c) are true.

(c) An action for recovery of costs or expenditures incurred from the state account or the Hazardous Substance Cleanup Fund pursuant to this chapter in response to a hazardous substance release shall not be brought against an owner of property unless the department first certifies that, as found by the department, one of the following situations applies:

(1) The hazardous substance release occurred on or after the date that the owner acquired the property.

(2) The hazardous substance release occurred before the date that the owner acquired the property and, at the time of the acquisition, the owner knew, or had reason to know, of the hazardous substance release.

(3) The environmental assessment applicable to the property was not properly carried out, was fraudulently completed, or involves the negligent or intentional nondisclosure of information.

(4) The hazardous substance release was discovered on or after the date of acquisition and the owner failed to exercise due care with respect to the release, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances.

(d) Notwithstanding any other provision of this chapter, this section governs liability pursuant to this chapter for an owner of property, as defined in subdivision (a).

(e) This section is applicable only to property that is acquired by the owner on or after January 1, 1995.

25360.4. (a) An action under Section 25360 for the recovery of the costs of removal or remedial action incurred by the department from the state account, the Hazardous Substance Cleanup Fund, or any other source authorized by law, or for the recovery of administrative costs incurred by the department in connection with any removal or remedial action performed by the department or by any responsible party, shall be commenced within three years after completion of the removal or remedial action has been certified by the department.

(b) An action under subdivision (c) of Section 25352 for costs incurred by the department for the purposes specified in subdivision (a) or (b) of Section 25352 shall be commenced within three years after certification by the department of the completion of the activities authorized under subdivisions (a) and (b) of Section 25352.

(c) In any action described in subdivision (a) or (b) for recovery of the costs of a removal action, a remedial action, administrative costs, or damages, where the court has entered a judgment for these past costs or damages, the court shall also enter an order reserving jurisdiction over the case and the court shall have continuing jurisdiction to determine any future liability and the amount. The department may immediately enforce the judgment for past costs and damages. The department may apply for a court judgment as to future costs and damages that have been incurred at any time during the removal and remedial actions or during the performance of the activities authorized by Section 25352, but the application shall be made not later than three years after the certification of completion of the actions or activities.

(d) An action may be commenced under Section 25360 or subdivision (c) of Section 25352 at any time prior to expiration of the three-year limitation period provided for by this section.

<< CA HLTH & S § 25360.6 >>

25360.6. (a) The department shall, when it determines that it is practicable and in the public interest, propose a final administrative or judicial expedited settlement with potentially responsible parties if such a settlement involves only a minor portion of the response costs at a facility and, if in the judgment of the department, either of the following conditions are met:

(1) The amount of hazardous substances and the toxic or other hazardous effects of the hazardous substances contributed by the potentially responsible party to the facility are minimal in comparison to the amount and effects of other hazardous substances at the facility.

(2) The potentially responsible party is the owner of the real property on or in which the facility is located, did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility, and did not contribute to the release or threat of release of a hazardous substance at the facility through any act or omission. This paragraph does not apply if the potentially responsible party, at the time of the purchase of the real property, knew or should have known that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(b) A party who has resolved its liability to the state under this section shall not

be liable for claims for contribution regarding matters addressed in the settlement. A settlement under this section does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c) Any person who enters into a settlement under this section shall provide any information relevant to the administration of this chapter that is requested by the department. In order to obtain the contribution protection provided by subdivision (b), a potentially responsible party participating in a de minimus settlement shall certify that it has responded fully and accurately to all of the department's requests for information, and that it has provided all of the relevant documents pertaining to the facility to the department.

(d) Nothing in this section shall be construed to affect the authority of the department or regional board to reach settlements with other potentially responsible parties under this chapter.

<< CA HLTH & S § 25361 >>

25361. (a) The state account or the Hazardous Substance Cleanup Fund shall be a party in any action for recovery of costs or expenditures under this chapter incurred from the state account or the Hazardous Substance Cleanup Fund.

(b) In the event a district attorney or a city attorney has brought an action for civil or criminal penalties pursuant to Chapter 6.5 (commencing with Section 25100) against any person for the violation of any provision of that chapter, or any rule, regulation, permit, covenant, standard, requirement, or order issued, adopted, or executed thereunder, and the department has expended moneys from the state account pursuant to Section 25354 for immediate corrective action in response to a release, or threatened release, of a hazardous substance which has resulted, in whole or in part, from the person's acts or omissions, the state account may be made a party to that action for the purpose of recovering the costs against that person. If the state account is made a party to the action, the Attorney General shall represent the state account for the purpose of recovering the moneys expended from the account. Notwithstanding any other provision of law, and under terms that the Attorney General and the department deem appropriate, the Attorney General may delegate the authority to recover the costs to the district attorney or city attorney who has brought the action pursuant to Chapter 6.5 (commencing with Section 25100). The failure to seek the recovery of moneys expended from the state account as part of the action brought pursuant to Chapter 6.5 (commencing with Section 25100) does not foreclose the Attorney General from recovering the moneys in a separate action.

<< CA HLTH & S § 25362 >>

25362. Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures of the type recoverable under this chapter.

<< CA HLTH & S § 25363 >>

25363. (a) Except as provided in subdivision (f), any party found liable for any costs

or expenditures recoverable under this chapter who establishes by a preponderance of the evidence that only a portion of those costs or expenditures are attributable to that party's actions, shall be required to pay only for that portion.

(b) Except as provided in subdivision (f), if the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures under subdivision (a), the court shall apportion those costs or expenditures, to the extent practicable, according to equitable principles, among the defendants.

(c) The state account shall pay any portion of the judgment in excess of the aggregate amount of costs or expenditures apportioned under subdivisions (a) and (b).

(d) The standard of liability for any costs or expenses recoverable pursuant to this chapter is strict liability.

(e) Any person who has incurred removal or remedial action costs in accordance with this chapter or the federal act may seek contribution or indemnity from any person who is liable pursuant to this chapter, except that no claim may be asserted against a person whose liability has been determined and which has been or is being, fully discharged pursuant to Section 25356.6, or against a person who is actively participating in a pending apportionment proceeding pursuant to Section 25356.6. An action to enforce a claim may be brought as a cross-complaint by any defendant in an action brought pursuant to Section 25360 or this section, or in a separate action after the person seeking contribution or indemnity has paid removal or remedial action costs in accordance with this chapter or the federal act. Any plaintiff or cross complainant seeking contribution or indemnity shall give written notice to the director upon filing an action or cross complaint under this section. In resolving claims for contribution or indemnity, the court may allocate costs among liable parties using those equitable factors which are appropriate.

(f) Notwithstanding this chapter, any response action contractor who is found liable for any costs or expenditures recoverable under this chapter and who establishes by a preponderance of the evidence that only a portion of those costs or expenditures are attributable to the response action contractor's actions, shall be required to pay only that portion of the costs or expenditures attributable to the response action contractor's actions.

<< CA HLTH & S § 25364 >>

25364. Except as provided in Section 25364.1, no indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer any liability for cost or expenditures recoverable under this chapter. This section shall not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter.

<< CA HLTH & S § 25364.1 >>

25364.1. (a) For purposes of this section, the following definitions shall apply:

(1) "Affiliate" means any entity that directly, or indirectly through one or more

intermediaries, controls, is controlled by, or is under common control with, the responsible party owner. For purposes of this paragraph, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, or ownership of shares or interests in the entity possessing more than 50 percent of the voting power.

(2) "Qualified independent consultant" means either a geologist who is registered pursuant to Section 7850 of the Business and Professions Code or a professional engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(3) "Responsible party owner" means the owner of all or part of the site on January 1, 1993, or if all or a part of the site is transferred to a joint venture formed for purposes of development of the site, the owner of the site immediately prior to that transfer.

(4) "Site" means the site of the former Kaiser Steel Corporation steel mill located near the City of Fontana.

(b) Notwithstanding any other provision of law, except as provided in subdivisions (c) and (e), the director may release from liability under this chapter or Chapter 6.5 (commencing with Section 25100), and from liability for any claims of the state for recovery of response costs under the federal act, any of the following persons, with regard to a removal or remedial action at the site:

(1) Any person who provides financing for all, or a substantial part of, the costs of performing a removal or remedial action at the site pursuant to a remedial action plan prepared by a qualified independent consultant and issued by the department pursuant to subdivision (e) of Section 25356.1, except that the release from liability shall not release the person providing this financing from liability for any hazardous substance release or threatened release resulting from that person's exercise of decisionmaking control over the performance of the removal or remedial action while the responsible party owner remains in possession of the site.

(2) Any person who enters into an agreement with the responsible party owner to provide development services for the development of all, or a part of, the site, including a developer, who becomes a partner in a joint venture partnership with the responsible party owner, if the joint venture is formed for purposes of the development of the site and legal title to the site is transferred by the responsible party owner to the joint venture. If a release from liability is granted to a developer pursuant to this paragraph and the legal title to the site is transferred by the responsible party owner to a joint venture between the developer and the responsible party owner of the site, the responsible party owner shall not be relieved of liability under this chapter.

(3) Any person who acquires an ownership or leasehold interest in all or a part of the site after performance of the removal or remedial action specified in the remedial action plan for the site, or part of the site, has been completed to the satisfaction of the department.

(c) A release from liability shall not be granted pursuant to subdivision (b) unless all of the following conditions are met:

(1) A responsible party owner has entered into a stipulated settlement of an order issued by the department pursuant to Section 25187, 25355.5, or 25358.3 to perform the removal or remedial action at the site in accordance with the remedial action plan and has arranged financing, contingent only upon obtaining releases from potential liability pursuant to subdivision (b), for the costs of performing the removal or remedial action.

(2) A responsible party owner agrees to pay all applicable oversight fees required by Section 25343 and to pay any additional costs that are recoverable pursuant to Section 25360.

(3) No person to be released from liability pursuant to subdivision (b) is a responsible party or an affiliate of a responsible party, with respect to any hazardous substance release existing at the site at the time the release from liability is granted.

(4) The stipulated settlement requires the responsible party owner to provide irrevocable financial assurances for full performance of the remedial action plan. The financial assurances may consist of one or more of the financial assurance instruments described in Section 66264.143 of Title 22 of the California Code of Regulations. Upon the approval of the department, the forms of these instruments may be revised as appropriate to apply to the costs of performing the removal or remedial action specified in the remedial action plan.

(5) The director finds that the release from liability to be granted will promote the purposes and goals of this chapter and encourage private investment in property that is in need of remediation.

(d) The site may be subdivided to create subdivided parcels of land, pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), in order to facilitate removal or remedial action at the site, secure financing for removal or remedial action, or secure financing for development which would generate funds for removal or remedial action at the site.

(e) Notwithstanding any other provision of this section, a release from liability granted pursuant to subdivision (b) shall not extend to any of the following:

(1) Any person who was a responsible party for a hazardous substance release existing at the site before the release from liability was granted, and any entity which is an affiliate of such a responsible party.

(2) Any contractor who prepares the remedial action plan or performs the removal or remedial action provided for in the remedial action plan.

(3) Any person who obtains a release pursuant to subdivision (b) by fraud or negligent or intentional nondisclosure or misrepresentation.

(4) Any liability for a release or threatened release of a hazardous substance first deposited at the site by a person released from liability pursuant to subdivision (b) after the release from liability is granted.

(f) Any release from liability granted by the director pursuant to this section shall

contain the following provision: "If, for any reason, the responsible party does not complete the removal or remedial action, this release does not extend to any subsequent actions or activities performed by the released party that exacerbate the conditions at the site."

<< CA HLTH & S § 25364.7 >>

25364.7. The repeal of Section 25364.6 shall not affect any indemnity provided pursuant to that section for any cause of action brought because of any act or omission which occurs before the repeal of that section.

<< CA HLTH & S § 25365 >>

25365. The entry of judgment against any party to the action shall not be deemed to bar any future action by the state account against any person who is later discovered to be potentially liable for costs and expenditures paid by the state account.

<< CA HLTH & S § 25365.6 >>

25365.6. (a) Any costs or damages incurred by the department or regional board pursuant to this chapter constitutes a claim and lien upon the real property owned by the responsible party that is subject to, or affected by, the removal and remedial action. This lien shall attach regardless of whether the responsible party is insolvent. A lien established by this section shall be subject to the notice and hearing procedures required by due process of the law and shall arise at the time costs are first incurred by the department or regional board with respect to a response action at the site.

(b) The department shall not be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this section.

(c) The lien provided by this section shall continue until the liability for these costs or damages, or a judgment against the responsible party, is satisfied. However, if it is determined by the court that the judgment against the responsible party will not be satisfied, the department may exercise its rights under the lien.

(d) The lien imposed by this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located. The lien shall contain the legal description of the real property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll. The lien shall also contain a legal description of the property which is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property.

(e) All funds recovered pursuant to this section shall be deposited in the state account, except that, if the costs incurred were paid from the Hazardous Substance Cleanup Fund, the recovered funds shall be deposited in the Hazardous Substance Clearing Account.

<< CA HLTH & S § 25366 >>

25366. (a) This chapter shall not be construed as imposing any new liability associated with acts that occurred on or before January 1, 1982, if the acts were not in violation of existing state or federal laws at the time they occurred.

(b) Nothing in this chapter shall be construed as authorizing recovery for response costs or damages resulting from any release authorized or permitted pursuant to state law or a federally permitted release.

(c) Except as provided in Sections 25360, 25361, 25362, and 25363, nothing in this chapter shall affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of the hazardous substance.

<< CA HLTH & S § 25366.5 >>

25366.5. (a) Any public agency operating a household hazardous waste collection program or any person operating such a program under a written agreement with a public agency, or, for material received from the public as used oil, any person operating a certified used oil collection center as provided in Section 48660 of the Public Resources Code, shall not be held liable in any cost recovery action brought pursuant to Section 25360, including, but not limited to, any action to recover the fees imposed by Section 25343, for any waste which has been properly handled and transported to an authorized hazardous waste treatment or disposal facility at a location other than that of the collection program.

(b) For purposes of this section, "household hazardous waste collection program" means a program in which hazardous wastes from households and small quantity commercial sources, as defined in subdivision (d) of Section 25158.1, are collected and ultimately transferred to an authorized hazardous waste treatment, storage, or disposal facility.

(c) Except as provided in subdivision (a), this section does not affect or modify the obligations or liabilities of any person imposed pursuant to any state or federal law.

<< CA HLTH & S § 25367 >>

25367. Any person who commits any of the following acts shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate violation, or for continuing violations, for each day during which that violation continues:

(a) Intentionally makes any false statement or representation in any report or information furnished pursuant to Section 25358.1.

(b) Intentionally fails to provide any information requested pursuant to Section 25358.1.

(c) Refuses or prevents, without sufficient cause, any activity authorized pursuant to Section 25358.1 or 25358.3.

Article 6.3. Technology Demonstration Program

<< CA HLTH & S § 25368 >>

25368. Notwithstanding Section 25355.5, the department shall carry out a program of full-scale demonstrations to evaluate treatment technologies that can be safely utilized for removal and remedial actions to hazardous substance releases.

<< CA HLTH & S § 25368.1 >>

25368.1. For the purposes of this article, the following definitions apply:

(a) "Treatment technologies" means methods, techniques, or processes, including proprietary or patented methods, that permanently alter the composition of hazardous substances at hazardous substance release sites through chemical, biological, or physical means so as to make the substances nonhazardous or to significantly reduce the toxicity, mobility, or volume, or any combination thereof, of the hazardous substances or contaminated materials being treated.

(b) "Full-scale demonstration" means a demonstration of a technology that is of a size or capacity which permits valid comparison of the technology to the technical performance and cost of conventional technologies, that is likely to be cost-effective, and that will result in a substantial or complete remedial or removal action to a hazardous substance release site.

<< CA HLTH & S § 25368.2 >>

25368.2. The department shall select technology demonstration projects to be evaluated pursuant to this article using criteria that include, at a minimum, all of the following requirements:

(a) The project proposal includes complete and adequate documentation of technical feasibility.

(b) The project proposal includes evidence that a technology has been sufficiently developed for full-scale demonstration and can likely operate on a cost-effective basis.

(c) The department has determined that a site is available and suitable for demonstrating the technology or technologies, taking into account the physical, biological, chemical, and geological characteristics of the site, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in a manner to ensure the protection of human health and the environment.

(d) The technology to be demonstrated preferably has widespread applicability in removal and remedial actions at other sites in the state.

(e) The project will be developed to the extent that a successful demonstration on a hazardous substance release site may lead to commercial utilization by responsible parties at other sites in the state.

(f) The department has determined that adequate funding is available from one or more

of the following sources:

- (1) Responsible parties.
- (2) The Environmental Protection Agency.
- (3) The Hazardous Substance Cleanup Fund.
- (4) The state account.

<< CA HLTH & S § 25368.3 >>

25368.3. The department shall identify hazardous substance release sites, listed pursuant to Section 25356, that are particularly well-suited for technology demonstration projects. In identifying hazardous substance release sites, the department shall consider, at a minimum, all of the following:

- (a) The state's priority ranking for removal and remedial actions to hazardous substance release sites adopted pursuant to Section 25356.
- (b) The volume and variability of the hazardous substance release at the site.
- (c) The availability of data characterizing the hazardous substance release.
- (d) The accessibility of the hazardous substance release.
- (e) Availability of required utilities.
- (f) Support of federal and local governments.
- (g) Potential for adverse effects to public health and the environment.

<< CA HLTH & S § 25368.4 >>

25368.4. (a) The department shall annually, on or before July 1, publish a solicitation for proposals to conduct treatment demonstration projects which utilize technologies which are at a stage of development suitable for full-scale demonstrations at hazardous substance release sites. The solicitation notice shall prescribe information to be included in the proposal, including technical and economic data derived from the applicant's own research and development efforts, and any other information which may be prescribed by the department to assess the technology's potential and safety and the types of removal or remedial action to which it may be applicable.

(b) Any person and private or public entity may submit an application to the department in response to the solicitation. The application shall contain a proposed treatment demonstration plan setting forth how the treatment demonstration project is to be carried out and any other information which the department may require.

<< CA HLTH & S § 25368.5 >>

(Publication page references are not available for this document.)

25368.5. (a) On or before January 1, after reviewing all proposals submitted pursuant to Section 25368.4, the department shall annually select at least two treatment demonstration projects, to be commenced during that calendar year, using, at a minimum, the criteria specified in Section 25368.2.

(b) If the department determines that the required number of demonstrations required by subdivision (a) cannot be initiated consistent with the criteria specified in Section 25368.2 in any fiscal year, the department shall inform the appropriate committees of the Legislature of the reasons for its inability to conduct these demonstration projects.

(c) Each treatment demonstration project selected pursuant to this section shall be performed by the applicant, or by a person approved by the applicant and the department.

<< CA HLTH & S § 25368.6 >>

25368.6. Notwithstanding Section 25360, if the department determines that using an alternative treatment technology to conduct a removal or remedial action at a hazardous substance release site listed pursuant to paragraph (2) or (3) of subdivision (b) of Section 25356 would be more costly than another available and feasible removal or remedial action method that would also achieve satisfactory results, the department may determine not to attempt to recover from the liable person the incremental costs of the removal or remedial action attributable to the alternative treatment technology.

<< CA HLTH & S § 25368.7 >>

25368.7. The department shall conduct a technology transfer program that shall include the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative hazardous waste treatment technologies demonstrated pursuant to this article. The information shall include an evaluation of each treatment demonstration project's efficacy relating to performance and cost in achieving permanent and significant reduction in risks from hazardous substance releases. The information shall also include documentation of the testing procedures utilized in the project, the data collected, and the quality assurance and quality control which was conducted. The information shall also include the technology's applicability, pretreatment and posttreatment measurements, and the technology's advantages or disadvantages compared to other available technologies.

<< CA HLTH & S § 25368.8 >>

25368.8. Notwithstanding paragraph (5) of subdivision (c) of Section 25356.1, when preparing or approving a remedial action plan for a site listed pursuant to paragraph (2) or (3) of subdivision (b) of Section 25356, that has been selected for a treatment demonstration project pursuant to this article, the department shall consider the cost-effectiveness of the project but is not required to choose the most cost-effective measure.

Article 6.5. Abandoned Site Program

<< CA HLTH & S § 25369 >>

25369. The department shall establish an abandoned site program to survey counties where abandoned site surveys have not been completed. As part of the program, the department shall do all of the following:

(a) Develop protocols and procedures for conducting an abandoned site survey of rural unsurveyed counties. These protocols shall address all types of sites likely to be found in these counties, including, but not limited to, crop-duster airstrips, abandoned mining operations, pesticide formulators and manufacturers, abandoned wells, oil exploration and extraction, wood treatment plants, land disposal sites, and scrap metal operations.

(b) Notify the California regional water quality control boards, the Department of Fish and Game, local health officers, county directors of environmental health, county agricultural commissioners, and state and federal land management agencies of the abandoned site program. Notifications shall consist of the following:

(1) Explanation of the abandoned site program.

(2) Description of the California Superfund Program, including the availability of state funds for cleaning up abandoned hazardous waste sites, and that discovery of a site does not impose liability for cleanup.

(3) Provide a copy of the program's protocols and procedures outlining sites the state is attempting to identify.

(4) Request that, as part of each respective agency's duties, it report to the state abandoned site program any suspected abandoned waste site.

(5) Request that each participating agency, as a part of its regular activities, notify the department of sites identified in writing at least quarterly.

(c) Prepare an inventory of suspected abandoned hazardous substance release sites.

(d) Contact the owners and occupants of suspected abandoned sites.

(e) Maintain individual records for each suspected abandoned site.

(f) Develop a methodology for screening sites identified.

(g) Conduct a field assessment of those sites which the screening procedures specified in subdivision (f) indicate require this assessment.

(h) Rank the assessed sites, in order of priority, as presenting a potential hazard to public health or the environment consistent with Section 25356 or regulations adopted pursuant to that section.

(i) Report to the Legislature quarterly, on an update on the progress of the abandoned sites survey, identifying which agencies have identified and reported sites to the department, as well as which agencies have reported that they do not intend to participate

in the program.

Article 7. Compensation

<< CA HLTH & S § 25370 >>

25370. "Board," as used in this article, means the State Board of Control.

<< CA HLTH & S § 25372 >>

25372. Any person may apply to the board, pursuant to Section 25373, for compensation of a loss caused by the release, in California, of a hazardous substance if any of the following conditions are met:

(a) The source of the release of the hazardous substance, or the identity of the party liable for damages in connection therewith or responsible for the costs of removal of the hazardous substance, is unknown or cannot, with reasonable diligence, be determined.

(b) The loss was not compensable pursuant to law, including Chapter 6.5 (commencing with Section 25100), because there is no liable party or the judgment could not be satisfied, in whole or part, against the party determined to be liable for the release of the hazardous substance.

(c) The person has presented a written demand for compensation, which sets forth the basis for the claim, to the party which the person reasonably believes is liable for a loss specified in paragraph (1) of subdivision (a) of Section 25375 which was incurred by that person and is compensable pursuant to this article, the person has presented the board with a copy of the demand, and, within 60 days after presenting the demand, the party has either rejected, in whole or in part, the demand to be compensated for a loss specified in paragraph (1) of subdivision (a) of Section 25375, or has not responded to the demand. Only losses specified in paragraph (1) of subdivision (a) of Section 25375 are compensable under a claim filed pursuant to this subdivision.

<< CA HLTH & S § 25373 >>

25373. The board shall prescribe appropriate forms and procedures for claims filed pursuant to this article, which shall include, as a minimum, all of the following:

(a) A provision requiring the claimant to make a sworn verification of the claim to the best of his or her knowledge.

(b) A full description, supported by appropriate evidence from government agencies of the release of the hazardous substance claimed to be the cause of the physical injury or illness or loss of income.

(c) Certification by the claimant of dates and places of residence for the five years preceding the date of the claim.

(d) Certification of the medical history of the claimant for the five years preceding the date of the claim, along with certification of the alleged physical injury or illness

and expenses for the physical injury or illness. The certification shall be made by hospitals, physicians, or other qualified medical authorities.

(e) The claimant's income as reported on the claimant's federal income tax return for the preceding three years in order to compute lost wages or income.

(f) Any person who knowingly gives, or causes to be given, any false information as a part of any such claim shall be guilty of a misdemeanor and shall, upon conviction, be fined up to five thousand dollars (\$5,000), or imprisoned for not more than one year, or both.

<< CA HLTH & S § 25374 >>

25374. All decisions rendered by the board shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to the board unless all the parties to the claim agree in writing to an extension of time. The decision shall be considered a final agency action for the purposes of judicial review of the decision by any party to the proceedings resulting in the decision.

<< CA HLTH & S § 25375 >>

25375. (a) If the board makes the determination, specified in subdivision (b), that losses resulted from the claimant's damages, injury, or disease, only the following losses are compensable pursuant to this article:

(1) One hundred percent of uninsured, out-of-pocket medical expenses, for up to three years from the onset of treatment.

(2) Eighty percent of any uninsured, actual lost wages, or business income in lieu of wages, caused by injury to the claimant or the claimant's property, not to exceed fifteen thousand dollars (\$15,000) per year for three years.

(3) One hundred percent of uninsured, out-of-pocket expenses for remedial action on the claimant's property undertaken to address a release of a hazardous substance when all of the following apply:

(A) The claimant's property is an owner-occupied single-family residence.

(B) The remedial action was ordered by federal, state, or local authorities due to a release of a hazardous substance.

(C) The department makes one of the following determinations:

(i) The release of the hazardous substance originated outside the boundaries of the property.

(ii) The release of the hazardous substance occurred on the property, was the result of an action which violated state or federal law, and the responsible party cannot be identified or cannot be located, or a judgment against the responsible party cannot be satisfied.

The maximum compensation under this paragraph is limited to twenty-five thousand dollars (\$25,000) per residence and to one hundred thousand dollars (\$100,000) for five contiguous residential properties. Any compensation provided shall be reduced by the amount that the remedial action results in a capital improvement to the claimant's residence.

(4) One hundred percent of the fair market value of owner-occupied real property that is rendered permanently unfit for occupancy because of the release of a hazardous substance. For purposes of this paragraph, real property is rendered permanently unfit for occupancy only if a state or federal agency requires that it be evacuated for a period of six or more months because of the release of a hazardous substance. The fair market value of the real property shall be determined by an independent appraiser, and shall be considered by the independent appraiser as being equal to the value of the real property prior to the release of the hazardous substance that caused the evacuation of the property. Where compensation is made by the board pursuant to this paragraph, sole ownership of the real property shall be transferred to the state and any proceeds resulting from the final disposition of the real property shall be deposited into the state account, for expenditure by the department upon appropriation by the Legislature. To be eligible for compensation pursuant to this paragraph, claims for compensation shall be made within 12 months of the date on which the evacuation was ordered.

(5) One hundred percent of the expenses incurred due to the evacuation of a residence ordered by a state or federal agency. For purposes of this paragraph, "evacuation expenses" include the cost of shelter and any other emergency expenditures incurred due to an evacuation ordered by a state or federal agency. The board may provide compensation, pursuant to this paragraph, only if it finds that the evacuation expenses represent reasonable costs for the goods or services purchased, and would not have been incurred if an evacuation caused by a hazardous substance release had not occurred. The board may provide compensation for these evacuation expenses only if they were incurred within 12 months from the date on which evacuation was ordered.

(b) A loss specified in subdivision (a) is compensable if the board makes all of the following findings, based upon a preponderance of the evidence:

(1) A release of a hazardous substance occurred.

(2) The claimant or the claimant's property was exposed to the release of the hazardous substance.

(3) The exposure of the claimant to the release of the hazardous substance was of such a duration, and to such a quantity of the hazardous substance, that the exposure caused the damages, injury, or disease which resulted in the claimant's loss.

(4) For purposes of paragraphs (4) and (5) of subdivision (a), the hazardous substance release, or the order which resulted in the claim for compensation occurred on or after January 1, 1986.

(5) The conditions and requirements of this article including, but not limited to, the conditions of Sections 25372 and 25373, have been met.

(c) No money shall be used for the payment of any claim authorized by this chapter, where the claim is the result of long-term exposure to ambient concentrations of air pollutants.

<< CA HLTH & S § 25375.5 >>

25375.5. (a) Except as specified in subdivision (b), the procedures specified in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to the proceedings conducted by the board pursuant to this article.

(b) Notwithstanding subdivision (a), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to the proceedings conducted by the board pursuant to this article.

(c) The board may consider evidence presented by any person against whom a demand was made pursuant to subdivision (c) of Section 25372. The evidence presented by that person shall become a part of the record upon which the board's decision shall be based.

<< CA HLTH & S § 25376 >>

25376. No claim may be presented to the board pursuant to this article later than three years from the date of discovery of the loss or from January 1, 1982, whichever is later.

<< CA HLTH & S § 25377 >>

25377. Nothing in this article shall require, or be deemed to require, pursuit of any claim against the board as a condition precedent to any other remedy.

<< CA HLTH & S § 25378 >>

25378. (a) Compensation of any loss pursuant to this article shall preclude indemnification or reimbursement from any other source for the identical loss, and indemnification or reimbursement from any other source shall preclude compensation pursuant to this article.

(b) If a claimant recovers any compensation from a party in a civil or administrative action for a loss for which the claimant has received compensation pursuant to this article, the claimant shall reimburse the state account in an amount equal to the compensation which the claimant has received from the state account pursuant to this article. The Attorney General may bring an action against the claimant to recover the amount which the claimant is required to reimburse the state account, and until the account is reimbursed, the state shall have a lien of first priority on the judgment or award recovered by the claimant. If the state account is reimbursed pursuant to this subdivision, the state shall not acquire, by subrogation, the claimant's rights pursuant to Section 25380.

(c) The Legislature hereby finds and declares that it is the purpose of this section to prevent double recovery for a loss compensable pursuant to this article.

<< CA HLTH & S § 25379 >>

25379. (a) The following evidence is not admissible as evidence in any civil or criminal proceeding, including a subrogation action by the state pursuant to Section 25380, to establish the liability of any person for any damages alleged to have been caused by a release of a hazardous substance:

- (1) A final decision made by the board pursuant to this article.
- (2) A decision made by the board to admit or not admit any evidence.
- (3) Any finding of fact or conclusion of law entered by the board in a proceeding for a claim pursuant to this article.
- (4) The fact that any person has done any of the following in a proceeding for a claim pursuant to Section 25372:
 - (A) Chosen to participate or appear.
 - (B) Chosen not to participate or appear.
 - (C) Failed to appear.
 - (D) Settled or offered to settle the claim.

(b) Subdivision (a) does not apply to any civil action or writ by a claimant against the board for any act, decision, or failure to act on a claim submitted by the claimant.

<< CA HLTH & S § 25380 >>

25380. Compensation of any loss pursuant to this article shall be subject to the state's acquiring, by subrogation, all rights of the claimant to recover the loss from the party determined to be liable therefor. Upon the request of the board, the Attorney General shall commence an action in the name of the people of the State of California to recover any amount paid in compensation for any loss pursuant to this article against any party who is liable to the claimant for any loss compensable pursuant to this article in accordance with the procedures set forth in Sections 25360 to 25364, inclusive. Moneys recovered pursuant to this section shall be deposited in the state account.

<< CA HLTH & S § 25381 >>

25381. (a) The board shall, in consultation with the department, adopt, and revise when appropriate, all rules and regulations necessary to implement this article, including methods that provide for establishing that a claimant has exercised reasonable diligence in satisfying the conditions specified in Sections 25372, 25373, 25375, and 25375.5, and regulations that specify the proof necessary to establish a loss compensable pursuant to this article.

(b) Claims approved by the board pursuant to this article shall be paid from the state

account.

(c) The Legislature may appropriate up to two million dollars (\$2,000,000) annually from the state account to be used by the board for the payment of awards pursuant to this article.

(d) Claims against or presented to the board shall not be paid in excess of the amount of money appropriated for this purpose from the state account. These claims shall be paid only when additional money is collected, appropriated, or otherwise added to that account.

<< CA HLTH & S § 25382 >>

25382. The board may expend from the state account those sums of money as are reasonably necessary to administer and carry out this article.

Article 7.5. Hazardous Substance Cleanup Bond Act of 1984

<< CA HLTH & S § 25385 >>

25385. This article shall be known and may be cited as the Johnston-Filante Hazardous Substance Cleanup Bond Act of 1984.

<< CA HLTH & S § 25385.1 >>

25385.1. For purposes of this article, and for purposes of Section 16722 of the Government Code as applied to this article, the following definitions apply:

- (a) "Board" means the Department of Toxic Substances Control.
- (b) "Committee" means the Hazardous Substance Cleanup Committee created pursuant to Section 25385.4.
- (c) "Director" means the Director of Toxic Substances Control.
- (d) "Fund" means the Hazardous Substance Cleanup Fund created pursuant to Section 25385.3.
- (e) "Orphan site" means a site with a release or threatened release of a hazardous substance with no reasonably identifiable responsible parties.
- (f) "Orphan share" means those costs of removal or remedial action at sites with a release or threatened release of hazardous substances, which costs are in excess of amounts included in a cleanup agreement.
- (g) "Responsible party" means a person who is, or may be, responsible or liable for carrying out, or paying for the costs of, a removal or remedial action.
- (h) "Trust fund" means the Superfund Bond Trust Fund.

<< CA HLTH & S § 25385.2 >>

25385.2. The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code) is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued pursuant to this article, and the provisions of that law are included in this article as though set out in full in this article, except that, notwithstanding anything in the State General Obligation Bond Law, the maximum maturity of bonds shall not exceed 30 years from the date of the bonds, or from the date of each respective series. The maturity of each respective series shall be calculated from the date of the series.

<< CA HLTH & S § 25385.3 >>

25385.3. (a) The Hazardous Substance Cleanup Fund is hereby created in the State Treasury. The proceeds of bonds issued and sold pursuant to this article shall be deposited in the fund, and the money in the fund may be expended only for the purposes specified in this article and, pursuant to appropriation by the Legislature, in the manner specified in this section.

(b) Except when the Legislature appropriates money from the fund for specified removal or remedial actions in a bill other than the Budget Act, it is the intention of the Legislature that all proposed appropriations for activities conducted pursuant to this article be included in a section of the Budget Act for each fiscal year for consideration by the Legislature and that this section be captioned "Hazardous Substance Cleanup Bond Act Program." Any appropriation of money from the fund is subject to all the limitations contained in the bill making the appropriation and to all fiscal procedures specified by statute concerning the expenditure of state funds.

(c) In issuing bonds pursuant to this article, the committee shall, to the extent possible, pay the principal of, and interest on, the bonds from the sources specified in subdivisions (a) to (f), inclusive, of Section 25385.9. The General Fund shall be reimbursed from these sources for any transfers made to the Hazardous Substance Clearing Account from the General Fund to make the principal and interest payments. In determining the amount the General Fund is to be reimbursed for any transfer, the committee shall also include interest on the transfer at a rate equal to the bond rate on the transfer from the date of transfer to the date of reimbursement.

<< CA HLTH & S § 25385.4 >>

25385.4. The Hazardous Substance Cleanup Committee, which is hereby created, shall consist of the Governor, the Director of Finance, the Treasurer, the Controller, and the Secretary for Environmental Protection.

<< CA HLTH & S § 25385.5 >>

25385.5. The committee may create a debt or debts, liability or liabilities, of the State of California, in the aggregate of one hundred million dollars (\$100,000,000), in the manner provided in this article. The debt or debts, liability or liabilities,

shall be created for the purpose of providing moneys, for deposit in the fund, for the purposes specified in Section 25385.6.

<< CA HLTH & S § 25385.6 >>

25385.6. (a) The moneys in the Hazardous Substance Cleanup Fund may be used, upon appropriation by the Legislature, for the purposes specified in this section.

(b) The board may expend moneys in the fund, upon the authorization of the committee, for all of the following purposes:

(1) To provide the state share of a removal or remedial action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)) if the site is the subject of a final remedial action plan issued pursuant to Section 25356.1.

(2) To pay all costs of a removal or remedial action incurred by the state, or by any local agency with the approval of the director, in response to a release or threatened release of a hazardous substance at a site which is listed in the priority ranking of sites pursuant to Section 25356 and is the subject of a final remedial action plan issued pursuant to Section 25356.1, to the extent that the costs are not paid by responsible parties or are reimbursed by the federal act.

(3) To pay for site characterization of a release of hazardous substances, even if a remedial action plan has not been prepared, approved, adopted, or made final for that site.

<< CA HLTH & S § 25385.7 >>

25385.7. (a) All bonds authorized by this article, which are sold and delivered as provided in this article, constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California are hereby pledged for the punctual payment of both principal and interest thereon.

(b) There shall be collected annually, in the same manner and at the same time as other state revenue is collected, that sum, in addition to the ordinary revenues of the state, which is required to pay the principal of, and interest on, the bonds as provided in this article, and all officers charged by law with any duty in regard to the collection of the revenue shall perform each and every act which is necessary to collect this additional sum.

<< CA HLTH & S § 25385.8 >>

25385.8. (a) The Superfund Bond Trust Fund is hereby created in the State Treasury. All interest earned on funds in the state account, and other funds transferred to the trust fund by the Legislature or the department, shall be deposited in the trust fund, which is a sinking fund to ensure the payment of principal of, and interest on, the debt incurred pursuant to Section 25385.5. All interest earned on money in the fund shall be deposited in the trust fund. The funds in the trust fund shall be invested by the Treasurer. The committee shall administer the trust fund so that there are sufficient funds in the trust fund to make the necessary principal and interest payments on bonds

issued and shall transfer funds from the trust fund for this purpose to the Hazardous Substance Clearing Account.

(b) There shall be transferred annually the sum of five million dollars (\$5,000,000) from the state account to the trust fund.

(c) The unobligated balance in the state account shall be transferred by the department to the trust fund on December 31 of each year. For purposes of this section, "unobligated balance" means that amount, which shall not be less than zero, determined by the department, in the year-end financial statement submitted to the Controller, to be the total of all unencumbered funds on June 30 of that calendar year, less the total of all of the following:

- (1) Any fund in the reserve account for emergencies established by Section 25354.
- (2) Any remaining principal of the loan authorized by Section 25332.
- (3) Any interest due on any remaining principal of the loan authorized by Section 25332.
- (4) Any funds paid as taxes for the following fiscal year.
- (5) Any funds received from the federal government pursuant to the federal act.
- (6) Any interest accruing from funds deposited in the subaccount for site operation and maintenance established by Section 25330.5.
- (7) Any funds received from responsible parties for remedial and removal action, except to the extent those funds are necessary to reimburse the state account for funds previously expended therefrom.
- (8) Any funds deposited into a sinking fund to ensure the repayment of principal on, and interest of, bonds pursuant to Section 25385.9.

(d) The amendment of this section by Chapter 531 of the Statutes of 1990 does not constitute a change in, but is declaratory of, the existing law.

<< CA HLTH & S § 25385.9 >>

25385.9. Notwithstanding any other provision of law, the board shall pay the principal of, and interest on, the bonds from the Hazardous Substance Clearing Account, using the following sources, in the following order of priority:

- (a) Money derived from the premium and the accrued interest on bonds which are sold.
- (b) Recoveries from responsible parties of costs incurred for removal or remedial actions at sites listed pursuant to Section 25356, insofar as the removal or remedial action expenditures were paid from proceeds from bonds issued pursuant to this article.
- (c) Funds received pursuant to the federal act which are designated to be used for removal

or remedial actions paid for by proceeds from bonds issued pursuant to this article.

- (d) Any money transferred from the state account.
- (e) Any money transferred from the trust fund.
- (f) Any money derived from any other source, as provided by law.
- (g) The General Fund.

<< CA HLTH & S § 25386 >>

25386. Notwithstanding Section 25386.5, the money deposited in the fund is available for transfer to the General Fund if money was deposited in the fund pursuant to any provision of law requiring repayments to the state for assistance financed by the proceeds of the bonds issued pursuant to this article. When transferred to the General Fund, that money shall be applied as a reimbursement to the General Fund for the principal and interest payments on the bonds which have been paid from the General Fund.

<< CA HLTH & S § 25386.1 >>

25386.1. There is hereby appropriated from the General Fund in the State Treasury, for the purpose of this article, an amount equal to the sum of all of the following:

(a) The sum, annually, which will be necessary to pay the principal of, and the interest on, the bonds issued and sold pursuant to this article, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out Section 25386.2, which sum is appropriated without regard to fiscal years, notwithstanding Section 13340 of the Government Code.

<< CA HLTH & S § 25386.2 >>

25386.2. For the purpose of carrying out this article, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of amounts not to exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of carrying out this article. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the board in accordance with this article. Any moneys made available pursuant to this section shall be returned to the General Fund from moneys received from the sale of bonds sold for the purpose of carrying out this article.

<< CA HLTH & S § 25386.25 >>

25386.25. Notwithstanding any other provision of this bond act, or of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), if the Treasurer sells bonds pursuant to this bond act that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and the in-

(b) Under federal liability, at sites where there are insolvent or defunct parties that cannot contribute to the cost of cleanup, viable responsible parties pay the share of liability for that cleanup that may be attributable to insolvent and defunct parties.

(c) The Orphan Share Reimbursement Trust Fund is created to mitigate the payment of an insolvent or defunct party's liability share by viable responsible parties, to the extent money in the fund is available, and to encourage responsible parties to quickly and efficiently remediate contamination.

<< CA HLTH & S § 25390.2 >>

25390.2. (a) This article does not prohibit, and is not intended to prohibit, the department, the regional board, or the Attorney General from pursuing any existing legal, equitable, or administrative remedies, pursuant to federal or state law, against any potentially responsible party.

(b) No liability or obligation is imposed upon the state pursuant to this article, and the state shall not incur a liability or obligation beyond the payment of claims pursuant to this article, to the extent that money is available and has been allocated by the administrator under subdivision (c) of Section 25390.4. No legal action may be brought against the Orphan Share Reimbursement Trust Fund in its own name.

<< CA HLTH & S § 25390.3 >>

25390.3. (a) The Orphan Share Reimbursement Trust Fund is hereby created in the State Treasury.

(b) The administrator of the fund may expend the money deposited in the fund as provided in this article, upon appropriation by the Legislature. The administrator of the fund shall act in a fiduciary capacity, shall prudently administer the fund, and shall protect the fund from any unreasonable or unjustified claims, including any unreasonable or unjustified determinations of the orphan share percentage.

(c) Except as provided in subdivision (d) and subdivision (b) of Section 25358.7.2, the administrator of the fund may expend the money in the fund for all of the following purposes:

(1) To pay claims for reimbursement of all, or any part of, the orphan share at a site paid by the responsible party filed pursuant to Section 25390.4.

(2) For the costs of implementing this article.

(3) To pay the reasonable costs of the department and the regional board for performance of its duties under this article, including, but not limited to, its participation in the orphan share determination process set forth in Section 25390.5, unless those costs are paid by a potentially responsible party under an agreement specified in paragraph (3) of subdivision (a) of Section 25390.4. The expenditures from the fund for purposes of this paragraph shall not exceed 5 percent of the total amount appropriated from the fund in the annual Budget Act for purposes of this subdivision for that fiscal year.

(4) To pay the portion of costs attributable to the orphan share incurred by the department and the regional boards to oversee actions of potentially responsible parties, unless those costs are paid by a potentially responsible party under an agreement specified in paragraph (3) of subdivision (a) of Section 25390.4.

(d) If an appropriation from the General Fund is made to the fund in any fiscal year and an amount greater than five million dollars (\$5,000,000) in unexpended funds, beyond any amount approved by the administrator of the fund to pay claims pursuant to this article from that General Fund appropriation, remain in the fund at the end of that fiscal year, and if the department determines that additional funding for orphan sites beyond that appropriated from the Toxic Substances Control Account is required for the next fiscal year, the administrator may expend the amount in excess of five million dollars (\$5,000,000) from the General Fund appropriation to pay for response costs incurred by the department or the regional boards under this chapter at sites listed pursuant to Section 25356 where no viable responsible parties exist.

<< CA HLTH & S § 25390.4 >>

25390.4. (a) A potentially responsible party may file a claim pursuant to paragraph (1) of subdivision (c) of Section 25390.3 only if all of the following apply:

(1) The site is listed pursuant to Section 25356.

(2) The department or the regional board has approved a final remedy for the site under Section 25356.1.

(3) The department and the potentially responsible party have entered into a written, enforceable cleanup agreement or order embodied in a consent order issued pursuant to Section 25355.5 or 25358.3, or the regional board and the potentially responsible party have entered into a written, enforceable cleanup agreement or order that provides for the completion of all response actions necessary at the site, conducted pursuant to this chapter and under the oversight and at the direction of the department or the regional board. The agreement shall provide for the payment by the potentially responsible party of the department's or the regional board's response costs.

(4) The potentially responsible party demonstrates, and the department or the regional board finds, that the potentially responsible party has and will have sufficient financial resources to complete all required response actions.

(5) The potentially responsible party is in compliance with the agreement provided in paragraph (3), and with any other applicable order or agreement pertaining to the potentially responsible party's obligations with respect to the site.

(6) The potentially responsible party has prepared and provided the information required under subdivision (b) of Section 25390.5.

(7) The claim for reimbursement is for the costs incurred for response actions that were subject to the oversight and approval of the department or the regional board.

(b) The administrator of the fund shall prescribe appropriate application forms and procedures for claims filed pursuant to paragraph (1) of subdivision (c) of Section 25390.3 that shall include all of the following:

(1) Requirements that the claimant provide, at a minimum, all of the following documentation:

(A) A sworn verification of the claim to the best of the information known to the claimant or within the claimant's possession or control.

(B) All records and information pertaining to the site and relevant to the ownership, operation, or control of the site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the site, within the possession or control of the claimant, including, but not limited to, the information specified in subdivision (b) of Section 25358.1.

(C) Certification of all response costs that have been, or will be, incurred at the site by the potentially responsible party, and an estimate of the total cost of completion of the approved final remedy at the site.

(2) Procedures specifying that claims shall be filed only at the two following specific time periods during the performance of a response action:

(A) After the final remedy is selected under Section 25356.1.

(B) After the department or the regional board determines that the response action is complete. The department or the regional board shall not include operation and maintenance activities in determining whether the response action is complete under this subparagraph.

(c) The administrator of the fund shall annually, on a fiscal year basis, pay claims for reimbursement from the fund filed by potentially responsible parties under paragraph (1) of subdivision (c) of Section 25390.3, in accordance with the following procedures:

(1) Claims for funds available during each fiscal year shall be filed with the administrator by July 30 of that fiscal year.

(2) For sites with multiple responsible parties, all potentially responsible parties that have entered into the cleanup agreement specified in paragraph (3) of subdivision (a) of Section 25390.4 shall file a single claim.

(3) (A) The administrator shall allocate the money available in the fund for the fiscal year among the claims filed by the July 30 deadline. The allocation shall be based on the determination of the orphan share percentage at the facility under the process set forth in Section 25390.5, the long-term financial stability and short-term resources available in the fund, and the administrator's fiduciary duty with respect to the fund. Except as provided in subparagraph (B), the administrator shall pay claims for funds in the order in which they are received.

(B) Notwithstanding subparagraph (A), if an appropriation from the General Fund is made to the fund in any fiscal year, the administrator may alter the order of payment of claims required by subparagraph (A) by using funds appropriated from the General Fund to pay claims based on the threat to public health or the environment posed by a site or the need to improve economic and environmental conditions in redeveloping communities.

(4) The total amount allocated to any one site shall not exceed 10 percent of the total amount available each fiscal year in the fund. If, due to this limit or to the unavailability of funds, a claimant receives only partial or no reimbursement of the orphan share paid to be paid by that claimant, the claim shall be paid in the following fiscal year and shall be given priority over all claims filed after the claim was initially received, subject to the discretion of the administrator set forth in paragraph (3).

(5) The administrator's proposed allocation shall be subject to public review and comment for 30 days.

(d) The state and the fund have no obligation to provide full reimbursement to a claimant. The fund shall be allocated at the discretion of the administrator, subject to the requirements of this article. In enacting this article, the Legislature intends that claimants be reimbursed only to the extent that money is available in the fund and is allocated to the claimant by the administrator.

<< CA HLTH & S § 25390.5 >>

25390.5. For the purposes of this article, the orphan share shall be determined in the following manner:

(a) The orphan share shall be expressed as a percentage in multiples of five, up to, and, including, but not greater than, 75 percent.

(b) The potentially responsible party filing a claim for reimbursement of the orphan share shall provide the administrator of the fund with a written potentially responsible party search report that shall include a list of all potentially responsible parties identified for the site, the factual and legal basis for identifying those parties, and a proposed orphan share percentage. The potentially responsible party shall also provide the administrator with the factual documentation necessary to support the proposed orphan share percentage.

(c) Upon receipt of the information required by subdivision (a), the administrator of the fund shall invite all identified potentially responsible parties and the department and the regional board to submit any additional information relating to the proposed orphan share percentage or to the list of identified potentially responsible parties.

(d) The administrator of the fund, in consultation with the department or the regional board, shall determine a final orphan share percentage based on the volume, toxicity, and difficulty of removal of the contaminants contributed to the site by the party or parties responsible for the orphan share. The administrator shall determine the orphan share timely and efficiently and is not required to precisely determine all relevant factors, as long as the determination is generally equitable. In addition, the administrator may consider the results of any apportionment or allocation conducted by voluntary arbitration or mediation or by a civil action filed by a potentially responsible

party, or any other apportionment or allocation decision that is helpful when determining the orphan share percentage.

(e) A potentially responsible party shall not assert, and the administrator of the fund shall not determine, that the orphan share percentage includes the share of liability attributable to a potentially responsible party's acts that occurred before January 1, 1982, unless that share of responsibility is attributable to a person who is defunct or insolvent.

(f) In determining the orphan share percentage under this section, the administrator of the fund may perform any of the activities authorized in subdivisions (b) and (c) of Section 25358.1.

(g) The administrator of the fund shall issue all orphan share percentage determinations in writing, with notification to all appropriate parties. The decision of the administrator with respect to either apportionment or payment of claims is a final agency action for the purposes of judicial review of the decision by any party to the proceedings resulting in the decision; however, judicial review of the administrator's decision is limited to a showing of fraud by a party submitting information under this subdivision. The administrator shall be represented by the Attorney General in any action brought under this article.

<< CA HLTH & S § 25390.6 >>

25390.6. (a) Any costs paid from the fund pursuant to paragraphs (1) and (4) of subdivision (c) of Section 25390.3 shall be recoverable by the Attorney General, at the request of the administrator of the fund, from any liable person or persons who have not entered into, or are not in compliance with, a written cleanup agreement entered into pursuant to paragraph (3) of subdivision (a) of Section 25390.4 that provides for the completion of all response actions necessary at the site under the oversight and at the direction of the department or the regional board.

(b) Any potentially responsible party who withholds information required to be submitted under this section, or who submits false information, is subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) for each piece of information withheld or for each piece of false information submitted.

<< CA HLTH & S § 25390.7 >>

25390.7. A claim for reimbursement under paragraph (1) of subdivision (c) of Section 25390.3 shall not be filed for any of the following:

(a) Sites listed on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605(a)(8)(B)).

(b) Sites remediated pursuant to Chapter 6.85 (commencing with Section 25396).

(c) Sites, or portions of sites, for which the potentially responsible party has agreed to take all response action required by the department or the regional board at the site, and that agreement is embodied in a written, enforceable settlement agreement, including,

but not limited to, a judicial consent decree, entered into prior to January 1, 1999.

(d) Sites, or portions of sites, that have been fully remediated for which the department or the regional board has determined that the response action is complete prior to January 1, 1999. The department or the regional board shall not include operation and maintenance activities in determining whether the response action is complete under this section.

<< CA HLTH & S § 25390.8 >>

25390.8. (a) Any costs incurred and payable from the fund by the administrator pursuant to this article shall constitute a claim and lien upon the real property owned by a responsible party which is subject to, or affected by, a response action. A lien established by this subdivision shall have all of the following properties:

(1) The lien shall not exceed the increase in fair market value of the site attributable to the response action at the time of a subsequent sale or other disposition of the site.

(2) The lien shall attach regardless of whether the responsible party property owner is solvent.

(3) The lien shall arise at the time costs to the fund are first incurred by the administrator.

(4) The lien shall be subject to the notice and hearing procedures that due process of the law requires.

(b) Neither the administrator of the fund nor the fund shall be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this section.

(c) The lien imposed by this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located. The lien shall contain the legal description of the property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll. The lien shall also contain a legal description of the property that is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property.

(d) All funds recovered pursuant to this subdivision shall be deposited in the fund.

<< CA HLTH & S § 25390.9 >>

25390.9. (a) This article shall become operative on the operative date of a statute that becomes operative on or after January 1, 2000, and does both of the following:

(1) Creates a position in state government known as the Administrator of the Orphan Share Reimbursement Trust Fund, and that provides that the administrator shall be appointed by the Governor and be subject to confirmation by the Senate.

(2) Either appropriates funds to the fund to implement this article, or establishes a revenue source for the fund, or both.

(b) Notwithstanding subdivision (a), the operation of this article shall be suspended during any fiscal year in which both no funds are appropriated to the fund to implement this article and no revenue source for the fund is operative.

Article 8. Private Site Management

<< CA HLTH & S § 25395.1 >>

25395.1. As used in this article, the following terms have the following meaning:

(a) "Private site manager" means an individual who is registered as a class II environmental assessor pursuant to Section 25570.3.

(b) "Private site management team" means a group coordinated by a private site manager, which may consist of any or all of the following persons:

(1) A person holding a four-year bachelor of science degree from an accredited college or university who has done significant work in biological, chemical, physical, environmental or soil geology, hydrology, hydrogeology, environmental health, environmental engineering, toxicology, industrial hygiene, or a related field.

(2) An environmental engineer holding a four-year bachelor of science in engineering degree from an accredited college or university.

(3) An engineer registered in the State of California.

(4) A geologist registered in the State of California.

(5) A certified hydrogeologist registered in the State of California.

(6) A certified engineering geologist registered in the State of California.

(7) A geophysicist registered in the State of California.

(8) An industrial hygienist or safety engineer registered in the State of California.

(9) A process engineer holding a four-year bachelor of science degree in engineering from an accredited college or university.

(10) A petroleum engineer holding a four-year bachelor of science degree in engineering from an accredited college or university.

(11) The necessary technical support personnel and equipment operators, as determined by the private site manager.

(c) "Project proponent" means any person who applies to the department for approval

to conduct the response to a release or threatened release of hazardous substances pursuant to this article.

(d) "Independent," as used in subdivision (b) of Section 25395.3, means that the private site manager or the members of the private site management team meet all of the following requirements:

(1) The site manager or team member is not an employee of the project proponent, a known responsible party, or a prospective buyer of the site property.

(2) The site manager or team member is not a general partner, or a limited partner, with any project proponent, known responsible party, or prospective buyer of the site property.

(3) The site manager or team member is not a shareholder in the project proponent entity, known responsible party, or a prospective buyer of the site property.

(4) The site manager or team member does not receive any source of income from the project proponent, known responsible party, or a prospective buyer of the site property, other than the payment of fees for professional services.

(5) The site manager or team member does not accept, or agree to accept, any payment that is in any way contingent upon the completion of a response action of the site as a private site management project.

<< CA HLTH & S § 25395.2 >>

25395.2. A private site manager may conduct investigations of potential hazardous substance release sites using preliminary endangerment assessment procedures approved by the department. If, upon completion of an investigation, a private site manager determines that because a significant release of hazardous substances has not occurred, site conditions do not require any further investigation or remedial action, the private site manager may submit a report to the department certifying that no further action is required at the site. Unless the department issues a written notice of disagreement to the private site manager within 60 days from the date of receipt of the report, the department shall be deemed to be in agreement with the report and shall designate the site as a site which requires no further action. The department may subsequently change that site designation status upon receipt and confirmation of evidence that the physical environment of the site conditions differ from the findings of a report submitted by a private site manager. The department shall not designate a site under this section as a site that requires no further action if the release of hazardous substances has caused, or threatens to cause, discharges to waters of the state.

<< CA HLTH & S § 25395.3 >>

25395.3. If, upon completion of a site investigation, a private site manager or the department determines that a significant release of a hazardous substance has occurred, or is likely to have occurred, a project proponent may submit an application to the department requesting that a response action be conducted under private site management pursuant to this article. The application for a response action shall include both of

the following:

(a) Where a site investigation was conducted by a private site manager, the private site manager shall provide the department with a report of the site findings based on the investigation. In all cases, the application shall set forth reasons why the site is appropriate for a private response action and management based on the information available at the time that the application is submitted to the department. Sites shall be deemed appropriate for private site management if all the following conditions exist:

(1) There is a substantial likelihood that no further significant environmental damage or exposure to humans will occur as the response action is implemented.

(2) The site is not adjacent to residential property, as defined in Section 1675 of the Civil Code, or a school, day care center for children, or a hospital.

(3) The site is not, or is not being used as, residential property, as defined in Section 1675 of the Civil Code, or a school, day care center for children, or a hospital.

(4) Releases of hazardous substances at the site did not result in discharges to groundwater.

(5) An enforceable agreement that specifies how response action will be conducted is not applicable to the site.

(b) The name and a statement of qualifications of any private site manager proposed for the site. The proposed private site manager shall be independent of the project proponent, all known responsible parties, and prospective buyers of the site property.

<< CA HLTH & S § 25395.4 >>

25395.4. (a) If the department approves an application for private site management, a private site management team shall be designated to perform the activities authorized by this article. The professional staff of the private site management team shall be comprised, at a minimum, of persons with qualifications and levels of experience which shall be specified by the department based upon the conditions at the site which require response action.

(b) At least one member of the proposed team shall have demonstrable experience or training in public participation, risk communication, and community involvement, except that the member shall not be required to be a registered or certified professional. Each member of the proposed team shall be independent of the project proponent, known responsible parties, and prospective buyers of the site property.

(c) If, at any time, the documented physical conditions at the site change or physical conditions previously unknown to the department are identified, the department may rescind approval of the proposed project or may require the private site management team to include additional professional staff members with expertise appropriate to the physical conditions at the site. The addition of new professional level team members proposed by the private site manager shall be approved by the department, but the department shall not unreasonably withhold that approval.

<< CA HLTH & S § 25395.5 >>

25395.5. (a) If the private site management team determines that the response action will include a removal or remedial action, the approved private site management team shall prepare a draft removal action work plan or remedial action plan. The draft removal action work plan or remedial action plan may be prepared without oversight by the department, but shall be prepared in accordance with all of the requirements of this chapter, or Chapter 6.85 (commencing with Section 25396) in the case of sites selected pursuant to Section 25396.6, and other applicable regulations and guidance documents adopted or issued by the department.

(b) The private site management team shall submit the draft removal action work plan or remedial action plan to the department for approval, and the department shall approve or reject the work plan or remedial action plan within 60 days from the date of submittal by a private site manager. If a plan is rejected, the department shall identify the principal reasons for the rejection, and shall describe the actions needed to adequately address deficiencies in the plan.

<< CA HLTH & S § 25395.6 >>

25395.6. (a) The private site management team shall, in the case of sites selected pursuant to Section 25396.6, prepare a remedial design for the implementation of the response action that is selected in the final remedial action plan that is prepared and approved in accordance with the requirements of this chapter, or Chapter 6.85 (commencing with Section 25396), and applicable regulations and guidance documents adopted or issued by the department. The remedial design may be prepared by the private site management team without oversight by the department, and shall be submitted to the department for approval.

(b) The department shall approve or reject a final remedial design within 60 days from the date of submittal by a private site management team. If a design is rejected, the department shall identify the principal reasons for the rejection, and shall describe the actions needed to adequately address deficiencies in the design.

<< CA HLTH & S § 25395.7 >>

25395.7. The private site management team shall implement the response action set forth in the approved final removal action work plan or remedial action plan and remedial design. The implementation of the response action may be conducted without oversight by the department.

<< CA HLTH & S § 25395.8 >>

25395.8. (a) Upon completion of a response action, the private site manager shall file a request for a certificate of completion from the department. The request for a certificate of completion submitted by a private site manager shall include all of the information required by the department, and, at a minimum, shall include all of the following additional information:

(1) A summary of all response action taken.

(2) All sample results for a certified laboratory confirming that the site has been fully remediated as required by the final removal action work plan or remedial action plan and in accordance with the remedial design approved by the department.

(b) In addition, the department may require submittal of any or all of the following documentation:

(1) A north-south and east-west cross section of the site geology, that is signed by a geologist, geophysicist, engineering geologist, or hydrogeologist who is registered in the State of California, and that evaluates the hydrogeologic conditions of the site.

(2) Horizontal and vertical surveys of all wells, caps, and facilities that are required by the final removal action work plan or final remedial action plan approved by the department.

(3) As-built drawings of any physical construction that is required by the removal action work plan or remedial action plan approved by the department, and that is signed by an engineer registered in the State of California.

(4) Copies of land use controls that are required by the removal action work plan or remedial action plan approved by the department, and that have been recorded by the county recorder in the county in which the site is located.

(5) A plan for the implementation of any operation and maintenance measures that are required by the final removal action work plan or remedial action plan approved by the department.

(c) The department shall review the request for a certificate of completion, and shall approve or reject a request for certificate of completion within 30 days from the date of submittal by the private site manager. If a request is rejected, the department shall identify the principal reasons for the rejection and describe the actions needed to amend the application to adequately address the deficiencies that are identified by the department.

(d) If the department approves the request for a certificate of completion, it shall prepare a certification which shall include a certificate of completion, requirements for ongoing reporting and operation and maintenance, and a description of applicable land use controls of a site. The certification shall be provided to the project proponent, all known responsible parties, owners of properties located adjacent to the site, and shall be made available to the public.

<< CA HLTH & S § 25395.9 >>

25395.9. No designated officer or employee of the California Environmental Protection Agency or its constituent boards, departments, or offices shall serve as a private site manager or member of a private site management team for the first 12 months following the termination of the officer's or employee's appointment or employment with the agency, constituent board, department, or office.

<< CA HLTH & S § 25395.10 >>

25395.10. (a) The private site manager and each member of a private site management team shall sign and certify all work performed by, and or directed by, that person.

(b) The private site manager and each member of the professional staff of the private site management team shall have appropriate insurance as required by the department.

<< CA HLTH & S § 25395.11 >>

25395.11. Except as otherwise specified in this article, all the requirements of this chapter, or Chapter 6.85 (commencing with Section 25396) in the case of sites selected pursuant to Section 25396.6, and any other applicable regulation and guidance document or manual adopted or issued by the department, shall apply to sites approved for private site management. The requirements of Division 13 (commencing with Section 21000) of the Public Resources Code shall apply to response actions conducted pursuant to this article in the same manner, and to the same extent, that the requirements apply to response actions otherwise conducted pursuant to this chapter or Chapter 6.85 (commencing with Section 25396). If, at any time, the department finds that a private site manager or a private site management team is not in compliance with the requirements of this chapter or Chapter 6.85 (commencing with Section 25396), the department may, pursuant to this article, withdraw its approval for the conduct of a response action on the site.

<< CA HLTH & S § 25395.12 >>

25395.12. (a) The department shall conduct audits of a minimum of 25 percent of the sites where a private site manager or private site management team has conducted a site investigation or response action without oversight by the department, except with respect to cases where oversight is otherwise required under this article, and where the department has issued a certificate of completion.

(b) A private site manager and any member of a private site management team shall provide an authorized representative of the department with complete access, at any reasonable hour of the day, to all technical data, reports, records, environmental samples, photographs, maps, and files that are materially related to a response action conducted pursuant to this article.

(c) In any case where the department's audit finds that the performance of a private site manager or a member of a private site management team fails to meet the minimum standards of performance adopted pursuant to Section 25395.15, the department shall send the results of the audit to the Office of Environmental Health Hazard Assessment.

<< CA HLTH & S § 25395.13 >>

25395.13. (a) Any private site manager or member of a private site management team who commits any of the following acts shall be punished, upon conviction, by a fine of not less than two thousand dollars (\$2,000) or by imprisonment in the county jail for not more than one year, or both that fine and imprisonment, if the private site manager or any member of a private site management team does any of the following:

(1) Knowingly makes any materially false or inaccurate statement in any application, record, report, certification, plan, design, or statement that the private site manager or the private site management team submits to the department.

(2) Knowingly makes any materially false or inaccurate statement in any record, report, plan, file, log, or register that the private site management team keeps, or is required to keep, pursuant to any law.

(3) Knowingly and materially falsifies, tampers with, alters, destroys, or disturbs any mechanism, recovery, or control system, or any monitoring device or method that the private site manager or the private site management team maintains, or that is required to be maintained pursuant to any law, regulation, or order for the protection of the public health and safety or the environment.

(4) Knowingly allows or orders any of the private site manager's or the private site management team's employees, agents, or contractors to do any of the actions specified in paragraphs (1) to (3), inclusive.

(b) Any private site manager or member of a site private management team who knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes of, or stores any hazardous substance in a manner that causes any unreasonable risk of fire, explosion, serious injury, or death, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) nor more than two hundred fifty thousand dollars (\$250,000) for each day of a violation, by imprisonment in the county jail for not more than one year, by imprisonment in the state prison for 16, 24, or 36 months, or by both that fine and imprisonment.

(c) Any private site manager or member of a private site management team who knowingly, at the time the manager or member takes any of the actions specified in subdivision (b), places another person in imminent danger of death or serious bodily injury, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than two hundred fifty thousand dollars (\$250,000) for each day of the violation.

(d) Each day that a violation of subdivision (a) occurs, or continues to occur, shall be considered a separate offense. A fine imposed pursuant to subdivision (a) shall not exceed, in the aggregate, twenty-five thousand dollars (\$25,000), and the term of imprisonment shall not exceed, in the aggregate, one year.

(e) Notwithstanding any other provision of law, all penalties collected pursuant to this section shall be transferred to the department for deposit in the trust fund for expenditure by the department, upon appropriation by the Legislature, to administer and enforce this article.

<< CA HLTH & S § 25395.14 >>

25395.14. The project proponent for a site subject to response action pursuant to this article shall fully reimburse the department for all reasonable costs incurred by the department, including those costs associated with the department's involvement in the

the department shall not have expended any funds appropriated by Item 3960-001-0001 for the purposes specified in this subdivision.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to continue the state's Hazardous Substance Cleanup Program thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CA LEGIS 23 (1999)

END OF DOCUMENT

West's Ann.Cal.Health & Safety Code § 25358.1

WEST'S ANNOTATED CALIFORNIA CODES
HEALTH AND SAFETY CODE
DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS
CHAPTER 6.8. HAZARDOUS SUBSTANCE ACCOUNTS
ARTICLE 5. USES OF THE STATE ACCOUNT

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§ 25358.1. Furnishing information at request of department; access to records; administrative procedures; photographs; entry for removal or remedial action; notice and split samples; immunity from liability

(a) The department, a representative of the department, or any person designated by the director may take the actions specified in this section only if there is a reasonable basis to believe that there may be a release or threatened release of a hazardous substance, and only for the purpose of determining under this chapter the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this chapter.

(b) Any officer or employee of the department, a representative of the director, or a person designated by the director may require any potentially responsible party, or any person who has, or may have, acquired information relevant to any of the following matters in the course of a commercial, ownership, or contractual relationship with any potentially responsible party, to furnish, upon reasonable notice, information or documents relating to the following matters:

(1) The identification, nature, and quantity of materials which have been, or are, generated, treated, stored, or disposed of at a hazardous substance release site or which have been, or are, transported to a hazardous substance release site.

(2) The nature or extent of a release or a threatened release of a hazardous substance at, or from, a hazardous substance release site.

(c) A person who is required to provide information pursuant to subdivision (b) shall, in accordance with subdivision (h), allow the officer, employee, representative, or designee, upon reasonable notice and at reasonable times, to have access to, and copy, all records relating to the hazardous substances for purposes of assisting the department in determining the need for an action in response to a release or threatened release pursuant to this chapter.

(d) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), enter, at reasonable times, any of the following properties:

(1) Any nonresidential establishment or other place or property where any hazardous substances may be, or have been, produced, stored, treated, disposed of, or transported from.

(2) Any nonresidential establishment or other place or property from which, or to which, a hazardous substance has been, or may have been, released.

(3) Any nonresidential establishment or other place or property where a hazardous substance release is, or may be, threatened.

(4) Any nonresidential establishment or other place or property where entry is needed to determine the need for a response action, or the appropriate remedial action, to effectuate a response action under this chapter.

(5) Any residential place or property which, if it were a nonresidential establishment or other place or property, would otherwise meet the criteria described in paragraphs (1) to (4), inclusive, if the department, representative, or person designated by the director is able to establish, based upon reasonably available evidence, that hazardous substances have been released onto or under the residential place or real property and if entry is made only at reasonable times and after reasonable notification to the owners and occupants.

(e) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), carry out any of the following activities:

(1) Inspect and obtain samples from any establishment or other place or property specified in subdivision (d) or from any location of any suspected hazardous substance.

- (2) Inspect and obtain samples of any substances from any establishment or place or property specified in subdivision (d).
- (3) Inspect and obtain samples of any containers or labeling for the suspected hazardous substances, and samples of the soil, vegetation, air, water, and biota on the premises.
- (4) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous substances.
- (5) Survey and determine the topographic, geologic, and hydrogeologic features of the land.
- (6) Photograph any equipment, sample, activity, or environmental condition described in paragraphs (2) to (5) inclusive.
- (f)(1) If photographs are to be taken pursuant to paragraph (6) of subdivision (e), the department shall do all of the following:
 - (A) Comply with all procedures established pursuant to subdivision (b) of Section 25358.2.
 - (B) Notify the person whose facility is photographed prior to public disclosure of the photographs.
 - (C) Upon the request of the person owning the facility, submit a copy of any photograph to the person for the purpose of determining whether trade secret information, as defined in Section 25358.2, or facility security, would be revealed by the photograph.
- (2) "Disclosure," as used in Section 25358.2, for purposes of this paragraph, does not include the review of the photograph by a court of competent jurisdiction or by an administrative law judge. A court or judge may review the photograph in camera.
- (g) An officer, employee, representative, or designee who enters a place, establishment, or property pursuant to this section shall make a reasonable effort to inform the owner or the owners' authorized representative of the inspection and shall provide split samples to the owner or the representative upon request.
- (h) If the owner or the owner's authorized representative does not voluntarily grant access to a place, establishment, or property pursuant to this section, the officer, employee, representative, or designee shall first obtain a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, if there is an emergency posing an immediate threat to public health and safety, the officer, employee, representative, or designee may enter the place, establishment, or property without the consent of the owner or owner's authorized representative and without the issuance of a warrant.
- (i) The department, and any person authorized by the department to enter upon any lands for the purpose of taking removal or remedial action pursuant to this chapter, shall not be held liable, in either a civil or criminal proceeding, for trespass or for any other acts which are necessary to carry out the corrective action.

CREDIT(S)

2000 Electronic Pocket Part Update

(Added by Stats.1999, c. 23 (S.B.47), § 2, eff. May 26, 1999.)

HISTORICAL AND STATUTORY NOTES

6CAP

1999 Legislation

Effect of repeal of former § 25358.1 by Stats.1997, c. 870 (S.B.660), § 46.5, see Historical and Statutory Notes under Health and Safety Code § 25300.

Derivation: Former § 25358.1, added by Stats.1983, c. 1044, § 12, amended by Stats.1993, c. 1283, § 5.

1999 Main Volume

Section 25358.1, added by Stats.1983, c. 1044, § 12, amended by Stats.1993, c. 1283 (S.B.1092), § 5, related to furnishing information at the request of the department.

LAW REVIEW AND JOURNAL COMMENTARIES

Review of selected 1993 California legislation. 25 Pac.L.J. 679 (1994).

West's Ann. Cal. Health & Safety Code § 25358.1
CA HLTH & S § 25358.1

END OF DOCUMENT

West's Ann.Cal.Health & Safety Code § 25358.7.1

WEST'S ANNOTATED CALIFORNIA CODES
HEALTH AND SAFETY CODE
DIVISION 20. MISCELLANEOUS **HEALTH AND SAFETY PROVISIONS**
CHAPTER 6.8. HAZARDOUS SUBSTANCE ACCOUNTS
ARTICLE 5. USES OF THE STATE ACCOUNT
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§ 25358.7.1. Community advisory groups

(a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory committee. The department or regional board shall also advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment. If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site or a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the petitioners or the legislative body to establish a community advisory group to review the response action at the site.

(b) To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(1) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(2) Individuals from the local business community.

(3) Local political or government agency representatives.

(4) Local citizen, civic, environmental, or public interest group members residing in the community.

(c) The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

(1) The department or regional boards.

(2) Representatives of local environmental regulatory agencies.

(3) The potentially responsible parties or other persons who are conducting the response action.

(d) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 25358.7. Nothing in this section shall affect the status of any citizen advisory group formed before the enactment of this section, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board.

CREDIT(S)

2000 Electronic Pocket Part Update

(Added by Stats.1999, c. 23 (S.B.47), § 2, eff. May 26, 1999.)

West's Ann. Cal. Health & Safety Code § 25358.7.1
CA HLTH & S § 25358.7.1

928) (WEST)

CALIFORNIA 1991 LEGISLATIVE SERVICE
1991 Portion of 1991-92 Regular Session
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Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted.

CHAPTER 1183
A.B. No. 928
ENVIRONMENT--PUBLIC FACILITIES--HAZARDOUS MATERIALS

AN ACT to amend Sections 39003 and 39120 of the Education Code, to amend Section 65759 of, and to repeal and add Section 65850.2 of, the Government Code, to amend Sections 13143.9, 25534.1, 25535, 25538, 25541, 42301.6, and 42301.9 of, and to add Sections 25501.3, 25507.10, 25514.3, and 25534.2 to, the Health and Safety Code, and to amend Sections 21151.4 and 21151.8 of, and to repeal Section 21151.3 of, the Public Resources Code, relating to hazardous materials.

[Approved by Governor October 14, 1991.]

[Filed with Secretary of State October 14, 1991.]

LEGISLATIVE COUNSEL'S DIGEST

AB-928, Archie-Hudson. Hazardous materials: schools: health care facilities.

(1) Existing law generally requires all state agencies and local agencies to prepare, or to be prepared by contract, and certify the completion of, an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment. In other cases, a negative declaration is required. Existing law prohibits the governing board of a school district from approving the acquisition of a schoolsite or the construction of a new school building, unless the lead agency, as defined, consults with specified local agencies to identify facilities which might emit hazardous air emissions, and unless the governing board of the school district makes specified written findings concerning these facilities.

Existing law also prohibits the approval of an environmental impact report or negative declaration for a school construction project or purchase of a schoolsite unless facilities within a specified distance of the proposed schoolsite are identified which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, the governing board of the school district makes specified written findings and the environmental impact report or negative declaration includes information to determine if property proposed to be purchased, or to be constructed upon, is the site of a hazardous waste disposal site or solid waste disposal site, a hazardous substance release site, or a site which contains pipelines which carry hazardous substances, acutely hazardous materials, or hazardous waste. Existing law prohibits the approval of an environmental impact report or negative declaration for any project involving the construction or alteration of a facility which might emit hazardous air emissions within 1/4 mile of a school unless the lead agency consults with the school district, as specified.

This bill would additionally provide that before the governing board approves a school construction project or the acquisition of a schoolsite, or before an environmental impact report or negative declaration is approved for a school construction project or the purchase of a schoolsite, the lead agency is also required to identify facilities which might be reasonably anticipated to handle acutely hazardous materials, substances, or waste, thereby imposing a

state-mandated local program. The bill would include an additional finding which the governing board would be authorized to make, if these facilities exist, concerning the corrective measures which these facilities are required to take. The bill would require specified local agencies which receive a request to provide information concerning these facilities to respond in 30 days, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

The bill would, instead, include within the prohibition on the approval of an environmental impact report or negative declaration, a facility which would emit hazardous air emissions or handle specified materials which may pose a specified health or safety hazard.

(2) Existing law requires a business which handles acutely hazardous materials to submit a registration form to the local administering agency, as defined, and, if the administering agency determines that there is a significant likelihood that the handler's use of an acutely hazardous material may pose an acutely hazardous materials accident risk, the agency is required to require the preparation and submission of a risk management and prevention program (RMPP), in accordance with a specified timetable. Existing law requires cities and counties to include in the application for building permits a place to indicate whether the applicant is required to comply with specified requirements concerning business plans, the submission of RMPPs, and permits for construction or modification pursuant to the regulation of air pollution. A city or county is prohibited from issuing a final certificate of occupancy unless the applicant meets these requirements and from permitting a facility to be constructed within 1,000 feet of a school unless specified requirements are met.

This bill would, instead, require a city or county to include in the information list for development projects or in the application form for a building permit specified requirements concerning compliance with statutes regulating hazardous materials and air pollution, the handling of acutely hazardous materials, and the emission of hazardous air emissions. The bill would prohibit a city or county from finding an application complete or from approving a development project or a building permit for a project which requires only a building permit if the project meets specified requirements concerning hazardous materials and emissions, unless the owner or authorized agent complies with certain provisions, thereby imposing a state-mandated local program. The bill would require the owner or operator of such a project to substantially meet the requirements for submitting an RMPP, pursuant to a specified procedure, if the administering agency makes a specified determination. Cities and counties would be authorized to adopt a schedule of fees to cover the cost of carrying out these provisions. The bill would impose specified duties upon administering agencies and air pollution control officers, thereby imposing a state-mandated local program.

(3) Existing law requires the State Fire Marshal to prepare, adopt, and submit for approval to the State Building Standards Commission, building standards establishing minimum standards for fire prevention, as specified, and minimum requirements for the storage and handling in commercial buildings of acutely hazardous materials, as defined.

This bill would revise the provisions relative to acutely hazardous materials to instead require the preparation, adoption, and submission of building standards and other fire and life safety regulations establishing minimum requirements for the storage, handling, and use of hazardous materials, as defined in the Uniform Fire Code, as specified.

(4) Existing law requires handlers or other specified persons to report hazardous material releases to an administering agency, which is defined as a department, office, or agency of a city or county.

This bill would require emergency rescue personnel to advise the superintendent of a school district of a specified release, or threatened release, within 1/2 mile of a school, thereby imposing a state-mandated local program. This bill would define the term "handle" for purposes of the provisions regulating hazardous materials to include connecting a marine vessel, tank

vehicle, tank car, or containers to a specified system or process.

(5) Existing law prescribes civil penalties for violations of specified provisions requiring any business, as defined, to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material, in accordance with prescribed requirements.

This bill would make a knowing violation of those provisions, after reasonable notice, a misdemeanor. The bill would thereby impose a state-mandated local program by creating a new crime.

(6) Existing law requires an RMPP to give consideration to the proximity of the facility to schools and requires a handler to submit a corrected RMPP within 60 days after receiving a specified notice from the administering agency. Existing law requires the administering agency to follow specified procedures with regard to the protection of trade secrets.

The bill would define school for purposes of the RMPP procedures and would authorize the administering agency to grant a one-time extension of the deadline to submit a corrected RMPP. The bill would require the administering agency to review any claim for a trade secret protection and to segregate properly substantiated trade secret information from the information to be made public. The bill would impose new duties upon administering agencies, thereby imposing a state-mandated local program.

(7) Existing law requires an air pollution control officer, prior to approving a permit for a source that may emit air contaminants which is located within 1,000 feet of a school, to prepare and distribute a public notice, as specified.

This bill would, instead, require that notice to be given prior to approving an application for a source which emits hazardous air emissions which is located within 1,000 feet of a school, as defined, and would require the notice to be distributed to additional persons, thereby imposing a state-mandated local program. The bill would authorize the preparation of the notice under prescribed circumstances. The bill would make the notice requirements inapplicable if the air pollution control officer makes specified determinations.

The bill would require the school district to make the information necessary to mail notices required by these provisions available to the air pollution control officer and would allow the notices to be distributed to the children to be given to their parents.

The bill would require applicants for a permit to certify whether the project is located within 1,000 feet of a school, and would authorize denial of the permit upon misrepresentation of that fact.

(8) The bill would provide that the changes proposed by this bill concerning development projects and permits, RMPPs, permits issued by air pollution control districts and air quality management districts, and environmental impact reports for facilities near schools do not apply to projects for which an application is submitted before January 1, 1992.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement is required by this act for certain costs for specified reasons. However, this bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs

shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

The people of the State of California do enact as follows:

SECTION 1. Section 39003 of the Education Code is amended to read:

<< CA EDUC § 39003 >>

39003. The governing board of a school district shall not approve a project involving the acquisition of a school site by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency <<+, as defined in Section 21067 of the Public Resources Code,+>> preparing the environmental impact report or negative declaration has consulted with the <<-* * *->> <<+administering agency+>> in which the proposed school site is located <<-* * *->> and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed school site which might reasonably be anticipated to emit hazardous air emissions <<+, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought+>>.

(c) The governing board of the school district makes <<+one+>> of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but <<-* * *->> <<+one of the following conditions applies:+>>

<<+(A) T+>> the health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

<<+(B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.+>>

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution <<+control+>> officer, hazardous air emissions <<-* * *->> also <<+means+>> emissions into the ambient air from any substance identified in <<+subdivisions (a) to (f), inclusive, of+>> Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" <<-* * *->> <<+means any substance+>> defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" <<-* * *->> <<+means any material+>> defined <<-* * *->>

>> <<+pursuant to+>> subdivision (a) of Section 25532 of the Health and Safety Code.
(4) "Hazardous waste" <<-* * *->> <<+means any waste+>> defined in Section 25117 of the Health and Safety Code.
(5) "Hazardous waste disposal site" <<-* * *->> <<+means any site+>> defined in Section 25114 of the Health and Safety Code.
<<+(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.+>>
<<+(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.+>>
SEC. 2. Section 39120 of the Education Code is amended to read:

<< CA EDUC § 39120 >>

39120. <<+(a)+>> The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency <<+comply+>> with the same requirements specified in <<+subdivision (a) of+>> Section 39003 for schoolsite acquisition.
<<+(b) For purposes of this section, the acceptance of construction bids shall constitute approval of the project.+>>
SEC. 3. Section 65759 of the Government Code is amended to read:

<< CA GOVT § 65759 >>

65759. In any action brought under this section:
<<+(a)+>> The <<-* * *->> California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, <<+ does+>> not apply to any action necessary to bring its general plan or relevant mandatory elements <<-* * *->> <<+of the plan+>> into compliance with any court order or judgment under this <<+article+>>.
<<+(1)+>> The local agency shall, however, prepare an initial study, within the time limitations specified in Section 65754, to determine the environmental effects of the proposed action necessary to comply with the court order. The initial study shall contain substantially the same information as is required for an initial study pursuant to subdivision (c) of Section 15080 of Title 14 of the California <<-* * *->> Code <<+of Regulations+>>.
<<+(2)+>> If as a result of the initial study, the local agency determines that the action may have a significant effect on the environment, the local agency shall prepare, within the time limitations specified in Section 65754, an environmental assessment, the content of which substantially conforms to the required content for a draft environmental impact report set forth in Article 9 (commencing with Section 15140) of Title 14 of the California <<-* * *->> Code <<+of Regulations+>>. The local agency shall include notice of the preparation of the environmental assessment in all notices provided for the amendments to the general plan proposed to comply with the court order.
<<+(3)+>> The environmental assessment shall be deemed to be a part of the general plan and shall only be reviewable as provided in this article.
<<+(4)+>> The local agency may comply with the provisions of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, in any action necessary to bring its general plan or <<+the plan's+>> relevant mandatory elements <<-* * *->> into compliance with any court order or judgment under this section so long as it does so within the time limitations specified in Section 65754.
<<+(b)+>> The court for good cause shown may grant not more than two extensions of time, not to exceed a total of 240 days, in order to meet the requirements imposed by Section 65754.

<< Repealed: CA GOVT § 65850.2 >>

SEC. 4. Section 65850.2 of the Government Code is repealed:
SEC. 5. Section 65850.2 is added to the Government Code, to read:

65850.2. (a) Each city and each county shall include in its information list compiled pursuant to Section 65940 for development projects, or application form for projects which do not require a development permit other than a building permit, both of the following:

(1) The requirement that the owner or authorized agent shall indicate whether the owner or authorized agent will need to comply with the applicable requirements of Sections 25505, 25533, and 25534 of the Health and Safety Code and the requirements for a permit for construction or modification from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county.

(2) The requirement that the owner or authorized agent shall certify whether or not the proposed project will handle, as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code, an acutely hazardous material or a mixture containing an acutely hazardous material, in a quantity equal to or greater than the quantity specified in subdivision (a) of Section 25536 of the Health and Safety Code, or will contain a source or modified source with hazardous air emissions.

(b) No city or county shall find the application complete pursuant to Section 65943 nor approve a development project, or a building permit for a project which does not require a development permit other than a building permit, in which acutely hazardous material or mixtures containing acutely hazardous material will be handled in a quantity equal to or greater than that specified in Section 25536 of the Health and Safety Code, unless the owner or authorized agent for the project first obtains from the administering agency, a notice of requirement to comply with, or determination of exemption from, the requirement to prepare and submit a risk management and prevention program. Within five days of submitting the project application to the city or county, the applicant shall submit the information required pursuant to paragraph (2) of subdivision (a) to the administering agency. This notice of requirement to comply with, or determination of exemption from, the requirement for an RMPP shall be provided by the administering agency to the applicant, and the applicant shall provide the notice to the city or county, within 25 days of the administering agency receiving adequate information from the applicant to make a determination as to the requirement for an RMPP. The notice of requirement to comply shall indicate if any of the acutely hazardous material to be handled at the site would create an acutely hazardous materials accident risk to any of the populations specified pursuant to Section 25534.1 of the Health and Safety Code. If the notice indicates an acutely hazardous materials accident risk may be present for any of the specified populations, no permit shall be issued until the administering agency has verified to the city or county within 90 days of the determination as to the requirement for an RMPP that the requirement for a risk management and prevention program is being substantially met. If within 90 days the administering agency has not verified that the requirement for the RMPP is being substantially met, then this section shall be deemed satisfied. If the notice of requirement to comply does not indicate that an acutely hazardous materials accident risk exists for the populations considered but does not exempt the requirement for an RMPP, a permit may be issued when all other permit conditions have been met. The requirement to submit an RMPP to the administering agency, shall be met prior to the issuance of a certificate of occupancy or its substantial equivalent. The owner or authorized agent shall submit to the city or county certification from the air pollution control officer that the owner or authorized agent is in compliance with the disclosures required by Section 42303 of the Health and Safety Code.

(c) No city or county shall issue a final certificate of occupancy or its substantial equivalent unless there is verification from the administering agency, if required by law, that the owner or authorized agent has met, or is meeting, the applicable requirements of Sections 25505, 25533, and 25534 of the Health and Safety Code, and the requirements for a permit, if required by law, from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county or has provided proof from the appropriate district that the permit requirements do not apply to the owner or authorized agent.

(d) The city or county, after considering the recommendations of the administering agency or air pollution control district or air quality management district, shall decide whether, and under what conditions, to allow construction of the site.

(e) Nothing in this section limits any existing authority of a district to require compliance with its rules and regulations.

(f) Counties and cities may adopt a schedule of fees for applications for compliance with this section sufficient to recover their reasonable costs of carrying out this section. Those fees shall be used only for the implementation of this section.

(g) As used in this section:

(1) "Acutely hazardous material" means any material as defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(2) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(3) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air of any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(h) Any misrepresentation of information required by this section shall be grounds for denial, suspension, or revocation of project approval or permit issuance. The owner or authorized agent required to comply with this section shall notify all future occupants of their potential duty to comply with the requirements of Sections 25505, 25533, 25534 of the Health and Safety Code.

(i) This section shall not apply to applications solely for residential construction.

SEC. 6. Section 13143.9 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 13143.9 >>

13143.9. The State Fire Marshal shall, in carrying out Section 13143, prepare, adopt, and submit building standards <<+and other fire and life safety regulations+>> for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 establishing minimum requirements for the storage<<+,+>> handling <<-* * *->><<+, and use+>> of <<-* * *->> hazardous materials, as defined<<+,+>> in <<-* * *->> <<+Article 9 of the 1988 Uniform Fire Code, and any subsequent editions, published by the Western Fire Chiefs Association and the International Conference of Building Officials+>>. The State Fire Marshal shall seek the advice of the Office of Emergency Services in establishing these requirements. This section does not prohibit a city, county, or district from adopting an ordinance, resolution, or regulation imposing stricter or more stringent requirements than a standard adopted pursuant to this section.

SEC. 7. Section 25501.3 is added to the Health and Safety Code, to read:

<< CA HLTH & S § 25501.3 >>

25501.3. "Handle" also means the use or potential for use of a quantity of hazardous material by the connection of any marine vessel, tank vehicle, tank car, or container to a system or process for any purpose other than the immediate transfer to or from an approved atmospheric tank or approved portable tank.

SEC. 8. Section 25507.10 is added to the Health and Safety Code, to read:

<< CA HLTH & S § 25507.10 >>

25507.10. The emergency rescue personnel, responding to the reported release or threatened release of an acutely hazardous material or to any fire or explosion involving a material that involves a release that would be required to be reported pursuant to Section 25507, shall immediately advise the superintendent of the school district having jurisdiction, where the location of the release or threatened release is within one-half mile of a school.

SEC. 9. Section 25514.3 is added to the Health and Safety Code, to read:

<< CA HLTH & S § 25514.3 >>

25514.3. Any person that knowingly violates Section 25503.5, 25503.7, 25503.8, 25505, 25508, 25509, 25509.3, 25510, or 25533 after reasonable notice of the violation, is, upon conviction, guilty of a misdemeanor. This section does not preempt any other applicable criminal or civil penalties.

SEC. 10. Section 25534.1 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 25534.1 >>

25534.1. Every RMPP prepared pursuant to Section 25534<<+, and every notice of requirement to comply prepared pursuant to subdivision (b) of Section 65850.2 of the Government Code,+>> shall give consideration to the proximity of the facility <<+or proposed facility+>> to <<+populations located in+>> schools, residential areas, general acute care hospitals, long-term health care facilities, and child day care facilities. For purposes of this section, "general acute care hospital" has the meaning provided by subdivision (a) of Section 1250, "long-term health care facility" has the meaning provided by subdivision (a) of Section 1418, and "child day care facility" has the meaning provided by Section 1596.750. <<+"School" means any school used for the purpose of the education of more than 12 children in kindergarten or any grades 1 to 12, inclusive.+>>

SEC. 10.5. Section 25534.2 is added to the Health and Safety Code, to read:

<< CA HLTH & S § 25534.2 >>

25534.2. An owner or operator of any new or modified facility which will be used for the handling of acutely hazardous materials in amounts equal to or greater than those specified in subdivision (a) of Section 25536, shall obtain from the administering agency, a notice of requirement to comply with, or determination of exemption from, the requirement for an RMPP prior to the approval of a development project or issuance of a building permit pursuant to Section 65850.2 of the Government Code.

SEC. 11. Section 25535 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 25535 >>

25535. (a) An owner or operator of a facility submitting an RMPP pursuant to Section 25534 shall submit the RMPP to the administering agency after the RMPP is certified as complete by a qualified person and the facility operator. The administering agency may authorize the air pollution control district or air quality management district in which the facility is located to conduct a technical review of the RMPP. If, after review by the administering agency or the air pollution control district or air quality management district exercising jurisdiction in the area of the facility, the administering agency determines that the handler's RMPP is deficient in any way, the administering agency shall notify the handler of these defects. The handler shall submit a corrected RMPP within 60 days of the <<-* * *->> <<+notification of defects, unless granted a one-time extension of no more than 30 days, of the notice to correct the RMPP by the administering agency. Failure to fully comply with this notice or the requirements of this section shall be deemed a violation of this article for purposes of Section 25540+>>.

(b) Upon implementation of a risk management and prevention program pursuant to subdivision (k) of Section 25534, the handler shall notify the administering agency that the RMPP has been implemented and shall summarize the steps taken in preparation and implementation of the RMPP.

(c) The handler shall continue to carry out the program and activities specified in the risk management and prevention program at the business after the administering agency has been notified pursuant to subdivision (b).

(d) The owner or operator shall implement all programs and activities in the RMPP before operations commence, in the case of a new facility, or before any new activities involving acutely

hazardous materials are taken, in the case of a modified facility.
SEC. 12. Section 25538 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 25538 >>

25538. (a) If a business believes that any information required to be reported by this article, involves the release of a trade secret, the business shall provide the information to the administering agency and shall notify the administering agency in writing of that belief.

<<+Upon receipt of a claim of trade secret related to a RMPP, the administering agency shall review the claim and shall segregate properly substantiated trade secret information from information which shall be made available to the public upon request in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).+>> As used in this section, "trade secret" has the same meaning as found in subdivision (d) of Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(b) Except as otherwise specified in this section, the administering agency shall not disclose any <<+properly substantiated+>> trade secret which is so designated by the owner or operator of a business.

(c) The administering agency may disclose trade secrets received by the administering agency pursuant to this article to authorized officers or employees of other governmental agencies only in connection with the official duties of that officer or employee pursuant to any law for the protection of health and safety.

(d) Any officer or employee or former officer or employee of the administering agency or any other government agency who, because of that employment or official position, has possession of, or has access to, information designated as a trade secret pursuant to this section, shall not knowingly and willfully disclose the information in any manner to any person not authorized to receive the information pursuant to this section. Notwithstanding Section 25515, any person who violates this subdivision, and who knows that disclosure of this information to the general public is prohibited by the section, shall, upon conviction, be punished by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars (\$1,000), or by both fine and imprisonment.

(e) Any information prohibited from disclosure pursuant to any federal statute or regulation shall not be disclosed.

(f) This section does not authorize any business to refuse to disclose to the administering agency any information required pursuant to this chapter.

SEC. 13. Section 25541 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 25541 >>

25541. Any person or business who knowingly makes any false statement or representation in any record, report, or other document filed, maintained, or used for the purpose of compliance with this article, or destroys, alters, or conceals any such record, report, or other document filed, maintained, or used for the purpose of compliance with this article, shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and the imprisonment.

If the conviction is for a violation committed after a first conviction under this section, the person shall be punished by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) per day of violation, or by imprisonment in the state prison for <<-* * *->> <<+ one, two, or three years+>> or in the county jail for not more than one year, or both the fine and imprisonment.

Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the acutely hazardous materials.

SEC. 14. Section 42301.6 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 42301.6 >>

42301.6. (a) Prior to approving an application for a permit to construct or modify a source <<-* * *->> <<+which emits hazardous+>> air <<-* * *->> <<+emissions, which source is+>> located within 1,000 feet from the outer boundary of a <<+schoolsite+>>, the air pollution control officer shall prepare a public notice in which the proposed project or modification for which the application for a permit is made is fully described. <<+The notice may be prepared whether or not the material is or would be subject to subdivision (a) of Section 25536, if the air pollution control officer determines and the administering agency concurs that hazardous air emissions of the material may result from an air release, as defined by Section 44303. The notice may be combined with any other notice on the project or permit which is required by law.+>>

(b) The air pollution control officer shall, at the permit applicant's expense, distribute <<+or mail+>> the public notice to the parents <<+or guardians+>> of children <<+enrolled+>> in any school <<+that is located+>> within one-quarter mile of the source and to each address within a radius of <<+1,000+>> feet <<-* * *->> of the proposed new or modified source at least 30 days prior to the date final action on the application is to be taken by the officer. The officer shall review and consider all comments received during the 30 days after the notice is distributed, and shall include written responses to the comments in the permit application file prior to taking final action on the application.

<<+(1) Notwithstanding Section 49073 of the Education Code, or any other provision of law, the information necessary to mail notices required by this section shall be made available by the school district to the air pollution control officer.+>>

<<+(2) Nothing in this subdivision precludes, at the discretion of the air pollution control officer and with permission of the school, the distribution of the notices to the children to be given to their parents or guardians.+>>

(c) Notwithstanding subdivision (b), an air pollution control officer may require the applicant to distribute the notice if the district had such a rule in effect prior to January 1, 1989.

(d) The requirements for public notice pursuant to subdivision (b) or a district rule in effect prior to January 1, 1989, are fulfilled if the air pollution control officer or applicant responsible for giving the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and, in <<+these+>> circumstances, failure of any person to receive the notice shall not affect the validity of any permit subsequently issued by the officer.

(e) Nothing in this section shall be deemed to limit any existing authority of any district.

<<+(f) An applicant for a permit shall certify whether the proposed source or modification is located within 1,000 feet of a schoolsite. Misrepresentation of this fact may result in the denial of a permit.+>>

<<+(g) The notice requirements of this section shall not apply if the air pollution control officer determines that the application to construct or modify a source will result in a reduction or equivalent amount of air contaminants, as defined in Section 39013, or which are hazardous air emissions.+>>

<<+(h) As used in this section:+>>

<<+(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the state board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.+>>

<<+(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532.+>>

SEC. 15. Section 42301.9 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 42301.9 >>

42301.9. For the purposes of Sections <<+42301.4+>> to 42301.8, inclusive:

(a) "School" means any <<+public or private+>> school used for purposes of the education of

<<+more than 12+>> children in kindergarten or any of grades 1 to 12, inclusive<<+, but does not include any private school in which education is primarily conducted in private homes+>>.

(b) "Air contaminant" <<-* * *->> <<+means any contaminant defined pursuant to+>> Section 39013.

(c) "Administering agency" means an <<-* * *->> agency <<-* * *->> <<+designated pursuant to+>> Section <<+ 25502+>>.

<<+(d) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.+>>

<< Repealed: CA PUB RES § 21151.3 >>

SEC. 16. Section 21151.3 of the Public Resources Code is repealed.

SEC. 17. Section 21151.4 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.4 >>

21151.4. No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within <<+ 1/4+>> of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air <<-* * *->> <<+ emission, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than the quantity specified in subdivision (a) of+>> Section <<-* * *->> <<+ 25536 of the Health and Safety Code, which may pose a health or safety hazard to persons who would attend or would be employed at the school,+>> unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

SEC. 18. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a school site or the construction of a new elementary or secondary school by a school district unless <<-* * *->> <<+all of the following occur:+>> <<+(1) T+>>he environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

<<+(A)+>> The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

<<+(B)+>> A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

<<+(C)+>> A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

<<+(2) The lead agency preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed school site is located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed school site which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the lead agency shall

include a list of the locations for which information is sought.+>>

<<+(3) The governing board of the school district makes one of the following written findings:+>>

<<+(A) Consultation identified no such facilities specified in paragraph (2).+>>

<<+(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:+>>

<<+(i) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.+>>

<<+(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.+>>

<<+(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency which does not respond within 30 days.+>>

<<+(b) If a lead agency has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility specified in paragraph (2) of subdivision (a).+>>

<<+(c)+>> As used in this section <<+and Section 21151.4, the following definitions shall apply+>>:

(1) "Hazardous substance" <<-* * *->> <<+means any substance+>> defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" <<-* * *->> <<+means any material+>> defined <<-* * *->> <<+pursuant to+>> subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" <<-* * *->> <<+means any waste+>> defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" <<-* * *->> <<+means any site+>> defined in Section 25114 of the Health and Safety Code.

<<+(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.+>>

<<+(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.+>>

<<+(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.+>>

<< Note: CA GOVT §§ 65759, 65850.2 >>

<< Note: CA HLTH & S §§ 25534.1, 25534.2, 25535, 42301.6, 42301.9 >>

<< Note: CA PUB RES § 21151.4 >>

SEC. 19. Sections 3, 5, 10, 10.5, 11, 14, 15, and 17 of this act shall not apply to projects for which an application is submitted pursuant to Section 65943 of the Government Code prior to January 1, 1992.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for those other costs. However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 21. If any provision of this act or its application to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

CA LEGIS 1183 (1991)

END OF DOCUMENT

West's Ann.Cal.Educ.Code § 39003

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EDUCATION CODE
TITLE 2. ELEMENTARY AND SECONDARY ADMINISTRATION
DIVISION 3. LOCAL ADMINISTRATION
PART 23. SCHOOL FACILITIES
CHAPTER 1. SCHOOL SITES
ARTICLE 1. GENERAL PROVISIONS

§ 39003. Approval of site acquisition; hazardous or solid waste disposal sites or hazardous substance release sites; hazardous air emissions; findings

The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency preparing the environmental impact report or negative declaration has consulted with the city in which the proposed schoolsite is located, or with the county in which the proposed schoolsite is located if the proposed site is in an unincorporated area, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions.

(c) The governing board of the school district makes either of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but the health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution officer, hazardous air emissions may also mean emissions into the ambient air from any substance identified in Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" has the same meaning as defined in Section 25114 of the Health and Safety Code.

1991 Pocket Part Credit(s)

(Added by Stats.1990, c. 1602 (S.B.2262), § 1.)

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1991 Pocket Part Historical and Statutory Notes

1987 Legislation

Former § 39003 was repealed by Stats.1987, c. 1452, § 269. Legislative findings, declarations and intent relating to Stats.1987, c. 1452, see Historical and Statutory Notes under § 1007.

1978 Main Volume Historical and Statutory Notes

Main Volume Text

§ 39003. Financing of reconstruction of particular school

The reconstruction of any school on all or a portion of a site which has been used for public school purposes uninterruptedly since prior to 1890 may be financed through the State School Building Aid and Earthquake Reconstruction and Replacement Bond Law of 1972 (Chapter 19 (commencing with Section 17400) of Part 10 of Division 1 of Title 1), if the legal title to such site or a portion thereof is held either by: (a) a city school district, or (b) a charter city, and a city school district has obtained or is in the process of obtaining a lease of not less than 50 years on such site or portion thereof from the charter city.

(Stats.1976, c. 1010, § 2, operative April 30, 1977.)

Main Volume Historical and Statutory Notes

Derivation: Educ.C.1959, § 15002.3 formerly § 15002.2, added by Stats.1973, c. 714, p. 1290, § 1, renumbered § 15002.3 and amended by Stats.1976, c. 557, § 3.

West's Ann. Cal. Educ. Code § 39003
CA EDUC § 39003

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West's Annotated California Codes Currentness

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Title 2. Elementary and Secondary Education (Refs & Annos)

Division 3. Local Administration (Refs & Annos)

Part 23. Supplemental Services (Refs & Annos)



HISTORICAL AND STATUTORY NOTES

2009 Main Volume

Sections 15 to 18 of Stats.1996, c. 277 (S.B.1562), provide:

"Sec. 15. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

"Sec. 16. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

"Sec. 17. Any section of any act enacted by the Legislature during the 1996 calendar year prior to the enactment of this act, that amends, amends and renumbers, adds, repeals and adds, or repeals a section, article, chapter, or part, that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act until January 1, 1998, at which time Sections 1 to 16 of this act shall become operative [Section affected by two or more acts at the same session of the legislature, see government Code § 9605.].

"Sec. 18. The provisions of this act are severable. If any provisions of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application."

Section 39001, added by Stats.1991, c. 846 (A.B.1603), § 12, related to public hearing for evaluation prior to acquisition in accordance with site selection standards. See Education Code § 17211.

Application of Stats.1991, c. 846 (A.B.1331) to validity or enforceability of action by state allocation board under Public Contract Code § 10115 et seq., see Historical and Statutory Notes under Education Code § 17706.

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Former Notes

Former § 39001, enacted by Stats.1976, c. 1010, § 2, derived from Education Code 1959, § 15002 (Stats.1959, c. 2, § 15002); Education Code 1943, § 18401 (Stats.1943, c. 71, p. 670); School Code § 6.100, added by Stats.1939, c. 217, § 3, relating to purchase of improvement of school lands, was repealed by Stats.1987, c. 1452, § 268.

Section 39002, enacted by Stats.1976, c. 1010, § 2, operative April 30, 1977, amended by Stats.1977, c. 36, § 141, eff. April 29, 1977, operative April 30, 1977; Stats.1984, c. 1009, § 1 was amended by Stats.1994, c. 840 (A.B.3562), § 10, prior to repeal, investigation of prospective schoolsite. See Education Code § 17212.

Section 43 of Stats.1984, c. 1009, provides, in part:

“It is the intent of the Legislature in enacting this act to consolidate and simplify statutes relating to local planning. It is not the intent of the Legislature to mandate new programs or higher levels of service on cities and counties.

“The responsibilities imposed by Sections 1, 1.1, 1.2, 1.3, 1.6, 2, 3, 3.5, 4, 5, 5.4, 9, 13.5, 14, 15, 18, 20.5, 21, 22, 23, 24, 25, 26, 26.5, 28, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 of this act are no greater than the responsibilities currently imposed on cities and counties by the statutes which are repealed or amended by Sections 1, 1.1, 1.2, 1.3, 3, 4, 5, 5.2, 5.4, 5.7, 6, 7, 7.5, 8, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 20.5, 21, 21.5, 22, 23, 24, 25, 26, 26.5, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 of this act.”

Section 39002.5, added by Stats.1977, c. 36, § 442, eff. April 29, 1977, operative April 30, 1977, amended by Stats.1977, c. 242, § 12, eff. July 7, 1977; Stats.1978, c. 362, p. 1064, § 1, related to geological and soils engineering studies. See Education Code § 17212.5.

Section 39003, added by Stats.1990, c. 1602 (S.B.2262), § 1, amended by Stats.1991, c. 1183 (A.B.928), § 1, related approval of site acquisition. See Education Code § 17213

Section 21 of Stats.1991, c. 1183 (A.B.928) provides:

“If any provision of this act or its application to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.”

Former Notes

Former § 39003, enacted by Stats.1976, c. 1010, § 2, derived from Education Code 1959, § 15002.3, formerly § 15002.2, added by Stats.1973, c. 714, 1, renumbered § 15002.3 and amended by Stats.1976, c. 557, § 3, relating

West's Ann.Cal.Educ.Code § 39120

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TITLE 2. ELEMENTARY AND SECONDARY ADMINISTRATION
DIVISION 3. LOCAL ADMINISTRATION
PART 23. SCHOOL FACILITIES
CHAPTER 2. CONSTRUCTION OF SCHOOL BUILDINGS
ARTICLE 2. PLANS

§ 39120. Construction of new school building; requirements for approval

The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency complies with the same requirements specified in Section 39003 for schoolsite acquisition.

1991 Pocket Part Credit(s)

(Added by Stats.1990, c. 1602 (S.B.2262), § 2.)

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1991 Pocket Part Historical and Statutory Notes

1979 Legislation

Former § 39120 was repealed by Stats.1979, c. 448, p. 1590, § 1.

1978 Main Volume Historical and Statutory Notes

Main Volume Text

§ 39120. Filing of copy of plans with Department of General Services

The governing board of any school district shall, upon completion of any school building let pursuant to Sections 39140 to 39155, inclusive, file with the Department of General Services on ozalid type reproducible duplicate set of architect plans for the new school building plant.

(Stats.1976, c. 1010, § 2, operative April 30, 1977.)

Main Volume Historical and Statutory Notes

Derivation: Educ.C.1959, § 15411 (Stats.1959, c. 2, p. 1079, § 15411, amended by Stats.1965, c. 371, p. 1487, § 33).

Educ.C.1943, § 18174, added by Stats.1955, c. 1835, p. 3378, § 2.

REFERENCES

CROSS REFERENCES

1978 Main Volume Cross References

Department of general services, see Government Code § 14600 et seq.

Governing boards, see §§ 78, 35010 et seq., 72200 et seq.

Powers, see §§ 35160 et seq., 39600 et seq., 72200 et seq., 81600 et seq.

Requirements before board may lease facilities, see §§ 39302, 81332.

West's Ann. Cal. Educ. Code § 39120

CA EDUC § 39120

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Effective:[See Text Amendments]

West's Annotated California Codes Currentness

Education Code (Refs & Annos)

Title 2. Elementary and Secondary Education (Refs & Annos)

Division 3. Local Administration (Refs & Annos)

Part 23. Supplemental Services (Refs & Annos)

~~§ 39120. Repealed by Stats.1996, c. 277 (S.B.1562), §6, operative Jan. 1, 1998.~~

HISTORICAL AND STATUTORY NOTES

2009 Main Volume

The repealed section, added by Stats.1990, c. 1602 (S.B.2262), § 2, amended by Stats.1991, c. 1183 (A.B.928), § 2, related to construction of new school buildings. See Education Code § 17268.

Former Notes

Former § 39120, enacted by Stats.1976, c. 1010, § 2, derived from Education Code 1959, § 15411 (Stats.1959, c. 2, § 15411, amended by Stats.1965, c. 371, § 33); Education Code 1943, § 18174, added by Stats.1955, c. 1835, § 2, related to the filing of copies of plans, and was repealed by Stats.1979, c. 448, § 1.

West's Ann. Cal. Educ. Code § 39120, CA EDUC § 39120

Current with all 2009 Reg.Sess. laws; all 2009-2010 1st through 5th, 7th, and 8th Ex.Sess. laws; urgency legislation through Ch. 20 of the 2010 Reg.Sess.; and propositions on the 6/8/2010 ballot.

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West's Ann.Cal.Pub.Res.Code § 21151.4

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PUBLIC RESOURCES CODE
DIVISION 13. ENVIRONMENTAL QUALITY
CHAPTER 4. LOCAL AGENCIES

§ 21151.4. Construction or alteration of a facility within one-fourth mile of a school; reasonable anticipation of release of hazardous air emissions; approval of environmental impact report or negative declaration

No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions as defined in Section 21151.3 unless both of the following occur:

- (a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.
- (b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

1991 Pocket Part Credit(s)

(Added by Stats.1988, c. 1589, § 14.)

West's Ann. Cal. Pub. Res. Code § 21151.4
CA PUB RES § 21151.4

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CALIFORNIA 2004 LEGISLATIVE SERVICE
 2004 Portion of 2003-2004 Regular Session

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CHAPTER 689
 S.B. No. 945

ENVIRONMENTAL PROTECTION--HAZARDOUS SUBSTANCES AND WASTE--SCHOOLS AND SCHOOL
 DISTRICTS

AN ACT to amend Sections 21083, 21086, and 21151.4 of, and to repeal Section
 21087 of, the Public Resources Code, relating to environmental quality.

[Filed with Secretary of State September 22, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 945, Sher. Environmental quality: guidelines.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.

CEQA requires the Office of Planning and Research (OPR) to prepare and develop proposed guidelines for the implementation of CEQA by public agencies. CEQA requires that the guidelines contain various objectives, criteria, and procedures, as specified. CEQA requires OPR, at least once every 2 years, to review the guidelines and recommend changes or amendments to the Secretary of the Resources Agency. CEQA requires the Secretary of the Resources Agency to certify and adopt guidelines at least once every 2 years.

CEQA requires OPR to recommend proposed changes and the secretary to certify and adopt revisions to the guidelines to reflect changes enacted during the 1993-94 Regular Session of the Legislature within 6 months of the enactment of AB 314 of the 1993-94 Regular Session of the Legislature.

This bill would delete the requirements summarized in the preceding paragraph and would make conforming changes.

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CEQA provides that no environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school that might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, or that would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than a specified quantity prescribed by statute that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless specified conditions occur, including that the school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

This bill would, instead, specify that an environmental impact report shall not be certified and a negative declaration shall not be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle extremely hazardous substances in a quantity equal to or greater than a specified state threshold quantity prescribed by statute that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless specified conditions occur, including that the school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

(2) This bill would provide that if AB 3090 is enacted on or before January 1, 2005, and amends Section 21087 of the Public Resources Code, then Section 4 of this bill, which would repeal Section 21087 of the Public Resources Code, would not become operative; and, this bill would not chapter out the amendments to Section 21087 of the Public Resources Code made by AB 3090.

The people of the State of California do enact as follows:

SECTION 1. Section 21083 of the Public Resources Code is amended to read:

<< CA PUB RES § 21083 >>

21083. (a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

(b) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the environment" if * * *one or more of the following conditions exist:

(1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(c) The guidelines shall include procedures for determining the lead agency pursuant to Section 21165.

(d) The guidelines shall include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that a draft environmental impact report, a proposed negative declaration, or a proposed mitigated negative declaration shall be submitted to appropriate state agencies, through the State Clearinghouse, for review and comment prior to completion of the environmental impact report, negative declaration, or mitigated negative declaration.

(e) The Office of Planning and Research shall develop and prepare the proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt the guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(f) The Office of Planning and Research shall, at least once every two years, review the guidelines adopted pursuant to this section and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, guidelines may not be adopted or amended without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

SEC. 2. Section 21086 of the Public Resources Code is amended to read:

<< CA PUB RES § 21086 >>

21086. (a) A public agency may, at any time, request the addition or deletion of a class of projects, to the list designated pursuant to Section 21084. * * * That request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that the class of projects does, or does not, have a significant effect on the environment.

(b) The Office of Planning and Research shall review each * * * request and, as soon as possible, shall submit its recommendation to the Secretary of the Resources Agency. Following the receipt of that recommendation, the Secretary of the Resources Agency may add or delete the class of projects to the list of classes of projects designated pursuant to Section 21084 that are exempt from the requirements of this division.

(c) The addition or deletion of a class of projects, as provided in this section, to the list specified in Section 21084 shall constitute an amendment to the guidelines adopted pursuant to Section 21083 and shall be adopted in the manner prescribed in Sections 21083 and 21084* * *.

<< Repealed: CA PUB RES § 21087 >>

SEC. 3. Section 21087 of the Public Resources Code is repealed.

SEC. 5. [FN1] Section 21151.4 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.4 >>

21151.4. An environmental impact report * * * shall not be certified and a negative declaration shall not be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school that might reasonably be anticipated to emit hazardous * * * air emissions, or that would handle * * * an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified * * * pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

SEC. 6. If AB 3090 is enacted on or before January 1, 2005, and amends Section 21087 of the Public Resources Code, then Section 4 of this bill, which would repeal Section 21087 of the Public Resources Code, shall not become operative; and,

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notwithstanding Section 9605 of the Government Code, this bill shall not chapter out the amendments to Section 21087 of the Public Resources Code made by AB 3090.

[FN1] No section 4 in enrolled bill.

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West's Ann.Cal.Pub.Res.Code § 21151.8

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PUBLIC RESOURCES CODE
DIVISION 13. ENVIRONMENTAL QUALITY
CHAPTER 4. LOCAL AGENCIES

§ 21151.8. Schoolsite acquisition or construction; environmental impact report or negative declaration; hazardous waste or solid waste disposal sites; hazardous substance release sites

(a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless the environmental impact report or negative declaration includes information which is needed to determine if the the property proposed to be purchased, or to be constructed upon, is any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) As used in this section:

(1) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" has the same meaning as defined in Section 25114 of the Health and Safety Code.

1991 Pocket Part Credit(s)

(Added by Stats.1990, c. 1602 (S.B.2262), § 3.)

West's Ann. Cal. Pub. Res. Code § 21151.8
CA PUB RES § 21151.8

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CALIFORNIA 2003 LEGISLATIVE SERVICE
 2003 Portion of 2003-2004 Regular Session

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CHAPTER 668
 S.B. No. 352

~~SCHOOLS AND SCHOOL DISTRICTS--SCHOOLSITES--POLLUTION~~

~~Amend Section 17213 of the Education Code to amend Section 17213 of the Public Resources Code regarding computer schools.~~

[Filed with Secretary of State October 3, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 352, Escutia. Schoolsites: sources of pollution.

Existing law sets forth various requirements regarding the siting, structural integrity, safety, and fitness-for-occupancy of school buildings, including, but not limited to, a prohibition of the approval by the governing board of a school district of the acquisition of a schoolsite by a school district, unless prescribed conditions relating to possible exposure to hazardous substances are satisfied, and a prohibition on the approval of a related environmental impact report or negative declaration.

This bill would, in addition, prohibit the approval by the governing board of a school district of a schoolsite that is within 500 feet from the edge of the closest traffic lane of a freeway or other busy traffic corridor, unless prescribed conditions are met and would make conforming and other technical, nonsubstantive changes.

Existing law requires the lead agency to consult with prescribed agencies to identify facilities that might reasonably be anticipated to emit hazardous materials, within 1/4 of a mile of the schoolsite.

This bill would define "facility" for this purpose and would require the lead agency to consult to identify freeways and other busy traffic corridors, as defined, large agricultural operations, and railyards, within 1/4 of a mile of the schoolsite, and would make conforming and other technical, nonsubstantive changes.

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The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Many studies have shown significantly increased levels of pollutants, particularly diesel particulates, in close proximity to freeways and other major diesel sources. A recent study of Los Angeles area freeways measured diesel particulate levels up to 25 times higher near freeways than those levels elsewhere. Much of the pollution from freeways is associated with acute health effects, exacerbating asthma and negatively impacting the ability of children to learn.

(b) Cars and trucks release at least forty different toxic air contaminants, including, but not limited to, diesel particulate, benzene, formaldehyde, 1,3-butadiene and acetaldehyde. Levels of these pollutants are generally concentrated within 500 feet of freeways and very busy roadways.

(c) Current state law governing the siting of schools does not specify whether busy freeways should be included in environmental impact reports of nearby "facilities." Over 150 schools are already estimated to be within 500 feet of extremely high traffic roadways.

(d) A disproportionate number of economically disadvantaged pupils may be attending schools that are close to busy roads, putting them at an increased risk of developing bronchitis from elevated levels of several pollutants associated with traffic. Many studies have confirmed that increased wheezing and bronchitis occurs among children living in high traffic areas.

(e) It is therefore the intent of the Legislature to protect school children from the health risks posed by pollution from heavy freeway traffic and other non-stationary sources in the same way that they are protected from industrial pollution.

SEC. 2. Section 17213 of the Education Code is amended to read:

<< CA EDUC § 17213 >>

17213. The governing board of a school district **may** not approve a project involving the acquisition of a schoolsite by a school district, unless all of the following occur:

(a) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site* * *, **unless** if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been re-

moved.

(2) A hazardous substance release site identified by the * * *Department of * * * Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site that contains one or more pipelines, situated underground or above-ground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood.

(b) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, in preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and other busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite* * *, that might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The school district, as the lead agency, shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified none of the facilities or significant pollution sources specified in subdivision (b).

(2) The facilities or other pollution sources specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another governmental entity that has jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these

levels.

(C) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(D) The governing board finds that neither of the conditions set forth in subparagraph (B) or (C) can be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is

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identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

SEC. 3. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) An environmental impact report or negative declaration * * * may not be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the * * * Department of * * * Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or above-ground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite* * *, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, sub-

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stances, or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes * * * a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of

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any agency that does not respond within 30 days.

(b) If a school district, as a lead agency, has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

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CHAPTER 148
A.B. No. 2720
LOCAL AGENCIES--ENVIRONMENTAL PROTECTION--SCHOOLS AND SCHOOL DISTRICTS

AN ACT to amend Sections 21151.4 and 21151.8 of the Public Resources Code, relating to the environment.

[Filed with Secretary of State July 18, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2720, Levine. Environment: environmental impact report.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.

CEQA prohibits an environmental impact report or negative declaration from being approved for any project involving the purchase of a school site or the construction of a new elementary or secondary school by a school district unless specified conditions are met. CEQA further provides that, if a school district, as the lead agency, has carried out a specified consultation, the environmental impact report or the negative declaration shall be conclusively presumed to comply with those conditions, notwithstanding any failure of the consultation to identify an existing facility or other pollution source, as specified.

This bill would make technical, nonsubstantive changes in these provisions and would revise a cross-reference.

(2) CEQA prohibits the certification of an environmental impact report or the approval of a negative declaration for a project involving the construction or alteration of a facility within 1/4 of a mile from a school that might reasonably be anticipated to emit hazardous air emissions or a mixture containing extremely hazardous substances that may pose a health or safety hazard to persons who would attend or would be employed at the school unless a specified event occurs.

This bill would define "hazardous air emissions" and "extremely hazardous substances" for the purposes of that provision.

The people of the State of California do enact as follows:

SECTION 1. Section 21151.4 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.4 >>

21151.4. (a) An environmental impact report shall not be certified or a negative declaration shall not be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

(1) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(2) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

(b) As used in this section, the following definitions apply:

(1) "Extremely hazardous substance" means an extremely hazardous substance as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(2) "Hazardous air emissions" means emissions into the ambient air of all contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air of a substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

SEC. 2. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) An environmental impact report shall not be certified or a negative declaration shall not be approved for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) (A) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous substances or waste. The notification by the school district, as the lead agency, shall

include a list of the locations for which information is sought.

~~(B) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to subparagraph (A) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with subparagraph (A) as to the area of responsibility of an agency that does not respond within 30 days.~~

~~(C) If the school district, as a lead agency, has carried out the consultation required by subparagraph (A), the environmental impact report or the negative declaration shall be conclusively presumed to comply with subparagraph (A), notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in subparagraph (A).~~

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a school site with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii), or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of overriding considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

* * *

~~(b)~~ As used in this section * * *, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Extremely hazardous substances" means * * * ~~an extremely hazardous substance as defined pursuant to paragraph (2) of~~ subdivision (g) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health

and Safety Code.

(6) "Administering agency" means an agency authorized pursuant to Section 25502 of the Health and Safety Code ~~to implement and enforce Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.~~

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit, or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

CA LEGIS 148 (2008)

END OF DOCUMENT

CALIFORNIA 2007 LEGISLATIVE SERVICE
2007 Portion of 2007-2008 Regular Session
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~~***~~. Changes in tables are made but not highlighted.

CHAPTER 130
A.B. No. 299
MAINTENANCE OF CODES

SEC. 206. Section ~~21151.8~~ of the Public Resources Code is amended to read:

<< CA PUB RES § ~~21151.8~~ >>

- ~~21151.8~~. (a) An environmental impact report or negative declaration may not be approved for any project involving the purchase of a school site or the construction of a new elementary or secondary school by a school district unless all of the following occur:
- (1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:
 - (A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.
 - (B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.
 - (C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, ~~extremely~~ hazardous ~~substances~~, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.
 - (D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.
 - (2) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed school site is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed school site, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or ~~extremely~~ hazardous ~~***~~substances ~~***~~ or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.
 - (3) The governing board of the school district makes one of the following written findings:
 - (A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).
 - (B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the

• following conditions applies:

(I) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(III) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency that does not respond within 30 days.

(b) If a school district, as a lead agency, has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "**Extremely hazardous substances**" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health

and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

West's Ann.Cal.Health & Safety Code § 25358.1

WEST'S ANNOTATED CALIFORNIA CODES
HEALTH AND SAFETY CODE
DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS
CHAPTER 6.8. HAZARDOUS SUBSTANCE ACCOUNTS
ARTICLE 5. USES OF THE STATE ACCOUNT
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§ 25358.1. Furnishing information at request of department; access to records; administrative procedures; photographs; entry for removal or remedial action; notice and split samples; immunity from liability

- (a) The department, a representative of the department, or any person designated by the director may take the actions specified in this section only if there is a reasonable basis to believe that there may be a release or threatened release of a hazardous substance, and only for the purpose of determining under this chapter the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this chapter.
- (b) Any officer or employee of the department, a representative of the director, or a person designated by the director may require any potentially responsible party, or any person who has, or may have, acquired information relevant to any of the following matters in the course of a commercial, ownership, or contractual relationship with any potentially responsible party, to furnish, upon reasonable notice, information or documents relating to the following matters:
- (1) The identification, nature, and quantity of materials which have been, or are, generated, treated, stored, or disposed of at a hazardous substance release site or which have been, or are, transported to a hazardous substance release site.
 - (2) The nature or extent of a release or a threatened release of a hazardous substance at, or from, a hazardous substance release site.
- (c) A person who is required to provide information pursuant to subdivision (b) shall, in accordance with subdivision (h), allow the officer, employee, representative, or designee, upon reasonable notice and at reasonable times, to have access to, and copy, all records relating to the hazardous substances for purposes of assisting the department in determining the need for an action in response to a release or threatened release pursuant to this chapter.
- (d) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), enter, at reasonable times, any of the following properties:
- (1) Any nonresidential establishment or other place or property where any hazardous substances may be, or have been, produced, stored, treated, disposed of, or transported from.
 - (2) Any nonresidential establishment or other place or property from which, or to which, a hazardous substance has been, or may have been, released.
 - (3) Any nonresidential establishment or other place or property where a hazardous substance release is, or may be, threatened.
 - (4) Any nonresidential establishment or other place or property where entry is needed to determine the need for a response action, or the appropriate remedial action, to effectuate a response action under this chapter.
 - (5) Any residential place or property which, if it were a nonresidential establishment or other place or property, would otherwise meet the criteria described in paragraphs (1) to (4), inclusive, if the department, representative, or person designated by the director is able to establish, based upon reasonably available evidence, that hazardous substances have been released onto or under the residential place or real property and if entry is made only at reasonable times and after reasonable notification to the owners and occupants.
- (e) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), carry out any of the following activities:
- (1) Inspect and obtain samples from any establishment or other place or property specified in subdivision (d) or from any location of any suspected hazardous substance.

- (2) Inspect and obtain samples of any substances from any establishment or place or property specified in subdivision (d).
- (3) Inspect and obtain samples of any containers or labeling for the suspected hazardous substances, and samples of the soil, vegetation, air, water, and biota on the premises.
- (4) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous substances.
- (5) Survey and determine the topographic, geologic, and hydrogeologic features of the land.
- (6) Photograph any equipment, sample, activity, or environmental condition described in paragraphs (2) to (5) inclusive.
- (f)(1) If photographs are to be taken pursuant to paragraph (6) of subdivision (e), the department shall do all of the following:
 - (A) Comply with all procedures established pursuant to subdivision (b) of Section 25358.2.
 - (B) Notify the person whose facility is photographed prior to public disclosure of the photographs.
 - (C) Upon the request of the person owning the facility, submit a copy of any photograph to the person for the purpose of determining whether trade secret information, as defined in Section 25358.2, or facility security, would be revealed by the photograph.
- (2) "Disclosure," as used in Section 25358.2, for purposes of this paragraph, does not include the review of the photograph by a court of competent jurisdiction or by an administrative law judge. A court or judge may review the photograph in camera.
- (g) An officer, employee, representative, or designee who enters a place, establishment, or property pursuant to this section shall make a reasonable effort to inform the owner or the owners' authorized representative of the inspection and shall provide split samples to the owner or the representative upon request.
- (h) If the owner or the owner's authorized representative does not voluntarily grant access to a place, establishment, or property pursuant to this section, the officer, employee, representative, or designee shall first obtain a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, if there is an emergency posing an immediate threat to public health and safety, the officer, employee, representative, or designee may enter the place, establishment, or property without the consent of the owner or owner's authorized representative and without the issuance of a warrant.
- (i) The department, and any person authorized by the department to enter upon any lands for the purpose of taking removal or remedial action pursuant to this chapter, shall not be held liable, in either a civil or criminal proceeding, for trespass or for any other acts which are necessary to carry out the corrective action.

CREDIT(S)

2000 Electronic Pocket Part Update

(Added by Stats.1999, c. 23 (S.B.47), § 2, eff. May 26, 1999.)

HISTORICAL AND STATUTORY NOTES

6CAP

1999 Legislation

Effect of repeal of former § 25358.1 by Stats.1997, c. 870 (S.B.660), § 46.5, see Historical and Statutory Notes under Health and Safety Code § 25300.

Derivation: Former § 25358.1, added by Stats.1983, c. 1044, § 12, amended by Stats.1993, c. 1283, § 5.

1999 Main Volume

Section 25358.1, added by Stats.1983, c. 1044, § 12, amended by Stats.1993, c. 1283 (S.B.1092), § 5, related to furnishing information at the request of the department.

LAW REVIEW AND JOURNAL COMMENTARIES

Review of selected 1993 California legislation. 25 Pac.L.J. 679 (1994).

West's Ann. Cal. Health & Safety Code § 25358.1
CA HLTH & S § 25358.1

END OF DOCUMENT

West's Ann.Cal.Health & Safety Code § 25358.7.1

WEST'S ANNOTATED CALIFORNIA CODES
HEALTH AND SAFETY CODE
DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS
CHAPTER 6.8. HAZARDOUS SUBSTANCE ACCOUNTS
ARTICLE 5. USES OF THE STATE ACCOUNT
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§ 25358.7.1. Community advisory groups

(a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory committee. The department or regional board shall also advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment. If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site or a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the petitioners or the legislative body to establish a community advisory group to review the response action at the site.

(b) To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(1) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(2) Individuals from the local business community.

(3) Local political or government agency representatives.

(4) Local citizen, civic, environmental, or public interest group members residing in the community.

(c) The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

(1) The department or regional boards.

(2) Representatives of local environmental regulatory agencies.

(3) The potentially responsible parties or other persons who are conducting the response action.

(d) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 25358.7. Nothing in this section shall affect the status of any citizen advisory group formed before the enactment of this section, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board.

CREDIT(S)

2000 Electronic Pocket Part Update

(Added by Stats.1999, c. 23 (S.B.47), § 2, eff. May 26, 1999.)

West's Ann. Cal. Health & Safety Code § 25358.7.1
CA HLTH & S § 25358.7.1

CALIFORNIA 1991 LEGISLATIVE SERVICE
1991 Portion of 1991-92 Regular Session
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Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted.

CHAPTER 1183
A.B. No. 928
ENVIRONMENT--PUBLIC FACILITIES--HAZARDOUS MATERIALS

AN ACT to amend Sections 39003 and 39120 of the Education Code, to amend Section 65759 of, and to repeal and add Section 65850.2 of, the Government Code, to amend Sections 13143.9, 25534.1, 25535, 25538, 25541, 42301.6, and 42301.9 of, and to add Sections 25501.3, 25507.10, 25514.3, and 25534.2 to, the Health and Safety Code, and to amend Sections 21151.4 and 21151.8 of, and to repeal Section 21151.3 of, the Public Resources Code, relating to hazardous materials.

[Approved by Governor October 14, 1991.]

[Filed with Secretary of State October 14, 1991.]

LEGISLATIVE COUNSEL'S DIGEST

AB 928, Archie-Hudson. Hazardous materials: schools: health care facilities.

(1) Existing law generally requires all state agencies and local agencies to prepare, or to be prepared by contract, and certify the completion of, an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment. In other cases, a negative declaration is required. Existing law prohibits the governing board of a school district from approving the acquisition of a schoolsite or the construction of a new school building, unless the lead agency, as defined, consults with specified local agencies to identify facilities which might emit hazardous air emissions, and unless the governing board of the school district makes specified written findings concerning these facilities.

Existing law also prohibits the approval of an environmental impact report or negative declaration for a school construction project or purchase of a schoolsite unless facilities within a specified distance of the proposed schoolsite are identified which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, the governing board of the school district makes specified written findings and the environmental impact report or negative declaration includes information to determine if property proposed to be purchased, or to be constructed upon, is the site of a hazardous waste disposal site or solid waste disposal site, a hazardous substance release site, or a site which contains pipelines which carry hazardous substances, acutely hazardous materials, or hazardous waste. Existing law prohibits the approval of an environmental impact report or negative declaration for any project involving the construction or alteration of a facility which might emit hazardous air emissions within 1/4 mile of a school unless the lead agency consults with the school district, as specified.

This bill would additionally provide that before the governing board approves a school construction project or the acquisition of a schoolsite, or before an environmental impact report or negative declaration is approved for a school construction project or the purchase of a schoolsite, the lead agency is also required to identify facilities which might be reasonably anticipated to handle acutely hazardous materials, substances, or waste, thereby imposing a

state-mandated local program. The bill would include an additional finding which the governing board would be authorized to make, if these facilities exist, concerning the corrective measures which these facilities are required to take. The bill would require specified local agencies which receive a request to provide information concerning these facilities to respond in 30 days, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

The bill would, instead, include within the prohibition on the approval of an environmental impact report or negative declaration, a facility which would emit hazardous air emissions or handle specified materials which may pose a specified health or safety hazard.

(2) Existing law requires a business which handles acutely hazardous materials to submit a registration form to the local administering agency, as defined, and, if the administering agency determines that there is a significant likelihood that the handler's use of an acutely hazardous material may pose an acutely hazardous materials accident risk, the agency is required to require the preparation and submission of a risk management and prevention program (RMPP), in accordance with a specified timetable. Existing law requires cities and counties to include in the application for building permits a place to indicate whether the applicant is required to comply with specified requirements concerning business plans, the submission of RMPPs, and permits for construction or modification pursuant to the regulation of air pollution. A city or county is prohibited from issuing a final certificate of occupancy unless the applicant meets these requirements and from permitting a facility to be constructed within 1,000 feet of a school unless specified requirements are met.

This bill would, instead, require a city or county to include in the information list for development projects or in the application form for a building permit specified requirements concerning compliance with statutes regulating hazardous materials and air pollution, the handling of acutely hazardous materials, and the emission of hazardous air emissions. The bill would prohibit a city or county from finding an application complete or from approving a development project or a building permit for a project which requires only a building permit if the project meets specified requirements concerning hazardous materials and emissions, unless the owner or authorized agent complies with certain provisions, thereby imposing a state-mandated local program. The bill would require the owner or operator of such a project to substantially meet the requirements for submitting an RMPP, pursuant to a specified procedure, if the administering agency makes a specified determination. Cities and counties would be authorized to adopt a schedule of fees to cover the cost of carrying out these provisions. The bill would impose specified duties upon administering agencies and air pollution control officers, thereby imposing a state-mandated local program.

(3) Existing law requires the State Fire Marshal to prepare, adopt, and submit for approval to the State Building Standards Commission, building standards establishing minimum standards for fire prevention, as specified, and minimum requirements for the storage and handling in commercial buildings of acutely hazardous materials, as defined.

This bill would revise the provisions relative to acutely hazardous materials to instead require the preparation, adoption, and submission of building standards and other fire and life safety regulations establishing minimum requirements for the storage, handling, and use of hazardous materials, as defined in the Uniform Fire Code, as specified.

(4) Existing law requires handlers or other specified persons to report hazardous material releases to an administering agency, which is defined as a department, office, or agency of a city or county.

This bill would require emergency rescue personnel to advise the superintendent of a school district of a specified release, or threatened release, within 1/2 mile of a school, thereby imposing a state-mandated local program. This bill would define the term "handle" for purposes of the provisions regulating hazardous materials to include connecting a marine vessel, tank

vehicle, tank car, or containers to a specified system or process.

(5) Existing law prescribes civil penalties for violations of specified provisions requiring any business, as defined, to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material, in accordance with prescribed requirements.

This bill would make a knowing violation of those provisions, after reasonable notice, a misdemeanor. The bill would thereby impose a state-mandated local program by creating a new crime.

(6) Existing law requires an RMPP to give consideration to the proximity of the facility to schools and requires a handler to submit a corrected RMPP within 60 days after receiving a specified notice from the administering agency. Existing law requires the administering agency to follow specified procedures with regard to the protection of trade secrets.

The bill would define school for purposes of the RMPP procedures and would authorize the administering agency to grant a one-time extension of the deadline to submit a corrected RMPP. The bill would require the administering agency to review any claim for a trade secret protection and to segregate properly substantiated trade secret information from the information to be made public. The bill would impose new duties upon administering agencies, thereby imposing a state-mandated local program.

(7) Existing law requires an air pollution control officer, prior to approving a permit for a source that may emit air contaminants which is located within 1,000 feet of a school, to prepare and distribute a public notice, as specified.

This bill would, instead, require that notice to be given prior to approving an application for a source which emits hazardous air emissions which is located within 1,000 feet of a school, as defined, and would require the notice to be distributed to additional persons, thereby imposing a state-mandated local program. The bill would authorize the preparation of the notice under prescribed circumstances. The bill would make the notice requirements inapplicable if the air pollution control officer makes specified determinations.

The bill would require the school district to make the information necessary to mail notices required by these provisions available to the air pollution control officer and would allow the notices to be distributed to the children to be given to their parents.

The bill would require applicants for a permit to certify whether the project is located within 1,000 feet of a school, and would authorize denial of the permit upon misrepresentation of that fact.

(8) The bill would provide that the changes proposed by this bill concerning development projects and permits, RMPPs, permits issued by air pollution control districts and air quality management districts, and environmental impact reports for facilities near schools do not apply to projects for which an application is submitted before January 1, 1992.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement is required by this act for certain costs for specified reasons. However, this bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs

shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

The people of the State of California do enact as follows:

SECTION 1. Section 39003 of the Education Code is amended to read:

<< CA EDUC § 39003 >>

39003. The governing board of a school district shall not approve a project involving the acquisition of a school site by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency <<+, as defined in Section 21067 of the Public Resources Code,+>>

preparing the environmental impact report or negative declaration has consulted with the <<-* * *->> <<+administering agency+>> in which the proposed school site is located <<-* * *->>

>> and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed school site which might reasonably be anticipated to emit hazardous air emissions <<+, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought+>>.

(c) The governing board of the school district makes <<+one+>> of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but <<-* * *->> <<+one of the following conditions applies:+>>

<<+(A) T+>> the health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

<<+(B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.+>>

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution <<+control+>> officer, hazardous air emissions <<-* * *->> also

<<+means+>> emissions into the ambient air from any substance identified in <<+subdivisions (a) to (f), inclusive, of+>> Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" <<-* * *->> <<+means any substance+>> defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" <<-* * *->> <<+means any material+>> defined <<-* * *->>

>> <<+pursuant to+>> subdivision (a) of Section 25532 of the Health and Safety Code.
(4) "Hazardous waste" <<-* * *->> <<+means any waste+>> defined in Section 25117 of the Health and Safety Code.
(5) "Hazardous waste disposal site" <<-* * *->> <<+means any site+>> defined in Section 25114 of the Health and Safety Code.
<<+(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.+>>
<<+(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.+>>
SEC. 2. Section 39120 of the Education Code is amended to read:

<< CA EDUC § 39120 >>

39120. <<+(a)+>> The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency <<+comply+>> with the same requirements specified in <<+subdivision (a) of+>> Section 39003 for schoolsite acquisition.
<<+(b) For purposes of this section, the acceptance of construction bids shall constitute approval of the project.+>>
SEC. 3. Section 65759 of the Government Code is amended to read:

<< CA GOVT § 65759 >>

65759. In any action brought under this section:
<<+(a)+>> The <<-* * *->> California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, <<+ does+>> not apply to any action necessary to bring its general plan or relevant mandatory elements <<-* * *->> <<+of the plan+>> into compliance with any court order or judgment under this <<+article+>>.
<<+(1)+>> The local agency shall, however, prepare an initial study, within the time limitations specified in Section 65754, to determine the environmental effects of the proposed action necessary to comply with the court order. The initial study shall contain substantially the same information as is required for an initial study pursuant to subdivision (c) of Section 15080 of Title 14 of the California <<-* * *->> Code <<+of Regulations+>>.
<<+(2)+>> If as a result of the initial study, the local agency determines that the action may have a significant effect on the environment, the local agency shall prepare, within the time limitations specified in Section 65754, an environmental assessment, the content of which substantially conforms to the required content for a draft environmental impact report set forth in Article 9 (commencing with Section 15140) of Title 14 of the California <<-* * *->> Code <<+of Regulations+>>. The local agency shall include notice of the preparation of the environmental assessment in all notices provided for the amendments to the general plan proposed to comply with the court order.
<<+(3)+>> The environmental assessment shall be deemed to be a part of the general plan and shall only be reviewable as provided in this article.
<<+(4)+>> The local agency may comply with the provisions of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, in any action necessary to bring its general plan or <<+the plan's+>> relevant mandatory elements <<-* * *->> into compliance with any court order or judgment under this section so long as it does so within the time limitations specified in Section 65754.
<<+(b)+>> The court for good cause shown may grant not more than two extensions of time, not to exceed a total of 240 days, in order to meet the requirements imposed by Section 65754.

<< Repealed: CA GOVT § 65850.2 >>

SEC. 4. Section 65850.2 of the Government Code is repealed:
SEC. 5. Section 65850.2 is added to the Government Code, to read:

65850.2. (a) Each city and each county shall include in its information list compiled pursuant to Section 65940 for development projects, or application form for projects which do not require a development permit other than a building permit, both of the following:

(1) The requirement that the owner or authorized agent shall indicate whether the owner or authorized agent will need to comply with the applicable requirements of Sections 25505, 25533, and 25534 of the Health and Safety Code and the requirements for a permit for construction or modification from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county.

(2) The requirement that the owner or authorized agent shall certify whether or not the proposed project will handle, as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code, an acutely hazardous material or a mixture containing an acutely hazardous material, in a quantity equal to or greater than the quantity specified in subdivision (a) of Section 25536 of the Health and Safety Code, or will contain a source or modified source with hazardous air emissions.

(b) No city or county shall find the application complete pursuant to Section 65943 nor approve a development project, or a building permit for a project which does not require a development permit other than a building permit, in which acutely hazardous material or mixtures containing acutely hazardous material will be handled in a quantity equal to or greater than that specified in Section 25536 of the Health and Safety Code, unless the owner or authorized agent for the project first obtains from the administering agency, a notice of requirement to comply with, or determination of exemption from, the requirement to prepare and submit a risk management and prevention program. Within five days of submitting the project application to the city or county, the applicant shall submit the information required pursuant to paragraph (2) of subdivision (a) to the administering agency. This notice of requirement to comply with, or determination of exemption from, the requirement for an RMPP shall be provided by the administering agency to the applicant, and the applicant shall provide the notice to the city or county, within 25 days of the administering agency receiving adequate information from the applicant to make a determination as to the requirement for an RMPP. The notice of requirement to comply shall indicate if any of the acutely hazardous material to be handled at the site would create an acutely hazardous materials accident risk to any of the populations specified pursuant to Section 25534.1 of the Health and Safety Code. If the notice indicates an acutely hazardous materials accident risk may be present for any of the specified populations, no permit shall be issued until the administering agency has verified to the city or county within 90 days of the determination as to the requirement for an RMPP that the requirement for a risk management and prevention program is being substantially met. If within 90 days the administering agency has not verified that the requirement for the RMPP is being substantially met, then this section shall be deemed satisfied. If the notice of requirement to comply does not indicate that an acutely hazardous materials accident risk exists for the populations considered but does not exempt the requirement for an RMPP, a permit may be issued when all other permit conditions have been met. The requirement to submit an RMPP to the administering agency, shall be met prior to the issuance of a certificate of occupancy or its substantial equivalent. The owner or authorized agent shall submit to the city or county certification from the air pollution control officer that the owner or authorized agent is in compliance with the disclosures required by Section 42303 of the Health and Safety Code.

(c) No city or county shall issue a final certificate of occupancy or its substantial equivalent unless there is verification from the administering agency, if required by law, that the owner or authorized agent has met, or is meeting, the applicable requirements of Sections 25505, 25533, and 25534 of the Health and Safety Code, and the requirements for a permit, if required by law, from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county or has provided proof from the appropriate district that the permit requirements do not apply to the owner or authorized agent.

(d) The city or county, after considering the recommendations of the administering agency or air pollution control district or air quality management district, shall decide whether, and under what conditions, to allow construction of the site.

(e) Nothing in this section limits any existing authority of a district to require compliance with its rules and regulations.

(f) Counties and cities may adopt a schedule of fees for applications for compliance with this section sufficient to recover their reasonable costs of carrying out this section. Those fees shall be used only for the implementation of this section.

(g) As used in this section:

(1) "Acutely hazardous material" means any material as defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(2) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(3) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air of any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(h) Any misrepresentation of information required by this section shall be grounds for denial, suspension, or revocation of project approval or permit issuance. The owner or authorized agent required to comply with this section shall notify all future occupants of their potential duty to comply with the requirements of Sections 25505, 25533, 25534 of the Health and Safety Code.

(i) This section shall not apply to applications solely for residential construction.

SEC. 6. Section 13143.9 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 13143.9 >>

13143.9. The State Fire Marshal shall, in carrying out Section 13143, prepare, adopt, and submit building standards <<+and other fire and life safety regulations+>> for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 establishing minimum requirements for the storage<<+,+>> handling <<-* * *->><<+, and use+>> of <<-* * *->> hazardous materials, as defined<<+,+>> in <<-* * *->> <<+Article 9 of the 1988 Uniform Fire Code, and any subsequent editions, published by the Western Fire Chiefs Association and the International Conference of Building Officials+>>. The State Fire Marshal shall seek the advice of the Office of Emergency Services in establishing these requirements. This section does not prohibit a city, county, or district from adopting an ordinance, resolution, or regulation imposing stricter or more stringent requirements than a standard adopted pursuant to this section.

SEC. 7. Section 25501.3 is added to the Health and Safety Code, to read:

<< CA HLTH & S § 25501.3 >>

25501.3. "Handle" also means the use or potential for use of a quantity of hazardous material by the connection of any marine vessel, tank vehicle, tank car, or container to a system or process for any purpose other than the immediate transfer to or from an approved atmospheric tank or approved portable tank.

SEC. 8. Section 25507.10 is added to the Health and Safety Code, to read:

<< CA HLTH & S § 25507.10 >>

25507.10. The emergency rescue personnel, responding to the reported release or threatened release of an acutely hazardous material or to any fire or explosion involving a material that involves a release that would be required to be reported pursuant to Section 25507, shall immediately advise the superintendent of the school district having jurisdiction, where the location of the release or threatened release is within one-half mile of a school.

SEC. 9. Section 25514.3 is added to the Health and Safety Code, to read:

<< CA HLTH & S § 25514.3 >>

25514.3. Any person that knowingly violates Section 25503.5, 25503.7, 25503.8, 25505, 25508, 25509, 25509.3, 25510, or 25533 after reasonable notice of the violation, is, upon conviction, guilty of a misdemeanor. This section does not preempt any other applicable criminal or civil penalties.

SEC. 10. Section 25534.1 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 25534.1 >>

25534.1. Every RMPP prepared pursuant to Section 25534<<+, and every notice of requirement to comply prepared pursuant to subdivision (b) of Section 65850.2 of the Government Code,+>> shall give consideration to the proximity of the facility <<+or proposed facility+>> to <<+populations located in+>> schools, residential areas, general acute care hospitals, long-term health care facilities, and child day care facilities. For purposes of this section, "general acute care hospital" has the meaning provided by subdivision (a) of Section 1250, "long-term health care facility" has the meaning provided by subdivision (a) of Section 1418, and "child day care facility" has the meaning provided by Section 1596.750. <<+"School" means any school used for the purpose of the education of more than 12 children in kindergarten or any grades 1 to 12, inclusive.+>>

SEC. 10.5. Section 25534.2 is added to the Health and Safety Code, to read:

<< CA HLTH & S § 25534.2 >>

25534.2. An owner or operator of any new or modified facility which will be used for the handling of acutely hazardous materials in amounts equal to or greater than those specified in subdivision (a) of Section 25536, shall obtain from the administering agency, a notice of requirement to comply with, or determination of exemption from, the requirement for an RMPP prior to the approval of a development project or issuance of a building permit pursuant to Section 65850.2 of the Government Code.

SEC. 11. Section 25535 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 25535 >>

25535. (a) An owner or operator of a facility submitting an RMPP pursuant to Section 25534 shall submit the RMPP to the administering agency after the RMPP is certified as complete by a qualified person and the facility operator. The administering agency may authorize the air pollution control district or air quality management district in which the facility is located to conduct a technical review of the RMPP. If, after review by the administering agency or the air pollution control district or air quality management district exercising jurisdiction in the area of the facility, the administering agency determines that the handler's RMPP is deficient in any way, the administering agency shall notify the handler of these defects. The handler shall submit a corrected RMPP within 60 days of the <<-* * *->> <<+notification of defects, unless granted a one-time extension of no more than 30 days, of the notice to correct the RMPP by the administering agency. Failure to fully comply with this notice or the requirements of this section shall be deemed a violation of this article for purposes of Section 25540+>>.

(b) Upon implementation of a risk management and prevention program pursuant to subdivision (k) of Section 25534, the handler shall notify the administering agency that the RMPP has been implemented and shall summarize the steps taken in preparation and implementation of the RMPP.

(c) The handler shall continue to carry out the program and activities specified in the risk management and prevention program at the business after the administering agency has been notified pursuant to subdivision (b).

(d) The owner or operator shall implement all programs and activities in the RMPP before operations commence, in the case of a new facility, or before any new activities involving acutely

hazardous materials are taken, in the case of a modified facility.
SEC. 12. Section 25538 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 25538 >>

25538. (a) If a business believes that any information required to be reported by this article, involves the release of a trade secret, the business shall provide the information to the administering agency and shall notify the administering agency in writing of that belief.

<<+Upon receipt of a claim of trade secret related to a RMPP, the administering agency shall review the claim and shall segregate properly substantiated trade secret information from information which shall be made available to the public upon request in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).+>> As used in this section, "trade secret" has the same meaning as found in subdivision (d) of Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(b) Except as otherwise specified in this section, the administering agency shall not disclose any <<+properly substantiated+>> trade secret which is so designated by the owner or operator of a business.

(c) The administering agency may disclose trade secrets received by the administering agency pursuant to this article to authorized officers or employees of other governmental agencies only in connection with the official duties of that officer or employee pursuant to any law for the protection of health and safety.

(d) Any officer or employee or former officer or employee of the administering agency or any other government agency who, because of that employment or official position, has possession of, or has access to, information designated as a trade secret pursuant to this section, shall not knowingly and willfully disclose the information in any manner to any person not authorized to receive the information pursuant to this section. Notwithstanding Section 25515, any person who violates this subdivision, and who knows that disclosure of this information to the general public is prohibited by the section, shall, upon conviction, be punished by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars (\$1,000), or by both fine and imprisonment.

(e) Any information prohibited from disclosure pursuant to any federal statute or regulation shall not be disclosed.

(f) This section does not authorize any business to refuse to disclose to the administering agency any information required pursuant to this chapter.

SEC. 13. Section 25541 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 25541 >>

25541. Any person or business who knowingly makes any false statement or representation in any record, report, or other document filed, maintained, or used for the purpose of compliance with this article, or destroys, alters, or conceals any such record, report, or other document filed, maintained, or used for the purpose of compliance with this article, shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and the imprisonment.

If the conviction is for a violation committed after a first conviction under this section, the person shall be punished by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) per day of violation, or by imprisonment in the state prison for <<-* * *->> <<+ one, two, or three years+>> or in the county jail for not more than one year, or both the fine and imprisonment.

Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the acutely hazardous materials.

SEC. 14. Section 42301.6 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 42301.6 >>

42301.6. (a) Prior to approving an application for a permit to construct or modify a source <<-* * *->> <<+which emits hazardous+>> air <<-* * *->> <<+emissions, which source is+>> located within 1,000 feet from the outer boundary of a <<+schoolsite+>>, the air pollution control officer shall prepare a public notice in which the proposed project or modification for which the application for a permit is made is fully described. <<+The notice may be prepared whether or not the material is or would be subject to subdivision (a) of Section 25536, if the air pollution control officer determines and the administering agency concurs that hazardous air emissions of the material may result from an air release, as defined by Section 44303. The notice may be combined with any other notice on the project or permit which is required by law.+>>

(b) The air pollution control officer shall, at the permit applicant's expense, distribute <<+or mail+>> the public notice to the parents <<+or guardians+>> of children <<+enrolled+>> in any school <<+that is located+>> within one-quarter mile of the source and to each address within a radius of <<+1,000+>> feet <<-* * *->> of the proposed new or modified source at least 30 days prior to the date final action on the application is to be taken by the officer. The officer shall review and consider all comments received during the 30 days after the notice is distributed, and shall include written responses to the comments in the permit application file prior to taking final action on the application.

<<+(1) Notwithstanding Section 49073 of the Education Code, or any other provision of law, the information necessary to mail notices required by this section shall be made available by the school district to the air pollution control officer.+>>

<<+(2) Nothing in this subdivision precludes, at the discretion of the air pollution control officer and with permission of the school, the distribution of the notices to the children to be given to their parents or guardians.+>>

(c) Notwithstanding subdivision (b), an air pollution control officer may require the applicant to distribute the notice if the district had such a rule in effect prior to January 1, 1989.

(d) The requirements for public notice pursuant to subdivision (b) or a district rule in effect prior to January 1, 1989, are fulfilled if the air pollution control officer or applicant responsible for giving the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and, in <<+these+>> circumstances, failure of any person to receive the notice shall not affect the validity of any permit subsequently issued by the officer.

(e) Nothing in this section shall be deemed to limit any existing authority of any district.

<<+(f) An applicant for a permit shall certify whether the proposed source or modification is located within 1,000 feet of a schoolsite. Misrepresentation of this fact may result in the denial of a permit.+>>

<<+(g) The notice requirements of this section shall not apply if the air pollution control officer determines that the application to construct or modify a source will result in a reduction or equivalent amount of air contaminants, as defined in Section 39013, or which are hazardous air emissions.+>>

<<+(h) As used in this section:+>>

<<+(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the state board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.+>>

<<+(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532.+>>

SEC. 15. Section 42301.9 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 42301.9 >>

42301.9. For the purposes of Sections <<+42301.4+>> to 42301.8, inclusive:

(a) "School" means any <<+public or private+>> school used for purposes of the education of

<<+more than 12+>> children in kindergarten or any of grades 1 to 12, inclusive<<+, but does not include any private school in which education is primarily conducted in private homes+>>.

(b) "Air contaminant" <<-* * *->> <<+means any contaminant defined pursuant to+>> Section 39013.

(c) "Administering agency" means an <<-* * *->> agency <<-* * *->> <<+designated pursuant to+>> Section <<+ 25502+>>.

<<+(d) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.+>>

<< Repealed: CA PUB RES § 21151.3 >>

SEC. 16. Section 21151.3 of the Public Resources Code is repealed.

SEC. 17. Section 21151.4 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.4 >>

21151.4. No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within <<+ 1/4+>> of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air <<-* * *->> <<+ emission, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than the quantity specified in subdivision (a) of+>> Section <<-* * *->> <<+ 25536 of the Health and Safety Code, which may pose a health or safety hazard to persons who would attend or would be employed at the school,+>> unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

SEC. 18. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless <<-* * *->> <<+all of the following occur:+>> <<+(1) T+>>he environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

<<+(A)+>> The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

<<+(B)+>> A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

<<+(C)+>> A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

<<+(2) The lead agency preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the lead agency shall

Include a list of the locations for which information is sought.+>>

<<+(3) The governing board of the school district makes one of the following written findings:+>>

<<+(A) Consultation identified no such facilities specified in paragraph (2).+>>

<<+(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:+>>

<<+(i) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.+>>

<<+(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.+>>

<<+(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency which does not respond within 30 days.+>>

<<+(b) If a lead agency has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility specified in paragraph (2) of subdivision (a).+>>

<<+(c)+>> As used in this section <<+and Section 21151.4, the following definitions shall apply+>>:

(1) "Hazardous substance" <<-* * *->> <<+means any substance+>> defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" <<-* * *->> <<+means any material+>> defined <<-* * *->> <<+pursuant to+>> subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" <<-* * *->> <<+means any waste+>> defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" <<-* * *->> <<+means any site+>> defined in Section 25114 of the Health and Safety Code.

<<+(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.+>>

<<+(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.+>>

<<+(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.+>>

<< Note: CA GOVT §§ 65759, 65850.2 >>

<< Note: CA HLTH & S §§ 25534.1, 25534.2, 25535, 42301.6, 42301.9 >>

<< Note: CA PUB RES § 21151.4 >>

SEC. 19. Sections 3, 5, 10, 10.5, 11, 14, 15, and 17 of this act shall not apply to projects for which an application is submitted pursuant to Section 65943 of the Government Code prior to January 1, 1992.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for those other costs. However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 21. If any provision of this act or its application to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

CA LEGIS 1183 (1991)

END OF DOCUMENT

West's Ann.Cal.Educ.Code § 39003

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EDUCATION CODE
TITLE 2. ELEMENTARY AND SECONDARY ADMINISTRATION
DIVISION 3. LOCAL ADMINISTRATION
PART 23. SCHOOL FACILITIES
CHAPTER 1. SCHOOL SITES
ARTICLE 1. GENERAL PROVISIONS

§ 39003. Approval of site acquisition; hazardous or solid waste disposal sites or hazardous substance release sites; hazardous air emissions; findings

The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency preparing the environmental impact report or negative declaration has consulted with the city in which the proposed schoolsite is located, or with the county in which the proposed schoolsite is located if the proposed site is in an unincorporated area, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions.

(c) The governing board of the school district makes either of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but the health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution officer, hazardous air emissions may also mean emissions into the ambient air from any substance identified in Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" has the same meaning as defined in Section 25114 of the Health and Safety Code.

1991 Pocket Part Credit(s)

(Added by Stats.1990, c. 1602 (S.B.2262), § 1.)

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1991 Pocket Part Historical and Statutory Notes

1987 Legislation

Former § 39003 was repealed by Stats.1987, c. 1452, § 269. Legislative findings, declarations and intent relating to Stats.1987, c. 1452, see Historical and Statutory Notes under § 1007.

1978 Main Volume Historical and Statutory Notes

Main Volume Text

§ 39003. Financing of reconstruction of particular school

The reconstruction of any school on all or a portion of a site which has been used for public school purposes uninterruptedly since prior to 1890 may be financed through the State School Building Aid and Earthquake Reconstruction and Replacement Bond Law of 1972 (Chapter 19 (commencing with Section 17400) of Part 10 of Division 1 of Title 1), if the legal title to such site or a portion thereof is held either by: (a) a city school district, or (b) a charter city, and a city school district has obtained or is in the process of obtaining a lease of not less than 50 years on such site or portion thereof from the charter city.

(Stats.1976, c. 1010, § 2, operative April 30, 1977.)

Main Volume Historical and Statutory Notes

Derivation: Educ.C.1959, § 15002.3 formerly § 15002.2, added by Stats.1973, c. 714, p. 1290, § 1, renumbered § 15002.3 and amended by Stats.1976, c. 557, § 3.

West's Ann. Cal. Educ. Code § 39003
CA EDUC § 39003

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Effective:[See Text Amendments]

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Title 2. Elementary and Secondary Education (Refs & Annos)

Division 3. Local Administration (Refs & Annos)

Part 23. Supplemental Services (Refs & Annos)



2009 Main Volume

HISTORICAL AND STATUTORY NOTES

2009 Main Volume

Sections 15 to 18 of Stats.1996, c. 277 (S.B.1562), provide:

"Sec. 15. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

"Sec. 16. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

"Sec. 17. Any section of any act enacted by the Legislature during the 1996 calendar year prior to the enactment of this act, that amends, amends and renumbers, adds, repeals and adds, or repeals a section, article, chapter, or part, that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act until January 1, 1998, at which time Sections 1 to 16 of this act shall become operative [Section affected by two or more acts at the same session of the legislature, see government Code § 9605.].

"Sec. 18. The provisions of this act are severable. If any provisions of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application."

Section 39001, added by Stats.1991, c. 846 (A.B.1603), § 12, related to public hearing for evaluation prior to acquisition in accordance with site selection standards. See Education Code § 17211.

Application of Stats.1991, c. 846 (A.B.1331) to validity or enforceability of action by state allocation board under Public Contract Code § 10115 et seq., see Historical and Statutory Notes under Education Code § 17706.

Former Notes

Former § 39001, enacted by Stats.1976, c. 1010, § 2, derived from Education Code 1959, § 15002 (Stats.1959, c. 2, § 15002); Education Code 1943, § 18401 (Stats.1943, c. 71, p. 670); School Code § 6.100, added by Stats.1939, c. 217, § 3, relating to purchase of improvement of school lands, was repealed by Stats.1987, c. 1452, § 268.

Section 39002, enacted by Stats.1976, c. 1010, § 2, operative April 30, 1977, amended by Stats.1977, c. 36, § 141, eff. April 29, 1977, operative April 30, 1977; Stats.1984, c. 1009, § 1 was amended by Stats.1994, c. 840 (A.B.3562), § 10, prior to repeal, investigation of prospective schoolsite. See Education Code § 17212.

Section 43 of Stats.1984, c. 1009, provides, in part:

"It is the intent of the Legislature in enacting this act to consolidate and simplify statutes relating to local planning. It is not the intent of the Legislature to mandate new programs or higher levels of service on cities and counties.

"The responsibilities imposed by Sections 1, 1.1, 1.2, 1.3, 1.6, 2, 3, 3.5, 4, 5, 5.4, 9, 13.5, 14, 15, 18, 20.5, 21, 22, 23, 24, 25, 26, 26.5, 28, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 of this act are no greater than the responsibilities currently imposed on cities and counties by the statutes which are repealed or amended by Sections 1, 1.1, 1.2, 1.3, 3, 4, 5, 5.2, 5.4, 5.7, 6, 7, 7.5, 8, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 20.5, 21, 21.5, 22, 23, 24, 25, 26, 26.5, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 of this act."

Section 39002.5, added by Stats.1977, c. 36, § 442, eff. April 29, 1977, operative April 30, 1977, amended by Stats.1977, c. 242, § 12, eff. July 7, 1977; Stats.1978, c. 362, p. 1064, § 1, related to geological and soils engineering studies. See Education Code § 17212.5.

Section 39003, added by Stats.1990, c. 1602 (S.B.2262), § 1, amended by Stats.1991, c. 1183 (A.B.928), § 1, related approval of site acquisition. See Education Code § 17213

Section 21 of Stats.1991, c. 1183 (A.B.928) provides:

"If any provision of this act or its application to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Former Notes

Former § 39003, enacted by Stats.1976, c. 1010, § 2, derived from Education Code 1959, § 15002.3, formerly § 15002.2, added by Stats.1973, c. 714, 1, renumbered § 15002.3 and amended by Stats.1976, c. 557, § 3, relating

West's Ann.Cal.Educ.Code § 39120

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DIVISION 3. LOCAL ADMINISTRATION
PART 23. SCHOOL FACILITIES
CHAPTER 2. CONSTRUCTION OF SCHOOL BUILDINGS
ARTICLE 2. PLANS

§ 39120. Construction of new school building; requirements for approval

The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency complies with the same requirements specified in Section 39003 for schoolsite acquisition.

1991 Pocket Part Credit(s)

(Added by Stats.1990, c. 1602 (S.B.2262), § 2.)

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1991 Pocket Part Historical and Statutory Notes

1979 Legislation

Former § 39120 was repealed by Stats.1979, c. 448, p. 1590, § 1.

1978 Main Volume Historical and Statutory Notes

Main Volume Text

§ 39120. Filing of copy of plans with Department of General Services

The governing board of any school district shall, upon completion of any school building let pursuant to Sections 39140 to 39155, inclusive, file with the Department of General Services on ozalid type reproducible duplicate set of architect plans for the new school building plant.

(Stats.1976, c. 1010, § 2, operative April 30, 1977.)

Main Volume Historical and Statutory Notes

Derivation: Educ.C.1959, § 15411 (Stats.1959, c. 2, p. 1079, § 15411, amended by Stats.1965, c. 371, p. 1487, § 33).

Educ.C.1943, § 18174, added by Stats.1955, c. 1835, p. 3378, § 2.

REFERENCES

CROSS REFERENCES

1978 Main Volume Cross References

Department of general services, see Government Code § 14600 et seq.

Governing boards, see §§ 78, 35010 et seq., 72200 et seq.

Powers, see §§ 35160 et seq., 39600 et seq., 72200 et seq., 81600 et seq.

Requirements before board may lease facilities, see §§ 39302, 81332.

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CA EDUC § 39120

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Effective:[See Text Amendments]

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Part 23. Supplemental Services (Refs & Annos)

~~§ 39120. Repealed by Stats.1990, c. 277 (S.B.1562), § 6, operative January 1, 1991.~~

HISTORICAL AND STATUTORY NOTES

2009 Main Volume

The repealed section, added by Stats.1990, c. 1602 (S.B.2262), § 2, amended by Stats.1991, c. 1183 (A.B.928), § 2, related to construction of new school buildings. See Education Code § 17268.

Former Notes

Former § 39120, enacted by Stats.1976, c. 1010, § 2, derived from Education Code 1959, § 15411 (Stats.1959, c. 2, § 15411, amended by Stats.1965, c. 371, § 33); Education Code 1943, § 18174, added by Stats.1955, c. 1835, § 2, related to the filing of copies of plans, and was repealed by Stats.1979, c. 448, § 1.

West's Ann. Cal. Educ. Code § 39120, CA EDUC § 39120

Current with all 2009 Reg.Sess. laws; all 2009-2010 1st through 5th, 7th, and 8th Ex.Sess. laws; urgency legislation through Ch. 20 of the 2010 Reg.Sess.; and propositions on the 6/8/2010 ballot.

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West's Ann.Cal.Pub.Res.Code § 21151.4

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PUBLIC RESOURCES CODE
DIVISION 13. ENVIRONMENTAL QUALITY
CHAPTER 4. LOCAL AGENCIES

§ 21151.4. Construction or alteration of a facility within one-fourth mile of a school; reasonable anticipation of release of hazardous air emissions; approval of environmental impact report or negative declaration

No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions as defined in Section 21151.3 unless both of the following occur:

- (a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.
- (b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

1991 Pocket Part Credit(s)

(Added by Stats.1988, c. 1589, § 14.)

West's Ann. Cal. Pub. Res. Code § 21151.4
CA PUB RES § 21151.4

END OF DOCUMENT



CA LEGIS 689 (2004)
 2004 Cal. Legis. Serv. Ch. 689 (S.B. 945) (WEST)
 (Publication page references are not available for this document.)

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CALIFORNIA 2004 LEGISLATIVE SERVICE
 2004 Portion of 2003-2004 Regular Session

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Additions are indicated by **Text**; deletions by
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CHAPTER 689
 S.B. No. 945

ENVIRONMENTAL PROTECTION--HAZARDOUS SUBSTANCES AND WASTE--SCHOOLS AND SCHOOL
 DISTRICTS

AN ACT to amend Sections 21083, 21086, and 21151.4 of, and to repeal Section
 21087 of, the Public Resources Code, relating to environmental quality.

[Filed with Secretary of State September 22, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 945, Sher. Environmental quality: guidelines.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.

CEQA requires the Office of Planning and Research (OPR) to prepare and develop proposed guidelines for the implementation of CEQA by public agencies. CEQA requires that the guidelines contain various objectives, criteria, and procedures, as specified. CEQA requires OPR, at least once every 2 years, to review the guidelines and recommend changes or amendments to the Secretary of the Resources Agency. CEQA requires the Secretary of the Resources Agency to certify and adopt guidelines at least once every 2 years.

CEQA requires OPR to recommend proposed changes and the secretary to certify and adopt revisions to the guidelines to reflect changes enacted during the 1993-94 Regular Session of the Legislature within 6 months of the enactment of AB 314 of the 1993-94 Regular Session of the Legislature.

This bill would delete the requirements summarized in the preceding paragraph and would make conforming changes.

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CEQA provides that no environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school that might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, or that would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than a specified quantity prescribed by statute that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless specified conditions occur, including that the school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

This bill would, instead, specify that an environmental impact report shall not be certified and a negative declaration shall not be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle extremely hazardous substances in a quantity equal to or greater than a specified state threshold quantity prescribed by statute that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless specified conditions occur, including that the school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

(2) This bill would provide that if AB 3090 is enacted on or before January 1, 2005, and amends Section 21087 of the Public Resources Code, then Section 4 of this bill, which would repeal Section 21087 of the Public Resources Code, would not become operative; and, this bill would not chapter out the amendments to Section 21087 of the Public Resources Code made by AB 3090.

The people of the State of California do enact as follows:

SECTION 1. Section 21083 of the Public Resources Code is amended to read:

<< CA PUB RES § 21083 >>

21083. (a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

(b) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the environment" if ~~one or more~~ **one or more** of the following conditions exist:

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(Publication page references are not available for this document.)

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(1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(c) The guidelines shall include procedures for determining the lead agency pursuant to Section 21165.

(d) The guidelines shall include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that a draft environmental impact report, a proposed negative declaration, or a proposed mitigated negative declaration shall be submitted to appropriate state agencies, through the State Clearinghouse, for review and comment prior to completion of the environmental impact report, negative declaration, or mitigated negative declaration.

(e) The Office of Planning and Research shall develop and prepare the proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt the guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(f) The Office of Planning and Research shall, at least once every two years, review the guidelines adopted pursuant to this section and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, guidelines may not be adopted or amended without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

SEC. 2. Section 21086 of the Public Resources Code is amended to read:

<< CA PUB RES § 21086 >>

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21086. (a) A public agency may, at any time, request the addition or deletion of a class of projects, to the list designated pursuant to Section 21084. * * * That request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that the class of projects does, or does not, have a significant effect on the environment.

(b) The Office of Planning and Research shall review each * * * request and, as soon as possible, shall submit its recommendation to the Secretary of the Resources Agency. Following the receipt of that recommendation, the Secretary of the Resources Agency may add or delete the class of projects to the list of classes of projects designated pursuant to Section 21084 that are exempt from the requirements of this division.

(c) The addition or deletion of a class of projects, as provided in this section, to the list specified in Section 21084 shall constitute an amendment to the guidelines adopted pursuant to Section 21083 and shall be adopted in the manner prescribed in Sections 21083 and 21084* * *.

<< Repealed: CA PUB RES § 21087 >>

SEC. 3. Section 21087 of the Public Resources Code is repealed.

SEC. 5. [FN1] Section 21151.4 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.4 >>

21151.4. An environmental impact report * * * shall not be certified and a negative declaration shall not be approved for any project involving the construction or alteration of a facility within 1/4 of a mile of a school that might reasonably be anticipated to emit hazardous * * * air emissions, or that would handle * * * an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified * * * pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

SEC. 6. If AB 3090 is enacted on or before January 1, 2005, and amends Section 21087 of the Public Resources Code, then Section 4 of this bill, which would repeal Section 21087 of the Public Resources Code, shall not become operative; and,

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2004 Cal. Legis. Serv. Ch. 689 (S.B. 945) (WEST)
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notwithstanding Section 9605 of the Government Code, this bill shall not chapter out the amendments to Section 21087 of the Public Resources Code made by AB 3090.

[FN1] No section 4 in enrolled bill.

CA LEGIS 689 (2004)

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West's Ann.Cal.Pub.Res.Code § 21151.8

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PUBLIC RESOURCES CODE
DIVISION 13. ENVIRONMENTAL QUALITY
CHAPTER 4. LOCAL AGENCIES

§ 21151.8. Schoolsite acquisition or construction; environmental impact report or negative declaration; hazardous waste or solid waste disposal sites; hazardous substance release sites

(a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless the environmental impact report or negative declaration includes information which is needed to determine if the the property proposed to be purchased, or to be constructed upon, is any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) As used in this section:

(1) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" has the same meaning as defined in Section 25114 of the Health and Safety Code.

1991 Pocket Part Credit(s)

(Added by Stats.1990, c. 1602 (S.B.2262), § 3.)

West's Ann. Cal. Pub. Res. Code § 21151.8
CA PUB RES § 21151.8

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CA LEGIS 668 (2003)
 2003 Cal. Legis. Serv. Ch. 668 (S.B. 352) (WEST)
 (Publication page references are not available for this document.)

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CALIFORNIA 2003 LEGISLATIVE SERVICE
 2003 Portion of 2003-2004 Regular Session

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CHAPTER 668
 S.B. No. 352

~~SCHOOLS AND SCHOOL DISTRICTS--SCHOOLSITES--POLLUTION~~

~~AN ACT TO AMEND CHAPTER 668 OF THE CALIFORNIA EDUCATION CODE, TO CHANGE AN INDENTATION IN SECTION 20142 OF THE EDUCATION CODE, AND TO ADD A SECTION TO CHAPTER 668 OF THE EDUCATION CODE, RELATING TO POLLUTION AT SCHOOLS.~~

[Filed with Secretary of State October 3, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 352, Escutia. Schoolsites: sources of pollution.

Existing law sets forth various requirements regarding the siting, structural integrity, safety, and fitness-for-occupancy of school buildings, including, but not limited to, a prohibition of the approval by the governing board of a school district of the acquisition of a schoolsite by a school district, unless prescribed conditions relating to possible exposure to hazardous substances are satisfied, and a prohibition on the approval of a related environmental impact report or negative declaration.

This bill would, in addition, prohibit the approval by the governing board of a school district of a schoolsite that is within 500 feet from the edge of the closest traffic lane of a freeway or other busy traffic corridor, unless prescribed conditions are met and would make conforming and other technical, nonsubstantive changes.

Existing law requires the lead agency to consult with prescribed agencies to identify facilities that might reasonably be anticipated to emit hazardous materials, within 1/4 of a mile of the schoolsite.

This bill would define "facility" for this purpose and would require the lead agency to consult to identify freeways and other busy traffic corridors, as defined, large agricultural operations, and railyards, within 1/4 of a mile of the schoolsite, and would make conforming and other technical, nonsubstantive changes.

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The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Many studies have shown significantly increased levels of pollutants, particularly diesel particulates, in close proximity to freeways and other major diesel sources. A recent study of Los Angeles area freeways measured diesel particulate levels up to 25 times higher near freeways than those levels elsewhere. Much of the pollution from freeways is associated with acute health effects, exacerbating asthma and negatively impacting the ability of children to learn.

(b) Cars and trucks release at least forty different toxic air contaminants, including, but not limited to, diesel particulate, benzene, formaldehyde, 1,3-butadiene and acetaldehyde. Levels of these pollutants are generally concentrated within 500 feet of freeways and very busy roadways.

(c) Current state law governing the siting of schools does not specify whether busy freeways should be included in environmental impact reports of nearby "facilities." Over 150 schools are already estimated to be within 500 feet of extremely high traffic roadways.

(d) A disproportionate number of economically disadvantaged pupils may be attending schools that are close to busy roads, putting them at an increased risk of developing bronchitis from elevated levels of several pollutants associated with traffic. Many studies have confirmed that increased wheezing and bronchitis occurs among children living in high traffic areas.

(e) It is therefore the intent of the Legislature to protect school children from the health risks posed by pollution from heavy freeway traffic and other non-stationary sources in the same way that they are protected from industrial pollution.

SEC. 2. Section 17213 of the Education Code is amended to read:

<< CA EDUC § 17213 >>

17213. The governing board of a school district **may** not approve a project involving the acquisition of a school site by a school district, unless all of the following occur:

(a) The **school district, as the** lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site~~+~~ ~~+~~ ~~+~~, **unless** if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been re-

moved.

(2) A hazardous substance release site identified by the ***Department of *****Toxic Substances Control** in a current list adopted pursuant to Section 25356 of **the Health and Safety Code** for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site **that** contains one or more pipelines, situated underground or above-ground, **that** carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line **that** is used only to supply natural gas to that school or neighborhood.

(b) The **school district, as the** lead agency, as defined in Section 21067 of the Public Resources Code, in preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and other busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite***, **that** might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The **school district, as the** lead agency, shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified none of the facilities or significant pollution sources specified in subdivision (b).

(2) The facilities or other pollution sources specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another governmental entity that has jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these

levels.

(C) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(D) The governing board finds that neither of the conditions set forth in subparagraph (B) or (C) can be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is

identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

SEC. 3. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) An environmental impact report or negative declaration * * * may not be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the * * * Department of * * * Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or above-ground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite* * *, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, sub-

stances, or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes * * * a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of

CA LEGIS 668 (2003)
 2003 Cal. Legis. Serv. Ch. 668 (S.B. 352) (WEST)
 (Publication page references are not available for this document.)

Page 7

any agency that does not respond within 30 days.

(b) If a school district, as a lead agency, has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

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CA LEGIS 668 (2003)

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Westlaw Delivery Summary Report for PALKOWITZ,ARTHUR

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CALIFORNIA 2008 LEGISLATIVE SERVICE
2008 Portion of 2007-2008 Regular Session
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CHAPTER 148
A.B. No. 2720
LOCAL AGENCIES--ENVIRONMENTAL PROTECTION--SCHOOLS AND SCHOOL DISTRICTS

AN ACT to amend Sections 21151.4 and 21151.8 of the Public Resources Code, relating to the environment.

[Filed with Secretary of State July 18, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2720, Levine. Environment: environmental impact report.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.

CEQA prohibits an environmental impact report or negative declaration from being approved for any project involving the purchase of a school site or the construction of a new elementary or secondary school by a school district unless specified conditions are met. CEQA further provides that, if a school district, as the lead agency, has carried out a specified consultation, the environmental impact report or the negative declaration shall be conclusively presumed to comply with those conditions, notwithstanding any failure of the consultation to identify an existing facility or other pollution source, as specified.

This bill would make technical, nonsubstantive changes in these provisions and would revise a cross-reference.

(2) CEQA prohibits the certification of an environmental impact report or the approval of a negative declaration for a project involving the construction or alteration of a facility within 1/4 of a mile from a school that might reasonably be anticipated to emit hazardous air emissions or a mixture containing extremely hazardous substances that may pose a health or safety hazard to persons who would attend or would be employed at the school unless a specified event occurs.

This bill would define "hazardous air emissions" and "extremely hazardous substances" for the purposes of that provision.

The people of the State of California do enact as follows:

SECTION 1. Section 21151.4 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.4 >>

21151.4. (a) An environmental impact report shall not be certified or a negative declaration shall not be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

(1) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(2) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

(b) As used in this section, the following definitions apply:

(1) "Extremely hazardous substance" means an extremely hazardous substance as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(2) "Hazardous air emissions" means emissions into the ambient air of all contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located, as determined by the air pollution control officer; hazardous air emissions also means emissions into the ambient air of a substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

SEC. 2. Section 21151.8 of the Public Resources Code is amended to read:

<< CA PUB RES § 21151.8 >>

21151.8. (a) An environmental impact report shall not be certified or a negative declaration shall not be approved for a project involving the purchase of a school site or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) (A) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed school site is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed school site, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous substances or waste. The notification by the school district, as the lead agency, shall

include a list of the locations for which information is sought.

~~(B) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to subparagraph (A) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with subparagraph (A) as to the area of responsibility of an agency that does not respond within 30 days.~~

~~(C) If the school district, as a lead agency, has carried out the consultation required by subparagraph (A), the environmental impact report or the negative declaration shall be conclusively presumed to comply with subparagraph (A), notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in subparagraph (A).~~

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a school site with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii), or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of overriding considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

~~(b)~~ As used in this section***, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Extremely hazardous substances" means ***~~an extremely hazardous substance as defined pursuant to paragraph (2) of~~ subdivision ~~(g)~~ of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health

and Safety Code.

(6) "Administering agency" means an agency ~~authorized~~ pursuant to Section 25502 of the Health and Safety Code ~~to implement and enforce Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.~~

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit, or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

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CHAPTER 130
A.B. No. 299
MAINTENANCE OF CODES

SEC. 206. Section ~~21151.8~~ of the Public Resources Code is amended to read:

<< CA PUB RES § ~~21151.8~~ >>

- ~~21151.8~~. (a) An environmental impact report or negative declaration may not be approved for any project involving the purchase of a school site or the construction of a new elementary or secondary school by a school district unless all of the following occur:
- (1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:
 - (A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.
 - (B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.
 - (C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, **extremely** hazardous **substances**, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.
 - (D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.
 - (2) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed school site is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed school site, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or **extremely** hazardous ~~***~~substances ~~***~~ or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.
 - (3) The governing board of the school district makes one of the following written findings:
 - (A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).
 - (B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the

following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a school site with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency that does not respond within 30 days.

(b) If a school district, as a lead agency, has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "**Extremely** hazardous **substances**" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health

and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit, or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

COMMISSION ON STATE MANDATES

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EXHIBIT Q

January 27, 2011

Mr. Michael Johnston
Clovis Unified School District
1450 Herndon Ave.
Clovis, CA 93661-0599

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: Draft Staff Analysis, Schedule for Comments, and Hearing Date
School Facilities Funding Requirements, 02-TC-30, and 02-TC-43
Education Code Sections 15271, et al.
Clovis Unified School District, Claimant

Dear Mr. Johnston:

The draft staff analysis on the above-named matter is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Friday, **February 18, 2011**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents on the Commission's website. Please see the Commission's website at http://www.csm.ca.gov/dropbox_procedures.shtml for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This matter is set for hearing on **Thursday, March 24, 2011**, at 9:30 a.m. in Room 447, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about March 10, 2011. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Heather Halsey at (916) 445-9429 if you have any questions or concerns regarding this matter.

Sincerely,



Drew Bohan
Executive Director

Enclosure

ITEM _____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, 39003, 39120 and 100620 as added or amended by Statutes 1976, Chapter 557; Statutes 1977, Chapter 242; Statutes 1978, Chapter 362; Statutes 1982, Chapter 735; Statutes 1990, Chapter 1602; Statutes 1991, Chapter 1183, Statutes 1996, Chapter 277; Statutes 1997, Chapters 513, 893, and 940; Statutes 1998, Chapters 407, 485, 691, 741, 848, 941, 957, and 1076; Statutes 1999, Chapters 133, 709, 858, 992 and 1002; Statutes 2000, Chapters 44, 193, 443, 530, 590, and 753; Statutes 2001, Chapters 132, 159, 194, 422, 647, 725, 734 and 972; and Statutes 2002, Chapters 33, 199, 935, 1075, and 1168

Health and Safety Code Sections 25358.1 and 25358.7.1 as added by Statutes 1999, Chapter 23

Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668; Statutes 2004, Chapter 689; Statutes 2007, Chapter 130; and Statutes 2008, Chapter 148

California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70 as added or amended by Registers 78-05, 79-34, 80-12, 80-26, 81-19, 84-51, 86-44, 98-49, 98-52, 99-11, 99-14, 99-29, 99-31, 99-41, 99-52, 2000-02, 2000-11, 2000-26, 2000-29, 2000-37, 2000-52, 2001-01, 2001-24, 2001-30, 2001-33, 2001-51, 2002-15, 2002-18; 2002-33, 2002-37, 2002-38, 2002-40, 2002-45, 2003-03, 2003-06, 2003-07, 2003-08, 2003-09, 2003-18, 2003-24

The Substantial Progress and Expenditure Audit Guide of May 2003; The School Facility Program Guidebook of January 2003; The State Relocatable Classroom Program Handbook of January 2003; and The Lease-Purchase Applicant Handbook of April 1998

School Facilities Funding Requirements

02-TC-30, 02-TC-43 and 09-TC-01

Clovis Unified School District, Claimant

EXECUTIVE SUMMARY

I. Overview

This test claim addresses the activities required of school districts to comply with school facilities funding requirements (SFFRs). There is a glossary of frequently used acronyms to guide the reader at the back of this analysis on page 68. If a school district makes a decision to build or modernize a school, it must determine how to fund that construction. Generally, a school can seek grant funding from the state through the State School Facility Program (SFP), which is funded through state bonds or it may issue local bonds pursuant to one of several local bond acts. Schools usually rely on a combination of SFP and local bond funding for facilities.

If a school district decides to issue local bonds, it must comply with the public disclosure and other accountability requirements contained within the act under which the district decides to issue bonds. If a school district decides to seek state bond funding through the SFP (i.e. grant funding), the district must comply with various planning, environmental, building safety, labor, public participation/disclosure, and bond funding accountability requirements as a condition of receipt of that funding which includes preparation of hazardous materials assessments (HMA) and performing many of the other activities pled in this consolidated test claim.

HMAs are conducted to provide basic information for determining if there has been a release, or there is a threatened release of a hazardous material, or if there may be a naturally occurring hazardous material present at the site which may pose a risk to human health or the environment. A Phase I Assessment must be prepared to identify the potential for hazardous material release or the presence of naturally occurring hazardous materials. If such a potential is found then a Preliminary Endangerment Assessment (PEA) is required to evaluate the threat posed to public health or the environment. The California Education Code requires The Department of Toxic Substances Control (DTSC) to review Phase I Assessments and PEAs, and to make a determination about the need for further action or remediation.¹ School districts may elect to proceed directly to a PEA without having first completed a Phase I Assessment which can reduce costs when there is a known hazardous material present.²

There are two other programs pled in this test claim that do not fit neatly into the SFP funding or local bond funding categories:

1. The State Relocatable Classroom Law of 1979 under which claimant alleges costs for activities related to the lease of portable classrooms from the state, and
2. The California School Finance Authority Act, under which a school district may borrow funds from the state which are generally repaid with future Proposition 98 funds.

¹ Education Code section 17213.2.

² Education Code section 17213.1.

II. Positions of the Parties and Interested Parties

A. Claimant's Position

Claimant generally alleges that all of the activities it must perform to receive state funding, issue local bonds, or participate in other joint state-local programs pled for school facility projects (i.e. new building, modernization and renovation or leasing portable classroom), including the requirement to pay a local share of costs, are new and reimbursable under Article XIII B, section 6 of the California Constitution. In essence, claimant is alleging that the state is legally required to provide 100 percent of funding for all school facility project-related costs, including all of the environmental compliance, accountability and public notice requirements for the issuance of local bonds and other related costs pled in this consolidated test claim. Claimant also disputes the arguments put forth by the Department of Finance (DOF), the Department of Education (DOE), and the Department of Toxic Substances Control (DTSC) that a school district's participation in the underlying programs at issue are elective or optional and neither legally nor practically compelled, citing to cases and reports that discuss the need for school facilities.

B. Department of Finance's Position

DOF states that the school district's participation in the Leroy F. Greene School Facilities Act (i.e. SFP funding) is strictly voluntary and the result of elective action taken by the governing board of the district. DOF argues that nothing in state law or regulation requires a school district to construct additional school facilities or to acquire any site for the purpose of constructing a school building. Instead, the law provides school districts with flexibility, discretion, and choice over the manner in which districts elect to house their student populations. For example, school districts have the discretion to operate year round multi-track schools or two kindergarten sessions per day, use portable classrooms or transport students to underused schools. It is the district's voluntary decision to construct a school facility rather than using the aforementioned alternative that forced the district to carry out the activities required as a condition of receiving state funding from the SFP. DOF states that the costs incurred to comply with SFP requirements are allowable costs for the use of new construction grants provided by the State Allocation Board. Finally, DOF argues that school districts have the authority to charge development fees to finance construction projects.

C. Department of Education's Position

DOE states that the test claim statutes in 02-TC-30 (*School Facilities Funding Requirements*) do not impose a state-mandated program because each of the programs pled is but "one of various funding mechanisms available to school districts for the funding of facilities. School districts elect to participate in [these programs] and any requirements regarding [these programs] are applicable only after districts elect to participate. . . ."³

D. Department of Toxic Substances Control's Position

DTSC argues that school districts are not legally or practically compelled to meet HMA requirements because "district participation in the underlying program is elective or optional."⁴ Specifically, DTSC argues that conditions imposed under the SFP as a condition of receipt of

³ DOE, comments on the test claim (02-TC-30), p. 1.

⁴ DTSC, comments on the test claim (02-TC-43), *supra*, p. 1.

state funding in this test claim are analogous to state-funded educational programs that were at issue in *Kern Department of Finance v. Commission in State Mandates (Kern)* (2003) 30 Cal. 4th 727, which were determined not to impose a mandate since there was local discretion to participate in the underlying program that triggered the downstream requirements. DTSC also argues that school districts are not practically compelled because, though there may be no feasible alternative to participation in the state funding program for school construction projects where HMA costs are sizable, “districts may elect to stop pursuing such a high cost site at any time without compulsion or penalty.”

DTSC also argues, “school districts have authority to levy fees to fund their share of costs under Education Code section 17556, subdivision (d), and *Connell v. Superior Court* (1997) 59 Cal.App.4th 382.”⁵ DTSC points out that Government Code section 17556, subdivision (d), prohibits the Commission from determining costs are mandated by the state if it finds that the district “has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.”⁶ DTSC refers the Commission to Education Code section 17620 (development fee), Government Code section 53311 (Mello-Roos fee), and Education Code section 15350 (school facilities improvement districts bond authority) for some examples of potential revenue sources for school districts.⁷

DTSC also argues that the state already routinely funds half of the HMA costs and funds up to 100 percent of the costs in cases of economic hardship under Education Code sections 17072.12, 17072.13, and 17072.18.⁸

Additionally, DTSC states, “jointly funded programs such as school funding are outside the coverage of Section 6, article XIII B of the California Constitution. . . under *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App.4th 1264 (*County of Sonoma*).”⁹

Finally, DTSC argues that the preparation of HMAs is a condition of funding and “compliance with these funding conditions fails to provide a new program or higher level of service to the public to qualify as a reimbursable state mandate under *County of Sonoma*.”¹⁰ DTSC argues that prior to 1975, the state did not fund site acquisition and investigation costs, so the state has not shifted state program costs to the districts.¹¹ Specifically, DTSC states:

Here, the program at issue concerns school facility safety, an area that the state has long regulated to assure safety of school children in facilities for compulsory education. (Former Educ. Code § 39002; *Hall v. City of Taft* (1956) 47 Cal. 2nd 177, 185-186.) A mandate is a new program if the local entity had not been previously required to implement it. (*County of Los Angeles v. Commission on*

⁵ DTSC, comments on the test claim (02-TC-43), *supra*, p. 1.

⁶ *Id.*, p. 4, citing *Connell v. Superior Court*, *supra*, 59 Cal.App.4th 382.

⁷ *Id.*, p. 5.

⁸ DTSC, comments on the test claim (02-TC-43), *supra*, p. 5.

⁹ DTSC, comments on the test claim (02-TC-43), *supra*, p. 1.

¹⁰ DTSC, comments on the test claim (02-TC-43), *supra*, p. 1.

¹¹ *Id.*, p. 7.

State Mandates (2003) 110 Cal.App.4th 1176 at p. 1189 (*Los Angeles* 2003.) However, to qualify for reimbursement, the program must be one that the state previously funded in whole and would newly be funded solely by local tax revenues and not by other levies. (*Los Angeles* 2003, *supra*, 110 Cal. App.4th at 1193, citing *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App. 4th 1264 at p. 1289.)

DTSC states that HMAs do not provide a new service to the public. Instead, they require research and periodic evaluation at key decision points, such as the Phase I Assessment and PEA, to help inform public spending decisions to assure reasonable use of state school facility funds.¹² This increased level of information also protects against commitment to sites with unknown contamination levels. In addition, these processes assure that the site is reasonably safe for its intended use: occupancy by children for compulsory education. The situation here is similar to *County of Los Angeles v. Department of Industrial Relations* where the court found costs of complying with new elevator and earthquake safety standards were not reimbursable as state mandates because they provided no new or increased level of service to the public.¹³

III. Procedural History

The *School Facilities Funding Requirements* (02-TC-30) test claim was filed with the Commission on June 04, 2003. The *Hazardous Materials Assessments* (02-TC-43) test claim was filed with the Commission on June 23, 2003. Between 2003 and 2010, various parties requested and received multiple extensions to file comments on both of these test claims. During this period the Commission received comments from the claimant, DOE, DTSC and DOF. On January 25, 2010, 02-TC-30 and 02-TC 43 were consolidated under the name *School Facilities Funding Requirements*, since the requirement to prepare a hazardous materials assessment is also a school facilities funding requirement and there was some overlap in statutes pled. On May 27, 2010, an amendment to the consolidated test claim (09-TC-01) was filed. The potential reimbursement period for any reimbursable state-mandated new programs or higher level of service found in this consolidated test claim begins on July 1, 2001.

IV. Commission's Responsibility

Under article XIII B, section 6 of the California Constitution, local governments and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments or school districts to be eligible for reimbursement, one or more similarly situated local governments or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.

¹² DTSC, comments on the test claim (02-TC-43), *supra*, p. 10.

¹³ *Ibid.*

In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.¹⁴

V. Claims

The following chart provides a brief summary of the claims and issues raised by the claimant, and staff's recommendation.

Claim	Description	Issues	Staff Recommendation
Education Code section 17213.1, as added by Statutes of 1999, chapter 1002.	This section requires, as a condition of receipt of SFP funding, that prior to acquiring a schoolsite, the school district contract with an environmental assessor to supervise the preparation of, and sign, a Phase I Assessment of the proposed schoolsite unless the district decides to proceed directly to a PEA.	Claimant alleges the requirement to prepare HMAs as a condition of SFP funding imposes state-mandated costs.	<u>Denied:</u> The Commission does not have jurisdiction over Education Code section 17213.1, as added by Statutes of 1999, chapter 1002, because this statute was the subject of a final decision of the Commission, <i>Acquisition of Agricultural Land for a School Site</i> (98-TC-04 and 01-TC-03).
Education Code sections 39003 and 39120	These sections are similar to Public Resources Code sections 21151.4 and 21151.8 (related to HMAs) which are also pled in this test claim.	Claimant alleges the activities required by these statutes impose state-mandated costs.	<u>Denied:</u> Education Code sections 39003 and 39120 were repealed by Statutes 1996, chapter 277 (S.B.1562), section 6, operative January 1, 1998 and thus cannot be reimbursable.
Health and Safety Code section 25358.1	Imposes requirements on "any potentially responsible party, or any person who has or may have, acquired information relevant to [specified hazardous substance release related matters] in the course of commercial, ownership, or contractual relationship with any potentially responsible party." ¹⁵	Claimant alleges the activities required by this statute impose state-mandated costs.	<u>Denied:</u> The requirements imposed are not unique to government but apply generally to all residents and entities in the state.

¹⁴ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

¹⁵ Health and Safety Code section 25358.1, subdivision (b).

Health and Safety Code Section 25358.7.1	Authorizes formation of a community advisory committee “to review any response action and comment on the response action to be conducted in that community” which DTSC is required to regularly communicate, and confer with as appropriate.	Claimant alleges the activities required by this statute impose state-mandated costs.	<u>Denied:</u> Based on the plain language of this statute, Health and Safety Code section 25358.7.1 requires DTSC to perform activities but does not mandate school districts to perform any activities.
The Substantial Progress and Expenditure Audit Guide of May ‘03, The SFP Guidebook of Jan ‘03, The State Relocatable Classroom Program Handbook of Jan ‘03, and The Lease-Purchase Applicant Handbook of Apr ‘98	These guidebooks generally provide an overview of their respective programs and guide school districts and others through the funding and approval processes citing to specific statutory and regulatory authority.	Claimant alleges the claimed guidebooks are executive orders that impose state-mandated costs.	<u>Denied:</u> The claimed guidebooks do not meet the definition of “executive order” under Government Code section 17516 since they do not require performance of activities not required by statute or duly adopted regulation.
Conditions of SFP funding (including HMAs), issuance of local bonds and participation in other voluntary programs (e.g. the lease of portable classrooms)	Conditions of SFP funding include planning, environmental, building safety, labor, public participation/disclosure and bond funding accountability requirements. The State Relocatable Classroom Law and California School Finance Authority Act also impose requirements.	Claimant alleges the requirement to perform activities impose state-mandated costs.	<u>Denied:</u> School districts are not legally compelled, and there is no evidence in the record that school districts are practically compelled, to participate in the programs pled.

VI. Analysis

Staff makes the following findings:

- A. The Commission does not have jurisdiction over Education Code section 17213.1, as added by Statutes of 1999, chapter 1002, because this statute was the subject of a final decision of the Commission, Acquisition of Agricultural Land for a School Site (98-TC-04 and 01-TC-03).**

The Commission has adopted a prior test claim related to school facility finance requirements that made specific findings on one of the statutes pled in this test claim. This prior decision is a final, binding decision which is relevant to the issue of jurisdiction.

In *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03), the Commission found that Education Code section 17213.1, as added by Statutes of 1999, chapter 1002, did not impose a reimbursable state mandate on school districts because “the procedures a school district

must follow when it seeks state funding pursuant to the Leroy Greene School Facilities Act of 1998 (commencing with Educ. Code, § 17070.10) are not state-mandated because the school district is not required to request state funding under section 17213.1.”¹⁶

B. The Remaining Test Claim Statutes And Alleged Executive Orders Are Not Subject To Reimbursement Under Article XIII B, Section 6 of The California Constitution Because:

- 1. Education Code sections 39003 and 39120 have been repealed since January 1, 1998, prior to the beginning of the potential reimbursement period for this test claim and thus cannot be reimbursable.**

Education Code sections 39003 and 39120 were repealed by Statutes 1996, chapter 277 (S.B.1562), section 6, operative January 1, 1998. Because they have not been operative at any time during the reimbursement period, they cannot be reimbursable.

- 2. The Audit Guides and Handbooks Claimed are not Executive Orders Subject to Article XIII B, Section 6.**

Staff finds that the Substantial Progress and Expenditure Audit Guide of May 2003, the School Facility Program Guidebook of January 2003, the State Relocatable Classroom Program Handbook of January 2003, and the Lease-Purchase Applicant Handbook of April 1998 are not executive orders. An executive order is “any order, plan, requirement, rule or regulation” issued by the Governor or any official serving at the pleasure of the Governor.¹⁷ Although the above-mentioned audit guide, guidebook and handbooks are issued by state agency directors who serve at the pleasure of the Governor, they do not impose an “order, plan, requirement, rule or regulation.”

- 3. Health and Safety Code Section 25358.1 as Added By Statutes 1999, Chapter 23 Does Not Impose a State-Mandated Program On School Districts Subject to Article XIII B, Section 6 of the Constitution Because The Requirements It Imposes Are Not Unique to Government.**

Health and Safety Code Section 25358.1 imposes several requirements on “any potentially responsible party, or any person who has or may have, acquired information relevant to [specified hazardous substance release related matters] in the course of commercial, ownership, or contractual relationship with any potentially responsible party.” Health and Safety Code Section 25358.1 by its own terms applies to all potentially responsible parties, both private and public. As the *County of Los Angeles v. Department of Industrial Relations*¹⁸ court explained, “[w]ere section 6 construed to require state subvention for the incidental cost to local governments of general law, the result would be far-reaching indeed.”¹⁹ There, the court found

¹⁶ *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03), p. 14. Note that section 17213.1 was amended by Statutes 2000, chapter 443 and Statutes 2002, chapter 935 which were also pled in this test claim and are not the subject of a final Commission decision. Therefore, those statutes are addressed below.

¹⁷ Government Code section 17516.

¹⁸ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal. App.3d 1538.

¹⁹ *County of Los Angeles v. State of California, supra*, p. 56.

that the regulations were not a program because the regulations did not impose a unique requirement on local government and “[p]roviding elevators equipped with fire and earthquake safety features simply is not ‘a governmental function of providing services to the public.’”²⁰ Likewise here, staff finds that the requirement that potentially responsible parties disclose information and provide access to DTSC or the applicable regional water quality control board is not unique to government but applies generally to all residents and entities in the state who find themselves in the position of being a potentially responsible party for purposes of CERCLA/Superfund.

As the requirements of Health and Safety Code Section 25358.1 as added by Statutes 1999, chapter 23 applies to both public and private entities, not just those which are publicly owned, it does not impose a “unique requirement” on local governments, and thus it does not meet the second definition of “program” established by *County of Los Angeles*.

Providing access to facilities and disclosure about the release of hazardous substances for which one may be liable is not “a governmental function of providing services to the public” and is not unique to government. Therefore, staff finds that Health and Safety Code Section 25358.1 as added by Statutes 1999, chapter 23 does not impose a new program or higher level of service subject to reimbursement under Article XIII B, section 6 of the California Constitution.

4. Health and Safety Code section 25358.7.1, as added by Statutes 1999, chapter 23, Does Not Impose Any Activities or State-Mandated Duties on School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution.

Health and Safety Code section 25358.7.1 authorizes the formation of a community advisory committee “to review any response action and comment on the response action to be conducted in that community” and requires DTSC to regularly communicate, and confer as appropriate, with the community advisory committee. Based on the plain language of this statute, Health and Safety Code section 25358.7.1 requires DTSC to perform activities but does not mandate school districts to perform any activities. Therefore, staff finds that Health and Safety Code section 25358.7.1, as added by Statutes 1999, chapter 23 does not impose state-mandated duties on school districts within the meaning of Article XIII B, Section 6 of the California Constitution.

5. The Remaining Test Claim Statutes and Regulations Do Not Impose State-Mandated Duties on School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution.

- a) **School districts are not legally required to acquire new school sites, build new schools, undertake modernization projects, add portable classrooms or to request and accept SFP funding, issue local bonds or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations.**

The decision to acquire a new school site, build a new school, undertake a school modernization project, add portable classrooms and accept SFP funding, issue local bonds or participate in one

²⁰ *Id.*, p 1545.

of the other voluntary programs pled in this test claim can arise in a myriad of ways, from a district-level decision to an initiative enacted by the voters. Likewise, there are a number of funding sources that a school district might utilize to fund discretionary school construction projects and a number of alternatives to building a new school that a district might consider.

When SFP funding is used to acquire a school site or for school construction, compliance with the applicable SFFRs including the preparation of HMAs and related activities is a condition of funding. Generally, requirements imposed as a condition of SFP funding include various planning, environmental, building safety, labor, public participation/disclosure and bond funding accountability requirements. Likewise, when local bonds are issued, compliance with the requirements of the statutory scheme under which they are issued is required.²¹ These requirements generally include disclosure, voting and fiscal accountability. Similarly the “other” programs referred to in this analysis, the State Relocatable Classroom Law and California School Finance Authority Act impose their own requirements. What all of these requirements have in common; however, is that they are all downstream requirements triggered by a school district’s decision to participate in the overlying program in order to acquire, expand, or modernize school facilities. Therefore, staff finds that school districts are not legally compelled to request or accept state funding, issue local bonds or participate in the other voluntary programs pled thus triggering the SFFRs requirements.

- b) The evidence in the record does not support a finding that school districts are practically compelled to acquire new school sites, build new schools, undertake modernization projects, add portable classrooms or to request and accept SFP funding, issue local bonds or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations. Rather, the requirement to comply with the SFFRs is triggered by a district’s voluntary decisions to request and accept state matching funds under the SFP, to issue local bonds or to participate in one of the other voluntary programs pled.**

There are no facts in the record to support a finding of practical compulsion. Practical compulsion must be demonstrated by specific facts in the record showing that unless the alleged activity is performed, here the activity of acquiring new school sites, building new school facilities or modernizing existing schools and accepting SFP funding, issuing local bonds or opting to participate in other state programs to further such projects, which would in turn trigger the requirement to comply with the SFFRs that are a condition of those funding programs, the district faces “certain and severe ... penalties’ such as ’double ... taxation’ or other ’draconian’ consequences.” Only a showing that relying on alternative arrangements to house students or

²¹ Note that, as discussed in the background above, when a school district acquires land or builds exclusively with its own funds, which may include funds from the issuance of bonds under some of the test claim statutes, they are exempt from some of the SFFRs (in particular some of the HMA requirements) imposed on districts that build with state funds.

alternative funding sources would result in such severe consequences will meet the practical compulsion standard.

VII. Conclusion

Staff concludes that the test claim statutes do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the reasons listed on pages 65-67 of this analysis.

VIII. Staff Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

STAFF ANALYSIS

Claimant

Clovis Unified School District

Chronology

- 6/04/2003 Claimant, Clovis Unified School District, filed School Facilities Finance Requirements test claim (02-TC-30) with the Commission on State Mandates (“Commission”)²²
- 6/23/2003 Claimant, Clovis Unified School District, filed Hazardous Materials Assessments test claim (02-TC-43) with the Commission on State Mandates (“Commission”)²³
- 07/11/2003 Commission staff issued completeness review letters for 02-TC-30 and 02-TC-43 and requested comments from state agencies
- 07/29/2003 Department of Finance (DOF) requested an extension of at least 30 days to file comments on test claim 02-TC-43
- 07/30/2003 DOF requested an extension of at least 30 days to file comments on test claim 02-TC-43
- 08/01/2003 The Commission granted DOF’s request allowing an extension to September 11, 2003 to file comments on test claim 02-TC-43
- 08/06/2003 The Commission granted DOF’s request allowing an extension to September 4, 2003 to file comments on test claim 02-TC-30
- 08/11/2003 Department of Education (DOE) submitted comments on test claim 02-TC-30
- 08/26/2003 Department of Toxic Substances Control (DTSC) requested an extension of 45 to file comments on test claim 02-TC-43
- 08/27/2003 The Commission granted DTSC’s request for an extension to October 27, 2004 to file comments on test claim 02-TC-43
- 09/03/2003 The Attorney General’s Office requested an extension to October 8, 2003 to file comments on test claim 02-TC-30
- 09/09/2003 The Commission granted Attorney General’s Office request allowing an extension to October 8, 2003 to file comments on test claim 02-TC-30
- 10/22/2003 The Attorney General’s Office requested an extension to December 18, 2003 to file comments on test claim 02-TC-30

²² Based on the filing date of June 4, 2003, the potential period of reimbursement for 02-TC-30 begins on July 1, 2002.

²³ Based on the filing date of June 27, 2003, the potential period of reimbursement for 02-TC-43 begins on July 1, 2002.

- 09/09/2003 The Commission granted Attorney General's Office request allowing an extension to December 18, 2003 to file comments on test claim 02-TC-30
- 10/27/2003 DTSC submitted comments on test claim 02-TC-43
- 10/28/2003 DOF requested an extension until February 2004 to file comments on test claims 02-TC-30 and 02-TC-43
- 11/07/2003 The Commission granted DOF's request allowing an extension to February 7, 2004 to file comments on test claim 02-TC-30 and 02-TC-43
- 11/26/2003 Claimant submitted a response to DTSC's comments on test claim 02-TC-43
- 01/28/2004 Claimant submitted a correction to its response to DTSC's comments on test claim 02-TC-43
- 02/03/2004 DOF submitted comments on test claim 02-TC-43
- 02/06/2004 DTSC submitted a memo responding to claimant's November 26, 2003 response regarding 02-TC-43
- 02/09/2004 DOF submitted comments on test claim 02-TC-30
- 02/20/2004 Claimant submitted a response to DOF's comments on test claim 02-TC-43
- 02/23/2004 Claimant submitted a response to DTSC's February 6, 2004 memo regarding 02-TC-43
- 01/25/2010 Commission staff issued a Notice of Consolidation of Test Claims and Hearing Date for test claims 02-TC-30 and 02-TC-43
- 04/27/2010 Commission staff issued a Request for Clarification on Test Claim Filing for 02-TC-43
- 05/26/2010 Claimant submitted a test claim amendment 09-TC-01

I. Background

This test claim addresses the activities required of school districts to comply with school facilities funding requirements (SFFRs). If a school district makes a decision to build or modernize a school, it must determine how to fund that construction. Generally, a school can seek grant funding from the state through the State School Facility Program (SFP), which is funded through state bonds and/or it may issue local bonds pursuant to one of several local bond acts. Usually, but not always, schools rely on a combination of state and local bond funding for facilities.

If a school district decides to issue local bonds, it must comply with the public disclosure and other accountability requirements contained within the act under which the district decides to issue bonds, some of which were required by the statewide bond initiatives specifying the voting requirements for the issuance of local bonds. If a school district decides to seek state bond funding through the SFP (i.e. grant funding), the district must comply with various planning, environmental, building safety, labor, public participation/disclosure and bond funding accountability requirements as a condition of receipt of that funding which includes preparation of hazardous materials assessments (HMA) and performing many of the other activities pled in this consolidated test claim.

HMA's are conducted to provide basic information for determining if there has been a release or there is a threatened release of a hazardous material or if there may be a naturally occurring hazardous material present at the site which may pose a risk to human health or the environment. A Phase I Assessment must be prepared to identify the potential for hazardous material release or the presence of naturally occurring hazardous materials. If such a potential is found then a Preliminary Endangerment Assessment (PEA) is required to evaluate the threat posed to public health or the environment. The California Education Code requires DTSC to review Phase I Assessments and PEAs, and to make a determination about the need for further action or remediation.²⁴ School districts may elect to proceed directly to a PEA without having first completed a Phase I Assessment which can reduce costs when there is a known hazardous material present.²⁵

There are two other programs pled in this test claim that do not fit neatly into the state funding or local bond funding categories:

- The State Relocatable Classroom Law of 1979 under which claimant alleges costs for activities related to the lease of portable classrooms from the State; and
- The California School Finance Authority Act, under which a school district may borrow funds from the state which are generally repaid with future Proposition 98 funds.

In order to determine whether the activities to which claimant's alleged costs are connected constitute state-mandated local programs or higher levels of service subject to reimbursement under Article XIII B section 6 of the California Constitution, it is helpful to have an understanding of the history of school facility financing in California and the various programs under which costs are being claimed.

A. A Brief History of the Role of the State in School Facility Finance²⁶

Prior to 1976, school facilities were funded entirely by local tax revenues with the assistance of state loans and land grants and private donations. From the early days of California statehood until 1933, state involvement in school facility finance was restricted to providing land grants to local communities for the purpose of establishing public schools. The California Constitution set aside large tracts of public land for the creation of public schools and required that every district in the state operate a public school for at least three months a year. The construction and renovation of these schools was financed entirely with local tax revenue. In fact, in the late 1960's over 90 percent of public school funding came from local property taxes, supplemented by the State School Fund.²⁷

²⁴ Education Code section 17213.2.

²⁵ Education Code section 17213.1.

²⁶ In addition to the citations to specific sources, this overview draws extensively from the history of California school facility finance provided by two reports: *School Facility Financing – A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds* (Cohen, Joel, February 1999) and *Financing School Facilities in California* (Brunner, Eric J., October 2006).

²⁷ *County of Sonoma v. Commission on State Mandates*, "County of Sonoma" (2000), 84 Cal. App. 4th 1264, 1271. (Citing *Serrano v. Priest* (1971) 5 Cal. 3d 584, 591 & fn. 2 (*Serrano I.*))

The Long Beach earthquake struck just hours after classes ended on March 10, 1933 “and caused numerous school buildings in Long Beach and surrounding communities to collapse which provoked ‘public outcry over the vulnerability of school building to earthquake-related damage.’ In response, the state Legislature passed the Field Act on April 10th 1933.”²⁸ The Act mandated the Division of the State Architect (DSA) to develop earthquake-resistant design and construction for all public schools in the state. It also required architects, engineers and inspectors to file reports verifying that schools were in compliance with the provisions of the Field Act.²⁹ Thus, state involvement in school construction and renovation began with state oversight of construction design and mandatory construction inspections. Although the Field Act has been amended over time, the basic requirements of the Act have been continuously in place.

The State Allocation Board was created in 1947, and was directed by the state Legislature to allocate state funds for school construction and renovation. Originally, the funds allocated were loans to the local districts. Beginning in the 1970’s, however, school facility finance began to evolve from a locally-financed system to a system best described as a partnership between local school districts and the state. First, in 1971, the disparity created by reliance on the value of a district’s real estate was found to impermissibly discriminate in *Serrano I*.³⁰ After *Serrano I*, the state increased the amount of state aid to schools and tied limitations to inflation adjustments such that schools with lower local revenues received higher upward inflation adjustments. At this point, “...financial responsibility was still primarily with local government, with the state supplying aid in an attempt to remedy the deficiencies identified by the court”³¹ in *Serrano I*.

In 1976, in *Serrano II*³² the court determined that the Legislature’s actions to remedy the inequities were insufficient and that the school finance system “impermissibly ‘renders the educational opportunity available to the students of this state a function of the taxable wealth [per pupil] of the districts in which they live.’”³³ The Legislature then passed further legislation, Assembly Bill 65, (Stats. 1977, ch. 894) which would have back-filled poorer districts’ revenues with state assistance, if actual revenues fell below a scheduled amount and would also transfer some revenues from high to low wealth districts. School finance though, even under this scheme, would have remained a jointly funded system, with the majority of funds coming from local property tax revenues. However, before Assembly Bill 65 could take effect, the voters enacted Proposition 13 in 1978, which fundamentally altered the ability of local governments to raise funds through local property tax revenues.

²⁸ Brunner, p. 4, citing Heumann, Leslie, *Preliminary Historic Resources Survey of the Los Angeles Unified School District: Historic Context Statement*, prepared for the Los Angeles Unified School District Facilities Services Division by Science Applications International Corporation, Los Angeles, CA, March 2002, p. 9.

²⁹ Brunner, p. 4.

³⁰ *Serrano I*, *Ibid*.

³¹ *County of Sonoma*, *supra*, 84 Cal. App. 4th 1264, 1271.

³² *Serrano v. Priest* (1976) 18 Cal. 3d 728 (*Serrano II*).

³³ *County of Sonoma*, *supra*, 84 Cal. App. 4th 1264, 1271, (citing *Serrano II*).

Between 1970 and 1982, student enrollment in California's public schools was declining and hence there was little demand for state funds. However, Proposition 13 eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness and capped the ad valorem tax rate on real property at one percent of its value, thereby reducing the income from property taxes to such an extent that it virtually eliminated this source as a means for lease payments. Proposition 13 also prohibited the electorate of a school district from authorizing a tax over-ride to pay debt service on bonds for the purpose of constructing needed school facilities.

The enactment of the Leroy Greene State School Building Lease-Purchase Law in 1976³⁴ marked the beginning of the transition from state loan to state grant funding of school facilities. However, in June of 1976 the voters rejected the bond initiative that was necessary to fund the Lease Purchase Program. Because of declining enrollment, the lack of funding did not pose a problem for most school districts for several years.³⁵ Eventually, however, the Legislature and the voters provided funding for the lease-purchase program through several bond initiatives and also provided school districts with authority to raise local funds through the Mello-Roos Community Facilities District Act and the imposition of developer fees, neither of which have been pled in this test claim. The Lease-Purchase Law significantly altered the state's role in how school facilities construction was financed. This law established a state fund to provide loans to school districts for reconstruction, modernization, and replacement of school facilities that were more than 30 years old. The state held title to the schools until the loans were paid off. Over the course of the 1980s and 1990s there were several amendments to the Act that reduced the obligation of school districts to pay for facilities funding and beginning the transition from a loan program to a grant program.

³⁴ Education Code Section 17700- 17766, Statutes 1976, chapter 1010.

³⁵ *Financing School Facilities in California, supra*, p. 6.

B. An Overview of the Programs Pled

1. Leroy F. Greene School State School Building Lease-Purchase Law School Facility Program/Leroy F. Greene School Facilities Act Overview³⁶

As discussed above the Leroy Greene State School Building Lease-Purchase Law was enacted in 1976.³⁷ The Leroy F. Greene School Facilities Act of 1998, Education Code sections 17070.10 – 17079.30, was chaptered into law on August 27, 1998, establishing the state school facility program (SFP).³⁸ The same bill that enacted The Leroy F. Greene School Facilities Act of 1998 substantially amended the Leroy Greene State School Building Lease-Purchase Law to create one SFP. Proposition 1A, the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, which provided funding for the SFP was approved by the voters on November 3, 1998.

The SFP provides funding grants for school districts to acquire school sites, construct new school facilities, or modernize existing school facilities. The two major funding types available are “new construction” and “modernization.” The new construction grant provides funding on a 50/50 state and local match basis. The modernization grant provides funding on a 60/40 basis. Districts that are able to meet the financial hardship provisions may be eligible for additional state funding of up to 100 percent of the local share of cost. There are a number of requirements that a district must meet in order to receive state funding under the SFP including the requirement to prepare a hazardous materials assessment (HMA) pursuant to Education Code, Title 1, Division 1, Part 10.5 and related statutes.

³⁶ Specifically Education Code sections 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25 and 100620 and California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50 and 1865.70.

³⁷ Note that effective November 4, 1998, with the exception of the funding joint use facilities pursuant to Education Code section 17052, all school construction projects approved or funded by the SAB must be approved pursuant to Chapter 12.5 (i.e. Education Code sections 17070.10 *et seq.*)

³⁸ Statutes 1998, chapter 407, section 32 (Senate Bill 50).

In order to obtain funding under the SFP, school districts must obtain approval from a number of state agencies. These include the State Allocation Board (SAB), the Office of Public School Construction (OPSC), the Division of the State Architect of the Department of General Services, the School Facilities Planning Division of DOE, DTSC, and the Department of Industrial Relations.

SAB is responsible for approving all state apportionments for new school construction and modernization projects. The OPSC is the administrative arm of the SAB. Its primary responsibilities include: allocating state funds for projects approved by the SAB, reviewing eligibility and funding applications, and providing information and assistance to school districts. The Division of the State Architect has been involved in the process of school construction since the Field Act was first passed in 1933. The primary responsibility of the Division of the State Architect is to review and approve construction plans and to ensure those plans are in compliance with the Field Act. Division of the State Architect approval is required for all new school construction and modernization projects.

The primary role of the School Facilities Planning Division is to approve school district site and construction plans. The School Facilities Planning Division reviews the “educational adequacy” of proposed projects to ensure they meet the needs of students and teachers. The School Facilities Planning Division also works with DTSC to review any potential environmental hazards associated with a project. The final agency involved in the process is Department of Industrial Relations. The primary responsibility of this agency is to ensure that school districts are in compliance with labor laws relating to contractors and employers. Before any funding from the SFP is released to a school district, the district must obtain certification that its Labor Compliance Program has been approved by Department of Industrial Relations.

The process of obtaining state funding through SFP is divided into two steps: an application for eligibility and an application for funding. Applications for eligibility are reviewed by the OPSC and then presented to the SAB at one of their monthly meetings for approval. Upon receiving approval from the SAB, a district may request funding by submitting a funding application to the OPSC. The funding application must include supporting documentation that shows that the district’s plans for construction have been approved by the Division of the State Architect and the School Facilities Planning Division. The completed funding application is reviewed by the OPSC and then submitted to the SAB for a funding apportionment. Funds apportioned by the SAB are released once the district has provided evidence that it has secured funding for required local matching funds (generally 50 percent of new school construction projects costs and 40 percent of modernization project costs), and evidence that it has entered into a binding contract for at least 50 percent of the proposed construction project. According to the OPSC, most funding applications can now be reviewed and receive final approval from the SAB within 60 to 90 days.

a) Establishing Eligibility

To obtain state funding for new school construction projects, districts must first demonstrate that existing seating capacity is insufficient to house existing students or anticipated students using a five-year projection of enrollment. Districts may establish eligibility on a district-wide basis or, if only some areas within the district are facing capacity constraints, on a High School Attendance Area basis.

The eligibility application for modernization projects consists of a single form, SAB 50-03. To qualify for funding, a school building must be at least 25 years old or, in the case of a portable classroom, at least 20 years old. In addition, districts may submit applications for modernization projects on a site by site basis, rather than the district or School Attendance Area-wide basis used for new school construction eligibility.

b) Applying for Funding

New school construction projects are funded by the state on a per-pupil basis. Site acquisition and development grants are made on a 50/50 state and local matching basis. The amount of the grant is determined by multiplying the number of unhoused students (determined in the eligibility phase), by a per-pupil grant that is adjusted annually by the SAB to account for changes in construction costs. As of January 1, 2010, the per-pupil grant amounts for new school construction are as follows:

Elementary \$8,738

Middle \$9,241

High \$11,757

Special Day Class – Severe \$24,550

Special Day Class – Non-Severe \$16,418³⁹

Supplemental grants are also available to fund special project needs. The most common supplemental grants are site acquisition grants and site development grants, which respectively cover costs associated with purchasing a site and preparing a site for construction. There are also supplemental grants for meeting fire code, energy efficiency, and special education requirements as well as for multi-level construction, project assistance, replacement with multi-story construction, grants for certain geographic locations, small size projects, new school projects, and urban locations.

The funding application for new school construction consists of a single form, SAB 50-04. While the form itself is relatively simple, districts must also file with their application a number of supporting documents. These include: (1) an appraisal, escrow closing statement or court order and a CDE site approval letter if the project involves site acquisition; (2) DSA approval of construction plans; (3) CDE approval of final plans; and, (4) a set of district certifications that include (among other things) the establishment of a restricted maintenance account, certification that the district will fund its share of the project, and certification that the district's Labor Compliance Program has been approved by the Department of Industrial Relations.

School districts that receive state funding for new construction or modernization projects under the SFP are required to establish a restricted maintenance account to ensure that projects are kept in good repair. For a period of 20 years, districts that receive SFP funding are required to deposit no less than three percent of their general fund budget annually into the restricted maintenance account.⁴⁰ Small districts may deposit less than three percent into the account if they can demonstrate an ability to maintain their facilities using a smaller amount of money.⁴¹

³⁹ State Allocation Board, Annual Adjustment to School Facility Program Grants, State Allocation Board Meeting, January 27, 2010.

⁴⁰ Education Code section 17070.75.

⁴¹ *Id.*

Modernization projects are also funded by the state on a per-pupil basis. The amount of the grant is determined by multiplying the number of students to be housed in a modernized building by a per-pupil grant that is adjusted annually by the SAB to account for changes in construction costs. As of January 27, 2010, the per-pupil grant amounts for modernization projects are as follows:

Elementary \$3,738

Middle \$3,520

High \$4,607

Special Day Class – Severe \$10,600

Special Day Class – Non-Severe \$7,092⁴²

The funding application process for modernization projects is very similar to the process for new school construction. The application process consists of a single form, SAB 50-04, and a set of supporting documents that ensure the district has obtained DSA and CDE approval for its construction plans and obtained the requisite certifications. These certifications include: the establishment of a restricted maintenance account, verification that the building to be modernized was not previously modernized under the old Lease-Purchase Program, evidence that the district has obtained funding to meet its required 40 percent match for project costs, and approval from the Department of Industrial Relations for the district's Labor Compliance Program.

c) Financial Hardship

School districts unable to contribute some or all of the local matching funds required for new school construction and modernization projects may apply to the OPSC for financial hardship status.⁴³ If financial hardship status is granted, districts can receive up to 100 percent state funding for eligible new school construction and modernization projects. Districts seeking financial assistance must have their financial hardship status approved prior to submitting an application with the OPSC for funding. To qualify for financial hardship funding, a district must demonstrate the following: (1) it is levying developer fees up to the maximum amount allowed by law; (2) it has made every reasonable effort to raise local revenue to fund a project; and, (3) evidence of financial inability to contribute the required local matching funds.⁴⁴

2. The Strict Accountability in Local School Construction Bonds Act of 2000⁴⁵

The Strict Accountability in Local School Construction Bonds Act of 2000 was enacted as an alternative to issuing bonds pursuant to Education Code section 15120 *et seq.* or 15300 *et seq.* and was made operative contingent upon the passage of Proposition 39, which was approved at the November 2000 election. The Act allows for a reduced vote requirement of 55 percent (instead of two-thirds) for approving a school district bond measure and imposes additional requirements on districts that issue bonds using the 55 percent vote. Specifically it:

⁴² State Allocation Board, Annual Adjustment to School Facility Program Grants, State Allocation Board Meeting, January 27, 2010.

⁴³ Education Code section 17075.10.

⁴⁴ *Ibid.*

⁴⁵ Specifically, Education Code sections 15271, 15272, 15274, 15276, 15278, 15280, 15282 and 15284.

- Provides that the governing board of a school district may, by a two-thirds vote of the board, place a school bonds measure on the ballot that only requires a vote of 55 percent of the electorate to authorize the bonds;⁴⁶
- Provides that the 55 percent bond elections can only be at regularly scheduled state and local elections and statewide special elections;⁴⁷
- Specifies that the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under the code that governs bonds authorized by a 66 percent vote;⁴⁸
- Specifies that the total amount of bonds issued pursuant to 55 percent bonds shall not exceed 1.25 percent of the taxable property of the district and that the tax rate shall not exceed \$30 per \$100,000 of taxable property;⁴⁹
- Provides that notwithstanding the general restriction to 1.25 percent of the taxable property of the district, any unified school district may issue 55 percent bonds not to exceed 2.5 percent of the taxable property of the district, not to exceed a tax rate of sixty dollars (\$60) per one hundred thousand dollars (\$100,000) of taxable property;⁵⁰
- Specifies that a county board of education may not order an election to determine whether 55 percent bonds may be issued under this article to raise funds for a county office of education;⁵¹
- Provides that the 55 percent ballot shall also be printed with a statement that the board will appoint a "citizens' oversight committee" and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes;⁵²
- Specifies that if the bonds are approved by the voters, the governing board of the school district shall establish and appoint members to the independent citizens' oversight committee within 60 days of the date that the governing board enters the election results on its minutes;⁵³
- Specifies that the purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues and be active guardians of the public trust in ensuring the prudent expenditure of taxpayers' money for school construction. They shall ensure that no funds are used for any teacher or administrative salaries or

⁴⁶ Education Code section 15266.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Education Code section 15268.

⁵⁰ Education Code section 15270.

⁵¹ Education Code section 15276.

⁵² Education Code section 15272.

⁵³ Education Code section 15278.

other school operating expenses. In addition, the Act authorizes the committee to engage in any of the following activities:

- a) Receive and review copies of the annual, independent performance and financial audits required by the law authorizing 55 percent bonds;
 - b) Inspect school facilities and grounds to ensure that bond revenues are expended in compliance with law;
 - c) Receive and review copies of any deferred maintenance proposals or plans developed by a school district;
 - d) Review efforts by the school district to maximize bond revenues by implementing cost-saving measures.⁵⁴
- Specifies that the governing board of the district shall, without expending bond funds, provide the citizens' oversight committee with technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee;⁵⁵
 - Specifies that a) all committee proceedings shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board, b) the committee shall issue regular reports on the results of its activities, c) a report shall be issued at least once a year, d) minutes of the proceedings of the committee and all documents received and reports issued shall be a matter of public record and be made available on the website maintained by the governing board;⁵⁶
 - Specifies that the citizens' oversight committee shall consist of at least seven members, as specified, to serve for a term of two years without compensation and for no more than two consecutive terms;⁵⁷
 - Specifies that no employee or official of the district or vendor, contractor, or consultant of the district shall be appointed to the citizens' oversight committee,⁵⁸ and
 - Provides for a cause of action for waste or misuse of bond funds. Provides for attorney fees. Establishes a law enforcement priority for investigation and prosecution for waste or misuse of bond funds.⁵⁹

3. The Issuance of Bonds by School Facility Improvement Districts

Education Code section 15300 *et seq.* provides authority for the formation of a school facilities improvement district, consisting of a portion of the territory of a school district, and for the issuance of general obligation bonds by the district. Both the county board of supervisors and

⁵⁴ *Ibid.*

⁵⁵ Education Code section 15280.

⁵⁶ *Ibid.*

⁵⁷ Education Code section 15282.

⁵⁸ *Ibid.*

⁵⁹ Education Code section 15284.

the school district must approve the formation of the district. If the county board of supervisors for the county in which the district is located adopts Part 10, Chapter 2 of the Education Code relating to the establishment of school facilities improvement districts⁶⁰ and the governing board of a school district chooses to exercise the authority to establish a school facilities improvement district, the district is required to comply with the requirements imposed by Part 10, Chapter 2 of the Education Code. The decision to establish a school facilities improvement district triggers: necessary findings and filing requirements, noticing and hearing requirements and the requirement to adopt a resolution to form the district.⁶¹ With the exception of any activities relating to the initial approval of the county board of supervisors to establish the school facilities improvement district, the resulting requirements are imposed on the school district.

The school facilities improvement district may only issue bonds for specified purposes, which generally include purchasing real property for school facilities, building new school facilities or making improvements to existing school facilities.⁶² There are also limitations imposed on the amount of bonds that may be issued based on the taxable property in the district and the amount of indebtedness and there is a process set out in statute for how to assess those limits.⁶³ If the school facilities improvement district places a bond measure on the ballot, it must abide by the requirements for holding a bond election including the specific information required to be included in the proposition statement and the certification of election results.⁶⁴

If the voters approve the bond measure, the board of supervisors of the county in which the school facilities improvement district is located shall offer the bonds for sale.⁶⁵ Education Code sections 15351-15422 generally provide the requirements for the issuance and sale of the bonds, the required form of the bonds, cancellation of unsold bonds, the purchase of bonds by issuing school districts, method of bond payment, and tax for payment of bonds.

Education Code section 15335 provides a process for commencement of an action to determine the validity of bonds and the ordering of the improvement or acquisition. A school facilities improvement district that chooses to issue bonds is required to report the amount of the bond issue, indebtedness, the percentage of qualified electors who voted, and the results of the election with the percentage of votes cast for and against the proposition.⁶⁶

4. The State Relocatable Classroom Law of 1979⁶⁷

⁶⁰ See Education Code section 15303.

⁶¹ See Education Code sections 15320, 15321, 15322, 15323, 15324, 15325, 15326 and 15327.

⁶² Education Code section 15302.

⁶³ See Education Code sections 15330, 15331, 15332, 15333, 15334 and 15334.5.

⁶⁴ See Education Code sections 15340 - 15349.2.

⁶⁵ Education Code section 15350. Note that pursuant to Education Code section 15303, a resolution by this same board of supervisors is required to make this chapter applicable in the county.

⁶⁶ Education Code section 15336.

⁶⁷ Specifically, Education Code sections 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, and 17096.

The State Relocatable Classroom Law of 1979 requires the State Allocation Board (SAB) to lease portable classrooms to qualifying school districts and county superintendents of schools, as specified. It also authorizes any qualifying school district, or a joint power of one or more school districts or county superintendents of schools, to purchase portable classrooms, as specified. Specifically:

- Education Code section 17088.3 provides the requirements for a district to qualify for a lease.
- Education Code section 17088.5 authorizes the SAB to empower a lessee as an agent of the Board and to authorize a district or superintendent to purchase portable classrooms, subject to specified conditions, when funds are unavailable to the SAB.
- Education Code section 17088.7 outlines the eligibility, costs and procedures for purchasing and leasing portable classrooms.
- Education Code section 17089 provides a range of costs for leasing a portable classroom and requires that the lessee undertake (and bear the costs of) all necessary maintenance, repairs, renewal, and replacement to ensure that it is at all times kept in good repair, working order and condition.
- Education Code section 17089.2 authorizes a district or county superintendent to purchase a portable classroom that it is leasing from the SAB for the price that SAB paid for it, less the amount of rent already paid.
- Education Code section 17090 requires lessees to insure (in an amount that the SAB deems necessary to protect the interest of the state) any leased portable classroom at their own expense for the benefit of the state, payable to the SAB for the State School Building Aid Fund.
- Education Code section 17092 restricts eligibility for portable classrooms to those districts that demonstrate to the SAB that they have no bond funds available to purchase classroom facilities except that where a district or county superintendent has received approval for a project that includes a justified number of new teaching stations, it is eligible for at least the same number of portable classrooms as approved new teaching stations. Section 17092 exempts leases and subleases for licensed child care programs or any recreation or enrichment activities or programs for school age children.
- Education Code section 17096 requires that leases of portable classrooms must require a telephone installed in each portable classroom at the time of installation of the portable classroom.

5. Issuance of School District Revenue Bonds Pursuant to Part 10, Chapter 15 of the Education Code⁶⁸

Education Code sections 17110 and 17111 authorize school districts to issue revenue bonds to finance joint occupancy facilities (i.e. properties jointly occupied by a school district and a private entity) and to contract with any person, firm, partnership, joint venture, or other private

⁶⁸ Specifically, Education Code sections 17110 and 17111.

entity for the purposes of issuing the bonds or renting or leasing the facilities. Proceeds from the rental and lease of the facilities are required to be used by the district to repay the revenue bonds.

6. Public Disclosure of Non-Voter-Approved Debt⁶⁹

Education Code section 17150, subdivision (a) requires a district that approves the issuance of revenue bonds or enters into an agreement for financing school construction, pursuant to Chapter 18 (commencing with section 17170), to notify the county superintendent of schools and the county auditor. The superintendent of the schools district is required to provide the repayment schedule for the debt and evidence of the school's ability to repay the debt to the county auditor, the county superintendent and the public. Subdivision (b) provides nearly identical requirements for a county board of education (except that notice is given to the governing board rather than the county auditor). The county auditor and the county superintendent may publicly comment on the repayment capability issue within 15 days of receipt of the information.

7. California School Finance Authority Act, Part 10, Chapter 18 of the Education Code⁷⁰

The California School Finance Authority Act provides for the powers of the California School Finance Authority (CSFA).⁷¹ CSFA consists of the following three members: the State Treasurer who serves as chair, the Superintendent of Public Instruction, and the Director of DOF.

CSFA oversees the statewide system for the sale of revenue bonds to reconstruct, remodel or replace existing school buildings, and to acquire new school sites and buildings to be made available to public school districts, charter schools, and community colleges, and to provide access to financing for working capital and capital improvements. The bond funding provided to public school districts through this program is sort of a hybrid in that the state issues the bonds but the funding is loaned to school districts (rather than granted) and is generally repaid with school district's Proposition 98 funds. In recent times, very little public school construction has been funded through CSFA.⁷² Rather, CSFA has been primarily providing funding to charter schools and community colleges.⁷³

Only financially feasible projects are intended to be funded by the CSFA and a school district may take into account all of its funds, and may base future projections upon historical experience or reasonable expectations, or a combination thereof in demonstrating feasibility.⁷⁴ The Controller is authorized, upon receipt of a deficiency notice from any school district or county office of education, to make specified apportionments to trustees. However, public credit providers may impose certain requirements on schools districts as a condition of providing credit enhancement for bonds, notes, certificates of participation, or other evidence of indebtedness of the district.⁷⁵ Specifically, the public credit provider can require a credit enhancement agreement

⁶⁹ Specifically, Education Code section 17150.

⁷⁰ Specifically, Education Code sections 17180, 17183.5, 17193.5, 1794, 17199.1, and 17199.4.

⁷¹ Education Code section 17180.

⁷² See the 2009-2010 State Budget, item 0985.

⁷³ *Ibid.*

⁷⁴ Education Code section 17183.5.

⁷⁵ *Ibid.*

that requires the Controller to allocate the apportionments to a public credit provider rather than the trustee.⁷⁶ If a district votes to participate under Education Code section 17193.5, it is required to provide a notice to the Controller that includes a schedule for the repayment of principal and interest on the bonds, notes, certificates of participation, or other evidence of indebtedness, and to identify the public credit provider that provided credit enhancement not later than the date of issuance of the bonds.

CSFA may authorize a participating school district to act as its agent in the performance of acts specifically approved by the authority, and all acts required under Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5.⁷⁷ CSFA is also authorized to purchase the rights and possibilities⁷⁸ regarding funding for school facilities approved by the SAB pursuant to the Leroy F. Greene School Facilities Act of 1998, including amounts apportioned and funded and amounts approved but not yet funded.⁷⁹ However, the authorization of the CSFA is limited to making or purchasing those secured or unsecured loans or to purchasing those rights and possibilities to those loans and rights and possibilities regarding the state's share of funding, for school facilities provided under the Greene Act.⁸⁰ There is also a limit to amounts approved and funded or amounts approved but not yet funded from proceeds of state bonds already authorized by the electors but not yet issued.⁸¹

8. Hazardous Material Assessment (HMA) and Related Statutes Overview⁸²

HMAs are conducted to provide basic information for determining if there has been a release or there is a threatened release of a hazardous material or if there may be a naturally occurring hazardous material present at the site which may pose a risk to human health or the environment. All proposed school sites which will receive state funding for acquisition or construction are required to go through a comprehensive environmental review and cleanup process under DTSC oversight.⁸³

A Phase I Assessment must be prepared to identify the potential for hazardous material release or the presence of naturally occurring hazardous materials. If such a potential is found then a PEA is required to evaluate the threat posed to public health or the environment. The California Education Code requires DTSC to review Phase I Assessments and PEAs, and to make a determination about the need for further action or remediation.⁸⁴ School districts may elect to

⁷⁶ *Ibid.*

⁷⁷ Education Code section 17194.

⁷⁸ Note: a "possibility" is a contingent interest in real or personal estate.

⁷⁹ Education Code section 17199.1.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Specifically, Education Code sections 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2; Health and Safety Code sections 25358.7, 25358.7.1 and Public Resources Code section 21151.4 and 21151.8.

⁸³ See Public Resources Code sections 21000 *et seq.* and Education Code sections 17210 *et seq.*

⁸⁴ Education Code section 17213.2.

proceed directly to a PEA without having first completed a Phase I Assessment which can reduce costs when there is a known hazardous material present.⁸⁵

School districts are eligible for reimbursement from the state for 50 percent of the cost of the Phase I Assessment and PEA and 50 percent of the response costs for removal of hazardous waste or other remedial action in connection with hazardous substances at that site.

Reimbursement is capped at 50 percent of 1½ times the appraised value of the uncontaminated site (higher in instances of extreme need). Districts that qualify for financial hardship status may obtain funding for up to 100 percent of the cost of the evaluation of hazardous materials and the response costs at a site, subject to the appraised-value cap.⁸⁶

a) Phase I Assessments

When a school district finds a site that it believes may be suitable for a new school or decides to make an addition to an existing school that would increase student capacity by 25 percent or more, it must prepare a Phase I Assessment. A Phase I Assessment is a historical search of records to evaluate past site uses and identify "recognized environmental conditions" at the prospective school site.⁸⁷ The environmental assessor reviews records to determine if the property may pose any risk of exposures to hazardous materials (such as pesticides, metals, minerals, gases, radioactive elements, PCBs, petroleum-related chemicals, or unexploded ordnances).⁸⁸ The Phase I Assessment includes a site map (showing site boundaries and figures), a description of land uses (past, current and future), and an evaluation of all sources for the potential release or presence of hazardous material (including naturally occurring hazardous material).⁸⁹ The school district submits this assessment for DTSC review, comment, and approval, along with a fee. DTSC provides comments and makes a determination within 30 days. If there is no potential contamination, DTSC will issue a "No Further Action" determination, and the HMA process is complete.⁹⁰ A completed Phase I Assessment is generally not made available for a period of public review and comment.

Section 21083 of the Public Resource Code exempts from the Phase I Assessment requirement any addition to a school that is minor under the CEQA Guidelines. California Code of Regulations, title 14, section 15314 defines "minor" as any project that does not increase original student capacity by more than 25 percent or ten classrooms, whichever is less. Portable classrooms, including when intended for permanent use, are included in this exemption.

b) Preliminary Endangerment Assessments

If the Phase I Assessment reveals potential contamination, DTSC will issue a determination of "Preliminary Endangerment Assessment (PEA) Required" (also known as a Phase II). Before starting a PEA, the school district will enter into an Environmental Oversight Agreement to

⁸⁵ Education Code section 17213.1.

⁸⁶ Education Code section 17213.1, subdivision (b).

⁸⁷ Education Code section 17210.

⁸⁸ See American Society for Testing and Materials (ASTM) Standard E1527-05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.

⁸⁹ *Ibid.*

⁹⁰ Education Code section 17213.1, subdivision, (a)(2).

follow DTSC's direction for site investigation, and to pay DTSC's projected oversight costs.⁹¹ The school district's environmental assessor will conduct an investigation, and prepare a PEA, including environmental sampling and analysis data, and a risk assessment. The PEA must be made available for public review and comment before it is finalized.⁹² This may be done as a part of the Environmental Impact Report (EIR) comment period required pursuant to CEQA or separately, at the discretion of the school district.⁹³ DTSC approves or disapproves the PEA within 30 days after the close of the public comment period for the PEA, or within 30 days of the school district's approval of the EIR for the school site.⁹⁴ If the PEA identifies no significant health or environmental risks, the district will receive a "No Further Action" determination from DTSC.⁹⁵

c) CEQA⁹⁶

CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions that can be found in CEQA and the CEQA regulations. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration (ND). If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report (EIR). If the EIR includes findings of significant environmental impacts, CEQA imposes a substantive requirement to adopt feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the project.⁹⁷ The purposes of CEQA are to:

- inform decision makers and the public about project impacts;
- identify ways to avoid or significantly reduce environmental damage;
- prevent environmental damage by requiring feasible alternatives or mitigation measures;
- disclose to the public reasons why an agency approved a project if significant environmental effects are involved;

⁹¹ See generally Education Code sections 17210, subdivision (b) and 17213.1, subdivision (a)(4)(B).

⁹² Education Code section 17213.1, subdivision, (a)(6).

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Education Code section 17213.1, subdivision, (a)(9).

⁹⁶ On September 30, 2010, the Commission adopted a Statement of Decision (03-TC-17) denying reimbursement to school districts for the majority of the statutory and regulatory sections that make up CEQA because the requirement to comply with CEQA is triggered by the district's voluntary decision to undertake a project or accept state funding for a project. However, the two CEQA code sections pled in this test claim, Public Resources Code sections 21151.4 and 21151.8, were not pled in 03-TC-17.

⁹⁷ Public Resources Code section 21002.

- involve public agencies in the process; and,
- increase public participation in the environmental review and the planning processes.⁹⁸

The EIR requirement, which effectively accomplishes the above purposes, is “the heart of CEQA.”⁹⁹

Public Resources Code sections 21151.4 prohibits approval of a ND or EIR for a project within ¼ mile of a school, which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, or which would handle an acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than a specified quantity, which may pose a health or safety hazard to persons who would attend or would be employed at the school, unless:

- (a) The lead agency preparing the EIR or ND has consulted with the school district having jurisdiction regarding the potential impact of the project on the school, and
- (b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the EIR or ND.

The Legislature enacted Public Resources Code section 21151.4 and related code sections because of:

.... incidents of health threats and nuisances at schoolsites throughout the state causing children to evacuate schools, report ill, and require medical attention. These incidents have been caused in large part by the inappropriate siting of schools and certain facilities with the potential for routine and accidental releases of hazardous and acutely hazardous air emissions.¹⁰⁰

Section 21151.8 prohibits certification of an EIR or approval of an ND for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless:

- (a) The EIR or ND includes an analysis of whether the proposed site is or was a hazardous waste or solid waste disposal site, is a hazardous substance release site, or contains pipelines carrying hazardous substances, acutely hazardous materials, or hazardous wastes and if so, provides an analysis of the hazardous substances on the site. The district must also make certain findings on the hazardous substances before approving the acquisition.
- (b) The district consults with the local air pollution district to ascertain whether any facilities within a quarter mile of a proposed site might emit hazardous materials,

⁹⁸ Public Resources Code section 21002, California Code of Regulations, title 14, section 15002.

⁹⁹ *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795.

¹⁰⁰ Statutes 1988, chapter 1589 (S.B. 3205), section 1.

substances or waste. Facilities that must be considered include, but are not limited to: freeways, busy traffic corridors, railyards, and large agricultural facilities.¹⁰¹

d) Hazardous Substance Account Act

The Hazardous Substance Account Act (HSAA) which includes Health and Safety Code sections 25358.1 and 25358.7.1 as added by Statutes 1999, chapter 23, is California's equivalent to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA, (commonly known as "Superfund"). HSAA is a 1980 law passed to address the cleanup of abandoned toxic waste sites. DTSC administers CERCLA, which is implemented in California through HSAA and related regulations. HSAA assigns liability for each site, funds the cleanup of that site from a fund created from taxes and fines levied on the site's polluters, and imposes requirements on affected property owners and potentially responsible parties and a number of related requirements on state agencies. Specifically, Health and Safety Code section 25358.1 imposes disclosure requirements on "any potentially responsible party, or any person who has, or may have, acquired information relevant to [specified hazardous substance release related questions] in the course of a commercial, ownership, or contractual relationship with any potentially responsible party."

Additionally, owners of nonresidential property must provide information to buyers, lessees or renters regarding hazardous substances that have or may have been released on the property. Failure to provide such information subjects owners to penalties. HSAA further provides that owners are responsible for the cleanup of such sites, and the removal of toxic substances, where possible. Health and Safety Code section 25358.7.1 allows the affected community to form a community advisory group "to review any response action and comment on the response action to be conducted in that community." It also requires DTSC (or the regional water quality control board in some instances) to regularly communicate, and confer as appropriate, with the community advisory committee.

e) State Site Standards and Certificates of Compliance¹⁰²

Education Code section 17251 requires the Department of Education (DOE) to:

- Advise any school district, upon request, on the acquisition of new schoolsites and give the governing board in writing a list of the recommended locations in the order of their merit considering educational, environmental, and planning and zoning issues. The district may purchase a site deemed unsuitable for school purposes by DOE after reviewing DOE's report on proposed sites at a public hearing. The DOE is required to charge the school district a reasonable fee for each schoolsite reviewed not to exceed the actual administrative costs incurred for that purpose.
- Develop standards for use by a school district in the selection of schoolsites and investigate complaints of noncompliance with site selection standards. DOE is required to notify the school district of the results of the investigation and if the notification is

¹⁰¹ Note that these requirements are identical to the requirements of former Education Code section 39003, which was repealed by Statutes 1996, chapter 277 (S.B. 1572), which was an omnibus bill that reorganized the Education Code.

¹⁰² Specifically Education Code sections 17251 and 17315.

received prior to the acquisition of the site, the governing board is required to discuss the findings of the investigation in a public hearing.

- Establish standards for use by school districts to ensure that the design and construction of school facilities are educationally appropriate and promote school safety.
- Upon the request of any school district, review plans and specifications for school buildings in the district. DOE is required to charge school districts, for the review of plans and specifications, a reasonable fee not to exceed the actual administrative costs incurred for that purpose.
- Upon the request of any school district, survey the building needs of the district, advise and suggest plans for financing a building program to meet the needs. DOE is required to charge the district, for the cost of the survey, a reasonable fee not to exceed the actual administrative costs incurred for that purpose.
- Provide information relating to the impact or potential impact upon any schoolsite of hazardous substances, solid waste, safety, or hazardous air emissions, and other information as DOE may deem appropriate.

Education Code section 17315 requires the Department of General Services (DGS) to issue a certificate of compliance only after a school building constructed in accordance with plans and specifications approved by DGS is completed, the CEQA notice of completion is filed, and all final verified reports and all testing and inspection documents, as required by Education Code sections 17280-17317 and related regulations, are submitted to and on file with DGS, and all required fees paid by the school district. It also makes provisions for the issuance of a certificate of compliance where a final verified report is missing due to the incapacitating illness, death, or the default of any persons required to file such reports. The costs incurred by DGS in connection with this section are required to be paid by the school district. The actual costs to perform the examinations, tests and inspections are designated by section 17315 as an appropriate cost of the project to be paid from the building funds of the district.

II. Party Positions

A. Claimant's Position

Claimant generally alleges that all of the activities it must perform to receive state funding or to issue local bonds for school facility projects (i.e. new building, modernization and renovation), including the requirement to pay a local share of costs, are new and reimbursable under Article XIII B, section 6 of the California Constitution. In essence, claimant is alleging that the state is legally required to provide 100 percent of funding for all school facility project related costs, including all of the environmental compliance, accountability and public notice requirements for the issuance of local bonds and other related costs pled in this consolidated test claim.

In *School Facilities Financing Requirements* (02-TC-30), claimant alleges reimbursable state-mandated costs to school districts “[f]or programs, policies and procedures that school districts must comply with in order to receive state funded bond money for new construction, renovation and modernization projects. In *Hazardous Materials Assessments* (02-TC-43) claimant alleges reimbursable state-mandated costs to school districts to perform hazardous materials assessments (HMAs) and related activities. In particular, claimant alleges state-mandated costs for the performance of activities related to:

1. Receipt of State Grants

- The receipt of state funds for new construction or modernization of school facilities pursuant to the Leroy F. Greene School Facilities Act of 1998, Part 10, chapter 12 of the Education Code, or, the Kindergarten-University Public Education Facilities Bond Act of 2002, Part 68.1, Chapter 2;¹⁰³
- The requirement to prepare HMAs pursuant to Education Code, Title 1, Division 1, Part 10.5 and related statutes under specified circumstances;¹⁰⁴
- Compliance with state site standards and obtaining a certificate of compliance with Department of General Services (DGS) approved plans and specifications;¹⁰⁵

2. Issuance of Local Bonds

- The issuance of local school construction bonds pursuant to the Strict Accountability in Local School Construction Bonds Act of 2000, Part 10, Chapter 1.5 of the Education Code;¹⁰⁶
- The issuance of local school construction bonds by school facilities improvement districts pursuant to Part 10, Chapter 2 of the Education Code;¹⁰⁷
- The issuance of district revenue bonds by school districts pursuant to Part 10, Chapter 15 of the Education Code;¹⁰⁸

¹⁰³ Specifically, Education Code sections 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25 and 100620.

¹⁰⁴ Specifically, Education Code sections 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, and 17213.2; Health and Safety Code sections 25358.7 and 25358.7.1; and Public Resources Code sections 21151.4 and 21151.8.

¹⁰⁵ Specifically, compliance with Education Code sections 17251 and 17315.

¹⁰⁶ Specifically, Education Code sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, and 15284.

¹⁰⁷ Specifically, Education Code sections 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, and 15391.

- The public disclosure of non-voter-approved debt pursuant to Part 10, Chapter 16 of the Education Code;¹⁰⁹

3. Participation in Other State Programs

- The lease of portable classrooms from the SAB pursuant to the Emergency School (State Relocatable) Classroom Law of 1979, Part 10, Chapter 14 of the Education Code;¹¹⁰ and,
- California School Finance Authority Act, Part 10, Chapter 18 of the Education Code.¹¹¹

More specifically, in *Hazardous Materials Assessments* (02-TC-43) claimant alleges reimbursable state-mandated costs to school districts for the following HMA related activities:

- A. Developing and implementing policies and procedures, and periodically revising those policies and procedures, and compliance with all requirements relative to the discovery and removal of hazardous materials at proposed schoolsites pursuant to Article 1 of Chapter 1, commencing with Education Code section 17210 and related sections;¹¹²
- B. Funding 50 percent, or more, of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and 50 percent, or more, of the other response action costs for the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action in connection with hazardous substances at proposed schoolsites pursuant to Education Code section 17072.13, subdivision (a);¹¹³
- C. For school districts eligible for financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10), funding the balance of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and for the other response action costs for the site not funded by the State Allocation Board pursuant to Education Code section 17072.13, subdivision (b);
- D. Focusing on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, when

¹⁰⁸ Specifically, Education Code sections 17110 and 17111.

¹⁰⁹ Specifically, Education Code section 17150.

¹¹⁰ Specifically, Education Code sections 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, and 17096.

¹¹¹ Specifically, Education Code sections 17180, 17183.5, 17193.5, 17194, 17199.1, and 17199.4.

¹¹² Note that there is no reference to policies and procedures in this portion of the code, though a district may certainly find it helpful to have policies and procedures in place.

¹¹³ Note that based on a plain meaning reading of Education Code Section 17072.13, subdivision (a), it is the State Allocation Board (i.e. the state), not the school district that provides 50 percent or more (up to 100 percent for hardship) of the funding. The school district may be required to provide up to 50 percent of these costs, if it is not a hardship district.

- conducting risk assessments at prospective schoolsites pursuant to Education Code section 17210.1, subdivision (a)(3);
- E. When taking response actions pursuant to the article to be, at a minimum, protective of children's health, with an ample margin of safety, pursuant to Education Code section 17210.1, subdivision (a)(4);
 - F. Providing a notice to residents in the immediate area prior to the commencement of work on a PEA utilizing a format developed by the DTSC, pursuant to Education Code section 17210.1, subdivision (b);
 - G. Evaluating the real property for a new schoolsite, or an addition to an existing schoolsite, at a public hearing pursuant to Education Code Section 17211, using site selection standards established by DOE (DOE) pursuant to Section 17251, subdivision (b), prior to commencing the acquisition of that real property;
 - H. Prior to acquiring any site on which it proposes to construct any school building, investigating the site, or sites, under consideration by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only pursuant to Education Code section 17212 and including location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project;
 - I. If the prospective schoolsite is located within the boundaries of any special studies zone, or within an area designated as geologically hazardous in the safety element of the local general plan as provided in Government Code Section 65302, subdivision (g), including any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage in the investigation pursuant to Education Code section 17212;
 - J. Making geological and soil engineering studies, as described in Section 17212, for the reconstruction, or alteration of, or addition to, any school building for work which alters structural elements if the estimated cost exceeds \$25,000, or as increased according to a construction costs inflation index recognized by DGS pursuant to Education Code section 17212.5;
 - K. Making geological and soil engineering studies, as described in Section 17212, when required by DGS for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone pursuant to Education Code section 17212.5;
 - L. Submitting to DGS and DOE a copy of the report of each investigation conducted pursuant to Article 3 (commencing with Section 17280) as required by Education Code section 17212.5;
 - M. Verifying, prior to approval of a project, that the lead agency, as defined in section 21067 of the Public Resources Code, has determined that the property purchased or to be built upon is not any of the following:
 - 1. The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the

governing board of the school district concludes that the wastes have been removed;

2. A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code;
 3. A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood pursuant to Education Code section 17213, subdivision (a);
- N. Verifying, prior to approval of a project, that the lead agency, as defined in section 21067 of the Public Resources Code, has consulted with the administering agency in which the proposed schoolsite is located and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste and has included a list of the locations for which information was sought pursuant to Education Code section 17213, subdivision (b);
- O. Prior to approval of a project, making one of the following written findings:
1. Consultation identified none of the facilities specified in subdivision (b).
 2. The facilities specified in subdivision (b) exist, but one of the following conditions applies:
 - a. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.
 - b. The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels pursuant to Education Code section 17213, subdivision (b).
- P. Pursuant to Education Code section 17213.1, subdivision (a), prior to acquiring a schoolsite, contracting with an environmental assessor to supervise the preparation of, and sign, a Phase I Assessment of the proposed schoolsite unless the governing board decides to proceed directly to a PEA. The Phase I Assessment shall contain one of the following recommendations:
1. A further investigation of the site is not required; or,
 2. A PEA is needed, including sampling or testing;

- Q. Pursuant to Education Code section 17213.1, subdivision (a)(2), if the Phase I Assessment concludes that further investigation of the site is not required, submitting the signed assessment, proof that the environmental assessor meets the qualifications specified in subdivision (b) of section 17210, and the required fee to the DTSC;
- R. If DTSC determines that the Phase I Assessment is not complete, or disapproves the Phase I Assessment, taking actions necessary to secure the approval of the Phase I Assessment, elect to conduct a PEA, or electing not to pursue the acquisition or the construction project pursuant to Education Code section 17213.1, subdivision (a)(3);
- S. If DTSC concludes, after its review of a Phase I Assessment pursuant to this section that a PEA is needed (or when a district elects to forego a Phase I Assessment and proceed directly to a PEA), submitting to the DOE the Phase I Assessment and requested additional information, if any, that was reviewed by DTSC Pursuant to Education Code section 17213.1, subdivision (a)(4)(A);
- T. If the Phase I Assessment concludes that a PEA is needed, or if DTSC concludes after it reviews a Phase I Assessment pursuant to this section that a PEA is needed, contracting with an environmental assessor to supervise the preparation of, and sign, a PEA of the proposed schoolsite and entering into an agreement with DTSC to oversee the preparation of the PEA or electing not to pursue the acquisition or construction project pursuant to Education Code section 17213.1, subdivision (a)(4)(B). The PEA shall contain one of the following conclusions:
 - 1. A further investigation of the site is not required; or
 - 2. A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof;
- U. Submitting the PEA to DTSC for its review and approval and to DOE for its files pursuant to Education Code section 17213.1, subdivision (a)(5);
- V. At the same time a school district submits a PEA to DTSC, publishing a notice that the assessment has been submitted to the department in a local newspaper of general circulation, and posting the notice in a prominent manner at the proposed schoolsite that is the subject of that notice pursuant to Education Code section 17213.1, subdivision (a)(6). The notice shall state the school district's determination to make the PEA available for public review and comment;
- W. Complying with the public participation requirements of sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a PEA are required and the district determines that it will proceed with the acquisition or construction project pursuant to Education Code section 17213.1, subdivision (a)(7);
- X. If DTSC disapproves the PEA, taking actions necessary to secure the approval of DTSC of the PEA or electing not to pursue the acquisition or construction project pursuant to Education Code section 17213.1, subdivision (a)(8);

- Y. If the PEA determines that a further investigation of the site is not required and DTSC approves this determination, then proceeding with the acquisition or construction project pursuant to Education Code section 17213.1, subdivision (a)(9);
- Z. If the PEA determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and DTSC approves this determination, either electing not to pursue the acquisition or construction project, or, electing to pursue the acquisition or construction project pursuant to Education Code section 17213.1, subdivision (a)(10). If electing to pursue the acquisition, doing all of the following:
 - 1. Preparing a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite;
 - 2. Assessing the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any;
 - 3. Obtaining the approval of DOE that the proposed schoolsite meets the schoolsite selection standards adopted by DOE pursuant to subdivision (b) of section 17251;
 - 4. Evaluating the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of DOE, based upon the standards of DOE, pursuant to subdivision (a) of section 17251;
- AA. Reimbursing DTSC for all of the department's response costs pursuant to Education Code section 17213.1, subdivision (a)(11);
- BB. If a PEA prepared pursuant to section 17213.1 discloses the presence of a hazardous materials release, or threatened release, or the presence of naturally occurring hazardous materials, at a proposed schoolsite at concentrations that could pose a significant risk to children or adults, and the school district owns the proposed schoolsite, entering into an agreement with DTSC to oversee response action at the site and taking response action pursuant to the requirements of the state act as may be required by DTSC pursuant to Education Code section 17213.2, subdivision (a);
- CC. If at any time during the response action the school district determines that there has been a significant increase in the estimated cost of the response action, notifying DOE pursuant to Education Code section 17213.2, subdivision (c);
- DD. Before occupying a school building following construction, obtaining from DTSC a certification that all response actions, except for operation and maintenance activities, necessary to ensure that hazardous materials at the schoolsite no longer pose a significant risk to children and adults at the schoolsite have been completed, and that the response action standards and objectives established in the final removal action work plan or remedial action plan have been met and are being maintained, pursuant to Education Code section 17213.2, subdivision (d)(2);
- EE. If, at anytime during construction at a schoolsite, a previously unidentified release or threatened release of a hazardous material or the presence of a naturally occurring hazardous material is discovered:
 - 1. Ceasing all construction activities at the sites;

2. Notifying DTSC, and taking actions required by subdivision (a) that are necessary to address the release or threatened release or the presence of any naturally occurring hazardous materials; and
3. Resuming construction only if DTSC:
 - a. Determines that:
 - i. The construction will not interfere with any response action necessary to address the hazardous material release or threatened release or the presence of a naturally occurring hazardous material; and
 - ii. The site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the schoolsite; and
 - b. Certifies that the nature and extent of the release, threatened release, or presence of a naturally occurring hazardous material have been fully characterized.¹¹⁴
- FF. Reimbursing DTSC for all response costs incurred by the department pursuant to Education Code section 17213.2, subdivision (h);
- GG. Reimbursing DOE for fees incurred and charged for advising the governing board on the acquisition of new schoolsites and, after a review of available plots, giving the governing board, in writing, a list of the recommended locations in the order of their merit, considering especially the matters of educational merit, safety, reduction of traffic hazards, and conformity to the land use element in the general plan of the city, county, or city and county having jurisdiction pursuant to Education Code section 17251, subdivision (a);
- HH. Complying with standards developed by DOE to be used in the selection of schoolsites, in accordance with the objectives set forth in Education Code section 17251 subdivision (a), pursuant to Education Code section 17251, subdivision (b). If notification is received prior to the acquisition of the site that the department has investigated complaints of noncompliance with site selection standards, discussing the findings of the investigation in a public hearing;
- II. Complying with standards established by DOE for use by school districts to ensure that the design and construction of school facilities are educationally appropriate and promote school safety pursuant to Education Code section 17251, subdivision (c);
- JJ. Reimbursing the DOE for the review of plans and specifications Pursuant to Education Code section 17251, subdivision (d);
- KK. Reimbursing DOE for making a survey of the building needs of the district, advising the governing board concerning building needs, and suggesting plans for financing a building program to meet the needs pursuant to Education Code section 17251, subdivision (e);
- LL. Filing the notice of completion, submitting all final verified reports and all testing and inspection documents, and paying all required fees when a school building is constructed

¹¹⁴ Education Code Section 17213.2, subdivision (e).

in accordance with plans and specifications approved by DGS pursuant to Education Code section 17315, subdivision (a);

- MM. When a school building constructed in accordance with approved plans and specifications is completed but final verified reports, as are required under section 39151, have not been submitted to DGS due to the incapacitating illness, death, or the default of any persons required to file such reports, requesting DGS to review all of the project records and make such examinations as it deems necessary to enable it to certify that the school building otherwise complies with the requirements of the article pursuant to Education Code section 17315, subdivision (b). When requested by the DGS making, reporting, and verifying any other tests and inspections which the department deems necessary to complete its examinations of the construction;
- NN. Reimbursing the costs incurred by the DGS to perform the examinations, tests, and inspections required by the section pursuant to Education Code section 17315, subdivision (c).

In its amendment to the consolidated test claim (09-TC-01) claimant alleges the following statutes contain reimbursable mandates: Health and Safety Code sections 25358.7 and 25358.7.1¹¹⁵ as amended by Statutes 1999, chapter 23 (S.B. 47), Education Code sections 39003 and 39120 as amended by Statutes, chapter (repealed by Statutes 1996, chapter 277),¹¹⁶ Public Resources Code section 21151.4, section 17 as amended by Statutes 2004, chapter 689, Statutes 2008, chapter 148, and Public Resources Code section 21151.8, section 18, as amended by Statutes 2003, chapter 668 and Statutes 2007, chapter 130, and Statutes 2008, chapter 148.¹¹⁷ Claimant doesn't specify what activities are reimbursable except that it cut and pastes all of the pled statutes into the "narrative" and "declaration" and then includes copies of the statutes as required by Commission's test claim form.¹¹⁸

In response to the argument put forth by DOF¹¹⁹, DOE¹²⁰ and DTSC¹²¹ that a school district's participation in the underlying programs at issue are elective or optional and neither a compulsory or de facto mandate (i.e. that they are neither legally nor practically compelled), claimant disagrees. Claimant cites to the following to demonstrate that it is required to participate in the underlying programs:

¹¹⁵ These sections generally require DTSC or the Regional Board, in response actions, to inform the public and establish community advisory groups.

¹¹⁶ These sections were repealed in 1996.

¹¹⁷ These sections link the CEQA process to the HMA process and require consultation with the school district for the siting of hazardous facilities within ¼ mile of a school.

¹¹⁸ For an in depth description of what these statutes require, please see background above.

¹¹⁹ DOF comments on 02-TC-43, p.1.

¹²⁰ DOE, comments on 02-TC-30, p. 1.

¹²¹ DTSC, comments on 02-TC-43, *supra*, p.p. 1, 2, 3, 4, 8 and 9 and rebuttal to claimant's response on 02-TC-43, *supra*, p.p. 2 and 3.

1. *Butt v. State of California*, which discusses the duty of the Legislature to “provide for a system of common schools, by which a school be kept up and supported in each district.”¹²²
2. A report of the California Research Bureau which states in part that one challenge public schools face “[i]s the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand.”¹²³ That report also discusses the shortfall of available funds to meet the need for public school construction and rehabilitation.
3. The March 2004 Proposition 55 ballot information pamphlet which discusses the “need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils.”¹²⁴

Claimant states that “a finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate”¹²⁵ and discusses the case law regarding practical compulsion. Claimant concludes that “[i]n light of the finding that there is a need to construct new schools to house 1.1 million pupils and the need to modernize schools for an additional 1.1 million pupils, it is beyond the realm of practical reason to opportunistically argue that there is no state law or regulation which requires a school district to construct additional school facilities or acquire any site for the purpose of constructing a school building.”¹²⁶

Finally, claimant disagrees with DOF’s position that Education Code Part 1, Chapter 6, Title 1, Division, 1 provides schools with authority to impose development fees and therefore Government Code section 17556, subdivision (d) prohibits reimbursement for any state-mandated activities. Claimant argues: “Government Code section 17556(d) refers to ‘service charges, fees or assessments.’ Education Code 17620 refers to a ‘fee, charge, dedication or other requirement.’ They are not the same.”¹²⁷ Claimant includes a discussion of the limitations on the purposes for which a “fee, charge or dedication” may be used (i.e. to fund the construction or

¹²² Claimant, response to DOF comments and response to DTSC memorandum for 02-TC-43 and, *supra*, p. 2, citing *Butt v. State of California* (1992) 4 Cal. 4th 668, p. 680. Note that Claimant makes the same arguments in its response to DOF comments on 02-TC-30, but for the ease of the reader, this analysis will cite to the response to DOF and DTSC comments for 02-TC-43.

¹²³ *Id.*, p. 3, citing *School Facility Financing – A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds* (Cohen, Joel, February 1999). Note however, that according to California Department of Education, Educational Demographics Unit, from school year 1999-2000 to 2008-2009, the most recent year for which there is data, actual enrollment went up only by 300, 419 students, less than 1/6 of the projected number.

¹²⁴ *Id.*, p. 3. Note that the claimant has taken this quote somewhat out of context in that it actually says “... *the districts have identified* the need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils.” Emphasis added.

¹²⁵ *Id.*, p. 4.

¹²⁶ *Id.*, p. 7.

¹²⁷ Claimant, response to DOF comments on 02-TC-43, *supra*, p. 9.

reconstruction of school facilities but not for maintenance) pursuant to Education Code section 17620, subdivision (a)(1).

B. Department of Toxic Substances Control's Position

DTSC submitted comments on the test claim filing for 02-TC-43 (*Hazardous Materials Assessments*) on October 27, 2003 and a rebuttal to claimant's response to its October 27, 2003 comments on February 6, 2004.

1. School Districts are not Legally or Practically Compelled to Meet HMA Requirements

With regard to HMAs, DTSC states that "district participation in the underlying program is elective or optional."¹²⁸ Specifically, DTSC states that Education Code section 17210.1 "expressly addresses only sites for which 'school districts elect to receive state funds'" and "Education Code section 17213.1 also states, '[a]s a condition of receiving state funding' and clearly applies these requirements to districts seeking state funding of their projects."¹²⁹ DTSC states that "[t]he [claimant] also fails to mention that there is existing state funding for all or a part of the hazard assessment work under Education Code sections 17072.12 and 17072.13 that reduces the unfunded costs or invalidates their grounds for reimbursement as an unfunded mandate."¹³⁰ DTSC argues that the state-funded School Facilities Program conditions in this test claim are analogous to the state-funded educational programs at issue in *Kern*.¹³¹ Specifically:

The hazard assessments requirements are not rendered mandates because the state funds only a part of the total costs under Education Code sections 17072.1, 17213.13 and 17213.18. The [*Kern*] court noted, "[w]e reject the suggestion, implicit in claimants' argument that the state cannot legally provide school districts with funds for voluntary programs, and then effectively reduce that funding grant by requiring school districts to incur expenses in order to meet conditions of program participation."¹³²

DTSC also argues that school districts are not practically compelled (using the phrase "compelled de facto") because though there may be no feasible alternative to participation in the state funding program for school construction projects where HMA costs are sizable, "districts may elect to stop pursuing such a high cost site at any time without compulsion or penalty."¹³³

2. School Districts Have Sufficient Fee Authority to Fund Their Share of Costs and are Thus Disqualified for Reimbursement Under Government Code section 17556, subdivision (d).

DTSC argues, "school districts have authority to levy fees to fund their share of costs under Education Code section 17556, subdivision (d), and *Connell v. Superior Court* (1997) 59

¹²⁸ DTSC, comments on the test claim (2-TC-43), October 27, 2003, p.1 (citing *Kern*.)

¹²⁹ *Id.*, p. 3.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Id.*, citing *Kern, supra*, 30 Cal. 4th 727, 754.

¹³³ DTSC, comments on the test claim (2-TC-43), *supra*, p. 4.

Cal.App.4th 382.”¹³⁴ DTSC points out that Government Code section 17556, subdivision (d), prohibits the Commission from determining costs are mandated by the state if it finds that the district “has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.”¹³⁵ DTSC refers to Education Code section 17620 (development fee), Government Code section 53311 (Mello-Roos fee), and Education Code section 15350 (school facilities improvement districts bond authority) for some examples of potential revenue sources for school districts.¹³⁶

DTSC also argues that the state already routinely funds half of the HMA costs and funds up to 100 percent of the costs in cases of economic hardship under Education Code sections 17072.12, 17072.13 and 17072.18.¹³⁷

3. Jointly Funded Programs are Outside the Coverage of Section 6, Article XIII B of the California Constitution.

DTSC states, “jointly funded programs such as school funding are outside the coverage of Section 6, article XIII B of the California Constitution. . . under *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App.4th 1264 (*County of Sonoma*).”¹³⁸

4. HMAs are Part of the School District’s Continuing Duty to Provide Safe School Sites, Not a New Program or Higher Level of Service.

Finally, DTSC argues that the preparation of HMAs is a condition of funding and “compliance with these funding conditions fails to provide a new program or higher level of service to the public to qualify as a reimbursable state mandate under *County of Sonoma*.”¹³⁹ DTSC argues that prior to 1975, the state did not fund site acquisition and investigation costs, so the state has not shifted state program costs to the districts.¹⁴⁰ Specifically, DTSC states:

Here, the program at issue concerns school facility safety, an area that the state has long regulated to assure safety of school children in facilities for compulsory education. (Former Educ. Code § 39002; *Hall v. City of Taft* (1956) 47 Cal. 2nd 177, 185-186.) A mandate is a new program if the local entity had not been previously required to implement it. (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 at p. 1189 (*Los Angeles* 2003).) However, to qualify for reimbursement, the program must be one that the state previously funded in whole and would newly be funded solely by local tax revenues and not by other levies. (*Los Angeles* 2003, *supra*, 110 Cal. App.4th at 1193, citing *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App. 4th 1264 at p. 1289.)

¹³⁴ DTSC, comments on the test claim (02-TC-43), *supra*, p. 1.

¹³⁵ *Id.*, p. 4, citing *Connell v. Superior Court*, *supra*, 59 Cal.App.4th 382.

¹³⁶ *Id.*, p. 5.

¹³⁷ DTSC, comments on the test claim (02-TC-43), *supra*, p. 5.

¹³⁸ DTSC, comments on the test claim (02-TC-43), *supra*, p. 1.

¹³⁹ DTSC, comments on the test claim (02-TC-43), *supra*, p. 1.

¹⁴⁰ *Id.*, p. 7.

DTSC states that HMAs do not provide a new service to the public. Instead, they require research and periodic evaluation at key decision points, such as the Phase I Assessment and PEA, to help inform public spending decisions to assure reasonable use of state school facility funds.¹⁴¹ This increased level of information also protects against commitment to sites with unknown contamination levels. In addition, these processes assure that the site is reasonably safe for its intended use: occupancy by children for compulsory education. The situation here is similar to *County of Los Angeles v. Department of Industrial Relations* where the court found costs of complying with new elevator and earthquake safety standards were not reimbursable as state mandates because they provided no new or increased level of service to the public.¹⁴²

C. Department of Education's Position

DOE states that the test claim statutes in 02-TC-30 (*School Facilities Funding Requirements*) do not impose a state-mandated program because each of the programs pled is but "one of various funding mechanisms available to school districts for the funding of facilities. School districts elect to participate in [these programs] and any requirements regarding [these programs] are applicable only after districts elect to participate. . . ."¹⁴³

D. Department of Finance's Position

1. School Facilities Funding Requirements

DOF states:

Nothing in the statutes or regulations cited by the Claimant [] makes a school district's participation in the funding programs a compulsory activity. Instead, we conclude that a district's participation in any of the cited programs is voluntary and a result of the district's discretionary choice. We also note that 25 to 30 percent of California's nearly 1,100 K-12 school districts do not participate in the state-funded school facility programs, which demonstrates that the programs are not compulsory.¹⁴⁴

DOF also cites to the relevant sections of each of the chapters under which the claimant is alleging reimbursable activities to demonstrate that there is no legal requirement for school districts to comply with the requirements pled unless they make the discretionary decision to:

- Order an election of whether to issue bonds under the Strict Accountability in Local School Construction Bonds Act of 2000;
- Form a school facilities improvement district and issue bonds under Education Code part 10, Chapter 2 (Bonds of School Facilities Improvement Districts);
- Enter into an agreement with the state to receive funds for the construction, reconstruction or replacement of school facilities from the SAB pursuant to the State School Building Lease-Purchase Law of 1976;

¹⁴¹ DTSC, comments on the test claim (02-TC-43), *supra*, p. 10.

¹⁴² *Ibid.*

¹⁴³ DOE, comments on the test claim (02-TC-30), p. 1.

¹⁴⁴ DOF, comments on the test claim (02-TC-30), February 9, 2004, p. 1.

- Apply to receive an eligibility determination or funding for the construction, reconstruction or replacement of school facilities from the SAB pursuant to the Leroy F. Greene School Facilities Act of 1998;
- Adopt a resolution authorizing the district to file an application to lease portable classrooms from the SAB pursuant to the Emergency (State Relocatable) Classroom Law of 1979;
- Issue sale revenue bonds to finance construction of joint occupancy facilities necessary to relieve overcrowded schools pursuant to Education Code Part 10, Chapter 15 (School District Revenue Bonds);
- Approve the issuance of certificates of participation or revenue bonds or enter into any agreement for financing school construction (i.e. approve non-voter approved debt) which triggers public disclosure requirements pursuant to Education Code Part 10, Chapter 16; or
- Undertake, itself or through an agent, the financing or refinancing of a project or of working capital pursuant to Education Code Part 10, Chapter 18 (California School Finance Authority).¹⁴⁵

DOF notes that “when a school district elects to participate in a voluntary program, the “downstream” activities of the district do not constitute a state-mandated reimbursable program. In [*Kern*], the California Supreme Court confirmed the merits of the argument that where a local government entity voluntarily participates in a statutory program, the state may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for the increased level of activity.”¹⁴⁶

DOF also notes that in the first 200 pages of the test claim it found “more than three-dozen misstatements” of the Education Code.¹⁴⁷ Specifically, DOF asserts that claimant inserted the word “shall” in its citations to statute where the statute actually says “may” thus “changing an otherwise permissive action of the board to an action that appears compulsory.”¹⁴⁸

Finally, DOF asserts that school districts have fee authority (i.e. development fees) for the purpose of funding the construction or reconstruction of school facilities.¹⁴⁹

2. Hazardous Materials Assessments

DOF states that the school district’s participation in the Leroy F. Greene School Facilities Act of 1998, School Facilities Program (SFP) (Educ. Code § 17070.10 *et seq.*) “is strictly voluntary and the result of elective action taken by the governing board of the district.”¹⁵⁰ DOF argues the SFP requirements apply to discretionary, school district proposed, projects and school facilities

¹⁴⁵ *Id.*, p.p. 1-4.

¹⁴⁶ DOF, comments on the test claim (02-TC-30), *supra*, p. 2.

¹⁴⁷ DOF, comments on the test claim (02-TC-30), *supra*, p. 4.

¹⁴⁸ *Ibid.*

¹⁴⁹ DOF, comments on the test claim (02-TC-30), *supra*, p. 4.

¹⁵⁰ DOF, comments on the test claim (02-TC-43), February 3, 2004, p. 1.

construction projects. DOF cites to *Kern* for the proposition that “where a local government entity voluntarily participates in a statutory program, the state may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for the increased level of activity.”¹⁵¹

Moreover, with regard to HMAs, “Education Code section 17213.1 (b) states, ‘The costs incurred by school districts when complying with this section are allowable costs for an applicant under Chapter 12.5, Part 10 and may be reimbursed in accordance with section 17072.13.’”¹⁵²

Finally, DOF argues that “school districts have the authority to charge development fees to finance construction projects.”¹⁵³ Specifically, DOF asserts that Education Code sections 17620-17626 “authorize school districts to levy fees against any construction within its district boundaries for the purpose of funding school construction.”¹⁵⁴ DOF concludes with a discussion of the prohibition against finding a reimbursable mandate in a statute or executive order “if the affected local agencies have authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the statute or executive order.”¹⁵⁵

III. Discussion

The courts have found that article XIII B, section 6, of the California Constitution recognizes the state constitutional restrictions on the powers of local government to tax and spend. “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹⁵⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹⁵⁷ In addition, the required activity or task must constitute a “new program,” or it must create a “higher level of service” over the previously required level of service.¹⁵⁸

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹⁵⁹ To determine if

¹⁵¹ *Id.*, citing *Kern*, *supra*, 30 Cal. 4th 727.

¹⁵² DOF, comments on the test claim (02-TC-43), *supra*, p.1.

¹⁵³ DOF, comments on the test claim (02-TC-43), *supra*, p. 2.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁵⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹⁵⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3rd 830, 835 (*Lucia Mar*).

¹⁵⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar*, *supra*,

the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.¹⁶⁰ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁶¹ Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁶²

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁶³ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁶⁴

This analysis addresses the following issues:

- A. Does the Commission have jurisdiction over a statute that was the subject of a prior final decision of the Commission?
- B. Are the remaining test claim statutes and alleged executive orders subject to Article XIII B, section 6 of the California Constitution?
 1. Are statutes that have been repealed prior to the beginning of the potential reimbursement period subject to reimbursement under Article XIII B, section 6 of the California Constitution?
 2. Are the Substantial Progress and Expenditure Audit Guide of May 2003, the School Facility Program Guidebook of January 2003, the State Relocatable Classroom Program Handbook of January 2003, and the Lease-Purchase Applicant Handbook of April 1998¹⁶⁵ executive orders subject to Article XIII B, section 6?
 3. Does Health and Safety Code section 25358.1 impose a program subject to Article XIII B, section 6 of the California Constitution?

¹⁶⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁶¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹⁶² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹⁶³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹⁶⁴ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁶⁵ Note that the “1988” version of this Handbook was actually included in the caption for claimant’s test claim filing. However, because claimant attached the 1998 version of this Handbook to the test claim filing and staff could not locate a 1988 version of this Handbook, staff presumes that claimant intended to plead the 1998 version.

4. Does Health and Safety Code section 25358.7.1 impose any state-mandated duties on school districts?
5. Are the activities required by the remaining test claim statutes and regulations state-mandated duties or are they downstream requirements of a discretionary decision of the school district?

A. The Commission does not have jurisdiction over Education Code section 17213.1, as added by Statutes of 1999, chapter 1002, because this statute was the subject of a final decision of the Commission, *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03).

The Commission has adopted a prior test claim related to school facility finance requirements that made specific findings on one of the statutes pled in this test claim. This prior decision is a final, binding decision which is relevant to the issue of jurisdiction.

In *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03), the Commission found that Education Code section 17213.1, as added by Statutes of 1999, chapter 1002, did not impose a reimbursable state mandate on school districts because “the procedures a school district must follow when it seeks state funding pursuant to the Leroy Greene School Facilities Act of 1998 (commencing with Educ. Code, § 17070.10) are not state-mandated because the school district is not required to request state funding under section 17213.1.”¹⁶⁶

Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim. “‘Test claim’ means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state.”¹⁶⁷ Government Code Title 2, division 4, Part 7 “establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies. . . .”

When 98-TC-04 was filed in 1999 and amended by 01-TC-03 in 2003, section 1182.2 of the Commission’s regulations was in place and provided that “any person may submit comments in writing on any agenda item.” Moreover, pursuant to the Bagley-Keene Open Meeting Act of 1967, claimant had the opportunity to attend and provide written or oral comments at the Commission hearing on *Acquisition of Agricultural Land for a School Site*. Government Code section 17500 explicitly states that the test claim procedure is designed to avoid a multiplicity of proceedings to address the same issue. Once a decision of the Commission becomes final and has not been set aside by a court pursuant to a petition for writ of administrative mandamus (Code Civ. Proc., § 1094.5), it is not subject to collateral attack. Thus, claimant is bound by the findings in *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03). The Commission may not address issues that were conclusively addressed in that test claim.

¹⁶⁶ *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03), p. 14. Note that section 17213.1 was amended by Statutes 2000, chapter 443 and Statutes 2002, chapter 935 which were also pled in this test claim and are not the subject of a final Commission decision. Therefore, those statutes are addressed below.

¹⁶⁷ *City of San Jose v. State of California, supra*, 45 Cal.App.4th 1802.

Therefore, staff finds the Commission does not have jurisdiction over Education Code section 17213.1, as added by Statutes of 1999, chapter 1002, because this statute was the subject of a final decision of the Commission, *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03).

B. The Remaining Test Claim Statutes And Alleged Executive Orders Are Not Subject To Reimbursement Under Article XIII B, Section 6 of The California Constitution.

The courts have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs “mandated” by a new program or higher level of service imposed upon them by the state.¹⁶⁸ Thus, the issue is whether the test claim statutes impose a state-mandated activity on school districts.

For the test claim statutes or regulations to impose a state-mandated program, the language must order or command a school district to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered. Moreover, where program requirements are only invoked after the district has made an underlying discretionary decision causing the requirements to apply, or where participation in the underlying program is voluntary, courts have held that resulting new requirements do not constitute a reimbursable state mandate.¹⁶⁹ Stated another way, a reimbursable state mandate is created when the test claim statutes or regulations establish conditions under which the state, rather than a local entity, has made the decision requiring the district to incur the costs of the new program.¹⁷⁰

- 1. Education Code sections 39003 and 39120 have been repealed since January 1, 1998, prior to the beginning of the potential reimbursement period for this test claim and thus cannot be reimbursable.**

Education Code sections 39003 and 39120 were repealed by Statutes 1996, chapter 277 (S.B.1562), section 6, operative January 1, 1998. Because they have not been operative at any time during the reimbursement period, they cannot be reimbursable.

- 2. The Audit Guides and Handbooks Claimed are not Executive Orders Subject to Article XIII B, Section 6.**

Staff finds that the Substantial Progress and Expenditure Audit Guide of May 2003, the School Facility Program Guidebook of January 2003, the State Relocatable Classroom Program Handbook of January 2003, and the Lease-Purchase Applicant Handbook of April 1998 are not executive orders. An executive order is “any order, plan, requirement, rule or regulation” issued by the Governor or any official serving at the pleasure of the Governor.¹⁷¹ Although the above-mentioned audit guide, guidebook and handbooks are issued by state agency directors who serve

¹⁶⁸ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835; *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th 1802, 1816.

¹⁶⁹ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 727 hereinafter “*Kern*”.

¹⁷⁰ *San Diego Unified School Dist.*, *supra* (2004) 33 Cal.4th 859, 880.

¹⁷¹ Government Code section 17516.

at the pleasure of the Governor, they do not impose an “order, plan, requirement, rule or regulation.” Specifically:

- The Substantial Progress and Expenditure Audit Guide of May 2003 cites to specific legislative or regulatory authority for each requirement in the guide and thus does not impose an order, plan, requirement, rule or regulation.¹⁷²
- The School Facility Program Guidebook of January 2003 was developed by the Office of Public School Construction (OPSC) to “assist school districts in apply for and obtaining ‘grant’ funds for the new construction and modernization of school facilities under the Leroy F. Greene School Faculties Act of 1998.”¹⁷³ According to OPSC, “it is intended to provide an overview of the program for use by school district, parents, architects, the Legislature and other interested parties on how a school district becomes eligible for funding and applies for state funding.”¹⁷⁴
- The State Relocatable Classroom Program Handbook of January 2003 provides an overview of the program and then takes the reader step-by-step through the application process provided by statutes and regulations adopted pursuant to the Administrative Procedures Act.¹⁷⁵
- The Lease-Purchase Applicant Handbook of April 1998 provides an overview of the program and then takes the reader step-by-step through the application process provided by statutes and regulations adopted pursuant to the Administrative Procedures Act.¹⁷⁶

Because they do not require districts to do anything beyond what is required by statutes and regulations and are not plans, they are not executive orders. They merely explain the programs that are established in statute and regulation, summarizing requirements that have been established pursuant to statutory and regulatory provisions, including the test claim statutes and test claim regulations. They do not add any additional requirements above what is required by the relevant statutes and regulations, but rather, provide a tool to make compliance easier. Local agencies and school districts may refer solely to the test claim statutes and regulations and related statutes and regulations and consult with their attorneys to determine how to navigate the complex school facility funding process to maximize the amount of state-grant money they receive, if that is their preference.

3. Health and Safety Code Section 25358.1 as Added By Statutes 1999, Chapter 23 Does Not Impose a State-Mandated Program On School Districts Subject to Article XIII B, Section 6 of the Constitution Because The Requirements It Imposes Are Not Unique to Government.

¹⁷² See generally, Office of Public School Construction, The Substantial Progress and Expenditure Audit Guide, 2003.

¹⁷³ Office of Public School Construction, School Facility Program Guidebook, 2003, p. 1.

¹⁷⁴ *Ibid.*

¹⁷⁵ See generally, Office of Public School Construction, The State Relocatable Classroom Program Handbook, 2003.

¹⁷⁶ See generally, The Lease-Purchase Applicant Handbook, April 1998.

a. Health and Safety Code section 25358.1 as added by Statutes 1999, chapter 23 May Require School Districts to Perform Specified Activities.

Staff finds that Health and Safety Code section 25358.1 as added by Statutes 1999, chapter 23 imposes a requirement on school districts if they “[h]ave, or may have, acquired information relevant to [specified hazardous substance release related questions] in the course of commercial, ownership, or contractual relationship with any potentially responsible party.” Health and Safety Code section 25358.1 as added by Statutes 1999, chapter 23 imposes several requirements on “any potentially responsible party, or any person who has or may have, acquired information relevant to any of the following matters [i.e. specified hazardous substance release related matters] in the course of commercial, ownership, or contractual relationship with any potentially responsible party.”¹⁷⁷ Specifically, that potentially responsible party or person who has or may have such knowledge, at the request of DTSC, is required to:

- Furnish information about the release;
- Provide access to records and properties;
- Permit inspections and the collection of samples by DTSC;
- Allow the set up and monitoring of equipment by DTSC to assess or measure the actual or potential migration of hazardous substances;
- Permit DTSC to survey and determine topographic, geologic, and hydrogeologic features of the land;
- Permit DTSC to photograph any equipment, sample, activity, or environmental condition discovered through the inspections, samples, monitoring and surveys, described above. However, DTSC must protect trade secrets pursuant to Health and Safety section 25358.2.

Health and Safety Code section 25358.1 also provides a number of protections for the potentially responsible party or person and their property. Health and Safety Code section 25310 specifies that the definitions contained in CERCLA section 101 apply to the terms in the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.40). A “person” is defined in CERCLA section 101(21) as “an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States government, state, municipality, commission, political subdivision of a state, or any interstate body. Since a school district is a political subdivision of the state, it is a person under this definition. A “potentially responsible party” is a person that may be liable for CERCLA response costs, and as defined by section 107(a) of CERCLA includes:

- Current owners and operators regardless of whether they contaminated the site;
- Past owners and operators who owned or operated the facility at the time that hazardous substances were disposed;
- Persons who arranged for either the treatment or disposal, or the transportation for treatment or disposal of hazardous substances at the facility; and

¹⁷⁷ Health and Safety Code section 25358.1, subdivision (b).

- Persons who accepted hazardous substances for transport to disposal or treatment facilities that they selected.

Since a school district may be a current or past owner of contaminated property and may arrange for the treatment, disposal or transportation for treatment or disposal of hazardous substances found on its property, it may become a potentially responsible party in some instances. Staff finds that because a school district is a person and may be a potentially responsible party, Health and Safety Code section 25358.1 imposes requirements on school districts where the district acquired information relevant to specified hazardous substance release related matters in the course of commercial, ownership, or contractual relationship with any potentially responsible party. Therefore, staff finds that Health and Safety Code section 25358.1, as added by Statutes 1999, chapter 23, imposes state-mandated duties on school districts within the meaning of Article XIII B, section 6 of the California Constitution.

a. The Activities Required By Health and Safety Code Section 25358.1 Do Not Carry Out the Governmental Function of Providing a Service to the Public.

For Health and Safety Code section 25358.1 to be subject to article XIII B, section 6 of the California Constitution, it must constitute a new “program” or “higher level of service.” The California Supreme Court, in the case of *County of Los Angeles v. State of California*,¹⁷⁸ defined the word “program” within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.¹⁷⁹

Health and Safety Code section 25358.1 does not require school districts to provide any service to the public. Rather, it imposes disclosure and access requirements on parties who may be liable for the cleanup of hazardous substances released on or from a facility/property because they are:

- Past owners and operators who owned or operated the facility at the time that hazardous substances were disposed;
- Persons who arranged for either the treatment and/or disposal, or the transportation for treatment or disposal of hazardous substances at the facility; or
- Persons who accepted hazardous substances for transport to disposal or treatment facilities that they selected.

County of Los Angeles v. Department of Industrial Relations,¹⁸⁰ addressed elevator safety requirements applicable to all elevators in the state. There, the court found that the regulations

¹⁷⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹⁷⁹ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537, emphasis added.

¹⁸⁰ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal. App.3d 1538.

were not a program because “[p]roviding elevators equipped with fire and earthquake safety features simply is not ‘a governmental function of providing services to the public.’”¹⁸¹

a. Health and Safety Code section 25358.1 is Not Unique to Government.

Health and Safety Code section 25358.1 by its own terms applies to all potentially responsible parties, both private and public. As the *County of Los Angeles v. Department of Industrial Relations*¹⁸² court explained, “[w]ere section 6 construed to require state subvention for the incidental cost to local governments of general law, the result would be far-reaching indeed.”¹⁸³ There, the court found that the regulations were not a program because the regulations did not impose a unique requirement on local government and “[p]roviding elevators equipped with fire and earthquake safety features simply is not ‘a governmental function of providing services to the public.’”¹⁸⁴ Likewise here, staff finds that the requirement that potentially responsible parties disclose information and provide access to DTSC or the applicable regional water quality control board is not unique to government but applies generally to all residents and entities in the state who find themselves in the position of being a potentially responsible party for purposes of CERCLA/Superfund.

As the requirements of Health and Safety Code section 25358.1 as added by Statutes 1999, chapter 23 applies to both public and private entities, not just those which are publicly owned, it does not impose a “unique requirement” on local governments, and thus it does not meet the second definition of “program” established by *County of Los Angeles*.

Providing access to your facility and disclosure about the release of hazardous substances for which one may be liable is not “a governmental function of providing services to the public” and is not unique to government. Therefore, staff finds that Health and Safety Code section 25358.1 as added by Statutes 1999, chapter 23 does not impose a new program or higher level of service subject to reimbursement under Article XIII B, section 6 of the California Constitution.

4. Health and Safety Code Section 25358.7.1, as Added by Statutes 1999, Chapter 23, Does Not Impose Any Activities or State-Mandated Duties on School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution.

Health and Safety Code section 25358.7.1, as added by Statutes 1999, chapter 23 allows a community to form a community advisory group (CAG) to review and comment on a response action being conducted in that community. Health and Safety Code section 25358.7.1 requires DTSC or the regional board that is conducting the response action to communicate and confer as appropriate with the CAG and to advise local regulatory and other appropriate local agencies of planned response actions so that they may review and comment.

Based on the plain language of this statute, Health and Safety Code section 25358.7.1 requires DTSC to perform activities but does not mandate school districts to perform any activities.

¹⁸¹ *Id.*, p. 1545.

¹⁸² *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal. App.3d 1538.

¹⁸³ *County of Los Angeles v. State of California, supra*, p. 56.

¹⁸⁴ *County of Los Angeles v. Department of Industrial Relations, supra*, 214 Cal. App.3d 1538, 1545.

Therefore staff finds that Health and Safety Code section 25358.7.1, as added by Statutes 1999, chapter 23 does not impose state-mandated duties on school districts within the meaning of Article XIII B, section 6 of the California Constitution.

5. The Remaining Test Claim Statutes and Regulations Do Not Impose State-Mandated Duties on School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution.

If a school district makes a decision to build or modernize a school, it must determine how to fund that construction. Generally, a school can seek grant funding from the state through the state school facility program (SFP), which is funded through state bonds and/or it may issue local bonds pursuant to one of several local bond acts. Usually, but not always, schools rely on a combination of state and local bond funding for facilities.

If a school district decides to issue local bonds, it must comply with the public disclosure and other accountability requirements contained within the act under which the district decides to issue bonds, some of which were required by the statewide bond initiatives specifying the voting requirements for the issuance of local bonds. If a school district decides to seek state bond funding through the SFP (i.e. grant funding), the district must comply with various planning, environmental, building safety, labor, public participation/disclosure and bond funding accountability requirements as a condition of receipt of that funding which includes preparation of hazardous materials assessments (HMA) and performing many of the other activities pled in this consolidated test claim.

HMAs are conducted to provide basic information for determining if there has been a release or there is a threatened release of a hazardous material or if there may be a naturally occurring hazardous material present at the site which may pose a risk to human health or the environment. A Phase I Assessment must be prepared to identify the potential for hazardous material release or the presence of naturally occurring hazardous materials. If such a potential is found then a Preliminary Endangerment Assessment (PEA) is required to evaluate the threat posed to public health or the environment. The California Education Code requires DTSC to review Phase I Assessments and PEAs, and to make a determination about the need for further action or remediation.¹⁸⁵ School districts may elect to proceed directly to a PEA without having first completed a Phase I Assessment which can reduce costs when there is a known hazardous material present.¹⁸⁶

There are two other programs pled in this test claim that do not fit neatly into the state funding or local bond funding categories:

- The State Relocatable Classroom Law of 1979 under which claimant alleges costs for activities related to the lease of portable classrooms from the state; and
- The California School Finance Authority Act, under which a school district may borrow funds from the state which are generally repaid with future Proposition 98 funds.

¹⁸⁵ Education Code section 17213.2.

¹⁸⁶ Education Code section 17213.1.

The remaining statutes and regulations,¹⁸⁷ which generally require compliance with SFFRs¹⁸⁸ if a school district seeks state grant funding, local bond funding or elects to participate in one of the other programs pled pursuant to the test claim statutes and regulations, do not mandate school districts to perform any activities because:

- a) School districts are not legally required to acquire new school sites, build new schools, undertake modernization projects, add portable classrooms or to request and accepts SFP funding, issue local bonds or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations.

¹⁸⁷ Education Code sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, and 100620 as added or amended by Statutes 1976, Chapter 557; Statutes 1977, Chapter 242; Statutes 1978, Chapter 362; Statutes 1982, Chapter 735; Statutes 1990, Chapter 1602; Statutes 1991, Chapter 1183, Statutes 1996, Chapter 277; Statutes 1997, Chapters 513, 893, and 940; Statutes 1998, Chapters 407, 485, 691, 741, 848, 941, 957, and 1076; Statutes 1999, Chapters 133, 709, 858, 992; Statutes 2000, Chapters 44, 193, 443, 530, 590, and 753; Statutes 2001, Chapters 132, 159, 194, 422, 647, 725, 734 and 972; and Statutes, 2002, Chapters 33, 199, 935, 1075, and 1168

Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668; Statutes 2004, Chapter 689; Statutes 2007, Chapter 130; and Statutes 2008, Chapter 148

California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70.

¹⁸⁸ i.e. the activities required as a condition of receipt of SFP funding, issuance of local bonds or participation in the other state programs pled which are discussed at length in the background at pages 12-29.

b) The evidence in the record does not support a finding that school districts are practically compelled to acquire new school sites, build new schools, undertake modernization projects, add portable classrooms or to request and accept SFP funding, issue local bonds or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations. Rather, the requirement to comply with the SFFRs is triggered by a district's voluntary decisions to request and accept state matching funds under the SFP, to issue local bonds or to participate in one of the other voluntary programs pled.

a) School districts are not legally required to acquire new school sites, build new schools, undertake modernization projects, add portable classrooms or to request and accept SFP funding, issue local bonds or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations.

The decision to acquire a new school site, build a new school, undertake a school modernization project, add portable classrooms and accept SFP funding, issue local bonds or participate in one of the other voluntary programs pled in this test claim therefore, can arise in a myriad of ways, from a district-level decision to an initiative enacted by the voters. Likewise, there are a number of funding sources that a school district might utilize to fund discretionary school construction projects and a number of alternatives to building a new school that a district might consider. When SFP funding is used to acquire a school site or for school construction, compliance with the applicable SFFRs including the preparation of HMAs and related activities is a condition of funding. Generally, the following requirements are imposed as a condition of SFP: various planning, environmental, building safety, labor, public participation/disclosure and bond funding accountability requirements. Likewise, when local bonds are issued, compliance with the requirements of the statutory scheme under which they are issued is required.¹⁸⁹ These requirements generally include disclosure, voting and fiscal accountability. Similarly the "other" programs referred to in this analysis, the State Relocatable Classroom Law and California School Finance Authority Act impose their own requirements. What all of these requirements have in common, however, is that they are all downstream requirements triggered by a school district's decision to participate in the overlying program in order to acquire, expand, or modernize school facilities.

As discussed in the background above, in California, school facilities historically have been funded exclusively by local tax and fee revenues. More recently, the funding scheme has evolved to include state grant funding and issuance of local bonds, both of which impose certain requirements on schools as a condition of funding. Nothing in Article XIII B, section 6 requires the state to reimburse local government for its costs incurred to meet conditions of state grant funding or its costs incurred to meet the conditions of voluntary programs such as the issuance of local bonds, lease of portable classrooms, or loan or state funds for discretionary projects. Thus

¹⁸⁹ Note that, as discussed in the background above, when a school district acquires land or builds exclusively with its own funds, which may include funds from the issuance of bonds under some of the test claim statutes, they are exempt from some of the SFFRs (in particular some of the HMA requirements) imposed on districts that build with state funds.

there has been no shift in program responsibility and costs from state to local government. Rather than shifting costs and responsibilities to local government, the state has in fact assumed a greater share of the costs of building schools over the past several decades.¹⁹⁰ The programs pled in this test claim, represent a portion of the myriad of programs that the Legislature has enacted to provide school districts with a variety of funding options for school facilities projects that the districts chose to undertake.

None of the laws or regulations cited by claimant requires districts to acquire new school sites, undertake new school or modernization projects, add portable classrooms, or request SFP funding, issue local bonds or participate in the other state programs pled for those purposes. In comments filed February 20, 2004, however, claimant argues that participation in the Leroy F. Green School Facilities Act is not voluntary.¹⁹¹ In support of this contention, claimant cites to *Butt v. State of California*¹⁹² for the propositions that the state has a responsibility to “provide for a system of common schools, by which a school shall be kept up and supported in each district” and that those schools are required to be “free.”

Staff disagrees with the claimant’s argument that “obtaining [state] school facilities funding is not optional.” With regard to new construction of school buildings, the Second District Court of Appeal has stated: “[w]here, when or how, if at all, a school district shall construct school buildings is within the sole competency of its governing board to determine.”¹⁹³ It is true, as claimant states, that courts have consistently held public education to be a matter of statewide rather than a local or municipal concern, and that the Legislature’s power over the public school system is plenary.¹⁹⁴ These conclusions are true for every Education Code statute that comes before the Commission on the question of reimbursement under article XIII B, section 6 of the California Constitution. It is also true that the state is the beneficial owner of all school properties and that local school districts hold title as trustee for the state.¹⁹⁵

Nevertheless, article IX, section 14 of the California Constitution allows the Legislature to authorize the governing boards of all school districts to initiate and carry on any program or activity, or to act in any manner that is not in conflict with state law. In this respect, it has been and continues to be the legislative policy of the state to strengthen and encourage local

¹⁹⁰ See generally, *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, *School Facility Financing – A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds* (Cohen, Joel, February 1999) and *Financing School Facilities in California* (Brunner, Eric J., October 2006).

¹⁹¹ Claimant’s response to DOF comments on 02-TC-43, March 31, 2004, p. 2.

¹⁹² *Butt v. State of California* (1992) 4 Cal. 4th 688.

¹⁹³ *People v. Oken* (1958) 159 Cal.App.2d 456, 460.

¹⁹⁴ See *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1579, fn. 5; *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524 (formerly known as *California Teachers Assn. v. Huff*); *Hall v. City of Taft* (1956) 47 Cal.2d 177, 179.

¹⁹⁵ *Hayes v. Commission on State Mandates, supra*, 11 Cal.App.4th 1564, 1579, fn. 5.

responsibility for control of public education through local school districts.¹⁹⁶ The governing boards of K-12 school districts may hold and convey property for the use and benefit of the school district.¹⁹⁷ Governing boards of K-12 school districts have also been given broad authority by the Legislature to decide when to build and maintain a schoolhouse and, “when desirable, may establish additional schools in the district.”¹⁹⁸ Thus, under state law, the decision to construct a school facility lies with the governing boards of school districts, and is not legally compelled by the state.

Additionally, there are no statutes or regulations requiring the governing boards of school districts to construct new buildings or reconstruct unsafe buildings. The decision to reconstruct or even abandon an unsafe building is a decision left to the discretion of a school district. In *Santa Barbara School District v. Superior Court*, the California Supreme Court addressed a school district’s decision to abandon two of its schools that were determined unsafe, instead of reconstructing a new building, as part of its desegregation plan.¹⁹⁹ The court held that absent proof that there were no school facilities to absorb the students, the school district, “in the reasonable exercise of its discretion, could lawfully take this action.”²⁰⁰ The court describes the facts and the district’s decision as follows:

On August 12, 1971, the Board received a report that the Jefferson school was structurally unsafe within the requirements of section 15503 [a former statute with language similar to Education Code sections 17367 and 81162]. The report recommended that a structural engineer be retained to determine whether the school should be repaired or abandoned, since if it cannot be repaired, it must be abandoned pursuant to section 15516. On May 15, 1972, three days before the final meeting of the Board, the superintendent received a report concerning the rehabilitation or replacement costs of the Jefferson school. The report found that it would cost \$621,800 to make the existing structure safe and \$655,000 to build an entirely new building. Accordingly, in fashioning the Administration Plan, the superintendent made provision therein for closing the Jefferson school. The Board would certainly be properly exercising its discretion in a reasonable manner were it to approve abandoning this building in view of the extreme cost. The determination of the questions whether a new school was needed to replace this structure or whether existing facilities could handle the Jefferson school students due to an expected drop in elementary enrollment, was properly within the Board’s discretion.²⁰¹

¹⁹⁶ *California Teachers Assn.*, *supra*, 5 Cal.App.4th 1513, 1523; Education Code section 14000.

¹⁹⁷ Education Code sections 35162.

¹⁹⁸ Education Code sections 17340, 17342.

¹⁹⁹ *Santa Barbara School District v. Superior Court* (1975) 13 Cal.3d 315, 337-338.

²⁰⁰ *Id.*, p. 338.

²⁰¹ *Id.*, p. 337.

Thus, school districts are not legally compelled to acquire new school sites or construct new school facilities, modernize school facilities, add portable classrooms or request and accept SFP funds, issue local bonds, or participate in the other state programs pled for those purposes. Based on the above analysis, staff finds that the SFFRs are triggered by the district's voluntary decision to acquire a new school site, build a school, modernize a school, add portable classrooms, and to request and accept SFP funds, issue local bonds, or participate in the other state programs pled for such projects. Participation in any one of the voluntary programs pled (i.e. SFP funding, issuance of local bonds or other programs pled) is conditioned on performance the SFFRs required by that program and thus, school districts are not legally compelled to comply with the SFFRs required by the test claim statutes and regulations, but rather make a discretionary decision to participate and thus assume the duty to comply.

As discussed in the background above, all of the requirements alleged in this test claim are imposed "as a condition of receiving funding" or are required if the district chooses to issue local bonds. Thus, if a school district wishes to receive state grant funding or issue local bonds for funding of a school facilities project, compliance with the relevant SFFRs is a prerequisite. For example, consistent with the Public Resource Code 21102 and 21150 requirements, Education Code section 17025, subdivision (b) requires certification of CEQA compliance as a condition of bond funding for K-12 school districts.

The test claim statutes make clear that state agencies must require compliance with the SFFRs (i.e. the requirements of the test claim statutes and regulations) as a condition of providing state funding for a school facility project and must require compliance with the requirement for local bond funding imposed under the test claim statutes. However, there is no legal requirement that a school district seek funding from the state or issue local bonds.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings.²⁰²

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."²⁰³ The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."²⁰⁴ The court also reviewed and affirmed the holding of *City of Merced*,²⁰⁵ determining that, when analyzing state-mandate claims, the underlying program must be reviewed to

²⁰² *Kern* (2003) 30 Cal.4th 727.

²⁰³ *Id.* at p. 737.

²⁰⁴ *Ibid.*

²⁰⁵ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

determine if the claimant's participation in the underlying program is voluntary or legally compelled.²⁰⁶ The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain – but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.²⁰⁷ (Emphasis in original.)

Thus, the Supreme Court held as follows:

[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.*²⁰⁸ (Emphasis added.)

Based on the plain language of the statutes creating the underlying education programs in *Kern*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws. Rather, the districts elected to participate in the school site council programs to receive funding associated with the programs.²⁰⁹ Similarly here, school districts are not legally compelled to request and accept state funds or issue local bonds for discretionary construction projects. However, if districts choose to receive SFP funds, issue local bonds or participate in the other voluntary programs pled then, based upon the plain language of the test claim statutes, certain activities are required as a condition of participation in those programs.

The financing of school facilities has traditionally been the responsibility of local government, with *assistance* provided by the state. In 1985, the California Supreme Court decided *Candid Enterprises, Inc. v. Grossmont Union High School District*, which provides a good historical summary of school facility funding up until that time.²¹⁰

In California the financing of public school facilities has traditionally been the responsibility of local government. "Before the *Serrano v. Priest* decision in 1971, school districts supported their activities mainly by levying ad valorem taxes on real

²⁰⁶ *Kern, supra*, 30 Cal.4th 727, 743.

²⁰⁷ *Ibid.*

²⁰⁸ *Id.* at p. 731.

²⁰⁹ *Id.* at pp. 744-745.

²¹⁰ *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878.

property within their districts.” [Citation omitted.] Specifically, although school districts had received some state assistance since 1947, and especially since 1952 with the enactment of the State School Building Aid Law of 1952 (Educ. Code, § 16000 *et seq.*), they financed the construction and maintenance of school facilities through the issuance of local bonds repaid from real property taxes.

After the *Serrano* decision [citation omitted] and to the present day, local government remained primarily responsible for school facility financing, but has often been thrust into circumstances in which it has been able to discharge its responsibility, if at all, only with the greatest difficulty. In these years, the burden on different localities has been different: extremely heavy on those that have experienced growth in enrollment, light on those that have experienced decline, and somewhere in between on those that have remained stable.

In the early 1970’s, because of resistance to increasing real property taxes, localities throughout the state began to experience greater difficulty in obtaining voter approval of bond issues to finance school facility construction and maintenance. As a result, a number of communities chose to impose on developers school-impact fees ... in order to make new development cover the costs of school facilities attributable to it. [Citation omitted.]

With the passage of Proposition 13 in 1978 the burden of school financing became even heavier. “Proposition 13 prohibits ad valorem property taxes in excess of 1% except to finance previously authorized indebtedness. Since most localities have reached this 1% limit, school districts cannot raise property taxes even if two-thirds of a district’s voters wanted to finance school construction.” [Citation omitted.] Moreover, although Proposition 13 authorizes the imposition of “special taxes” by a vote of two-thirds of the electorate, such special taxes have rarely been imposed, remain novel, and as consequence are evidently not perceived as a practical method of school facility financing – especially in view of the need for a two-thirds vote of the electorate to approve them. [Citation omitted.]

In the face of such difficulties besetting local governments, the state has not taken over any substantial part of the responsibility of financing school facilities, less still full responsibility. To be sure, in order to implement the *Serrano* decision the Legislature has significantly increased assistance to education. But it has channeled by far the greater part of such assistance into educational programs and the lesser part into school facilities; in fiscal year 1981-1982, for example, only 3.6 percent went for such facilities. [Citation omitted.]²¹¹

State assistance for construction of school facilities comes almost exclusively from statewide general obligation bonds, and is implemented through the State Allocation Board.²¹² Before Proposition 13, the state bond funds provided to school districts were provided through loan

²¹¹ *Id.*, pp. 881-882. See also “School Facility Financing, A History of the Role of the State Allocation Board and Option for the Distribution of Proposition 1A Funds,” *supra*.

²¹² See also “School Facility Financing, A History of the Role of the State Allocation Board and Option for the Distribution of Proposition 1A Funds,” *supra*.

programs in which districts were required to repay their assistance with property tax revenues or local bond funds. After Proposition 13, the State Allocation Board shifted its policy of providing bond fund assistance from a loan-based program to a grant-based program.²¹³ Today, the grant funds are provided through the School Facility Program (SFP), under the provisions of the Leroy F. Greene School Facilities Act of 1998.²¹⁴ Under the SFP, state bond funding is provided in the form of per pupil grants, with supplemental grants for site development, site acquisition, and other project specific costs when warranted.²¹⁵ New construction grants provide funding on a 50/50 state and local match basis. Modernization grants provide funding on a 60/40 basis. Districts that are unable to provide local matching funds and are able to meet the financial hardship provisions may be eligible for state funding of up to 100 percent.²¹⁶

Though there is substantial funding made available to school districts through state grants, not all school districts elect to receive assistance from state funds for construction of school buildings. The “School Facility Financing” handbook prepared in February 1999 states:

If a school district wants state funding for construction or repair of a school, it must apply to the State Allocation Board for the money. *There are school districts that repair and construct school buildings without the assistance from the State Allocation Board* (i.e., San Diego Unified School District, San Luis Unified School District).²¹⁷ (Emphasis added.)

Therefore, staff finds that school districts are not legally compelled to request or accept state funding or issue local bonds thus triggering the SFFRs requirements under these circumstances.

- b) There is no evidence in the record to support a finding that school districts are practically compelled to acquire new school sites, build new schools, undertake modernization projects, add portable classrooms or to request and accept SFP funding, issue local bonds or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations.**

In comments filed March 31, 2004, claimant notes that “a finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate” and cites to *Sacramento II* as controlling case law.²¹⁸ Claimant relies on a study and Proposition 55 ballot language, both of which state a need to build more schools in California, to demonstrate that school districts are practically compelled to construct new school facilities when existing facilities become

²¹³ “School Facility Financing, A History of the Role of the State Allocation Board and Option for the Distribution of Proposition 1A Funds,” *supra*, pp. 12, 13, 20.

²¹⁴ Education Code section 17170.10 *et seq.*

²¹⁵ School Facility Program Handbook, *supra*, p. 23.

²¹⁶ *Id.* p. 61.

²¹⁷ School Facility Program Handbook, February 1999, endnote 2, p. 39.

²¹⁸ Claimant’s response to DOF comments, *supra*, p. 4, citing *City of Sacramento v. State of California* (1990) 50 Cal.3rd. 51 (*Sacramento II*).

inadequate.²¹⁹ However, the question before the Commission is not whether additional school facilities are needed, but whether school districts are legally compelled by a state statute or regulation or practically compelled to build them and use SFP funding, issue local bonds or participate in the otherwise voluntary programs pled in this test claim therefore. As discussed above, staff finds that school districts are not legally compelled to acquire new school sites, construct new facilities, use state funds or issue local bonds under the test claim statutes.

The proper standard for determining whether school districts and community college districts are practically compelled to undertake school construction projects is the *Kern*²²⁰ standard as followed, and expanded upon to provide specific evidentiary requirements, in the recent decision *Department of Finance v. Commission on State Mandates (POBRA)*.²²¹ Absent legal compulsion, the courts have ruled that at times, based on the particular circumstances, “practical” compulsion might be found. The Supreme Court in *Kern* addressed the issue of “practical” compulsion in the context of a school district that had participated in optional funded programs in which new requirements were imposed. In *Kern*, the court determined there was no “practical” compulsion to participate in the underlying programs, since a district that elects to discontinue participation in a program does not face “certain and severe ... penalties” such as “double ... taxation” or other “draconian” consequences.²²² Rather, local entities that have discretion will make the choices that are ultimately the most beneficial for the entity and its community:

As to each of the optional funded programs here at issue, school districts are, and have been, free to decide whether to (i) continue to participate and receive program funding, even though the school district also must incur program-related costs associated with the [new] requirements or (ii) decline to participate in the funded program. Presumably, a school district will continue to participate only if it determines that the best interests of the district and its students are served by participation – in other words, if, *on balance*, the funded program, even with strings attached, is deemed beneficial. And, presumably, a school district will

²¹⁹ Claimant’s Response to DOF Comments, *supra*, pp. 3-4, citing “School Facility Financing-A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds” (Cohen, Joel, February 1999.) and Proposition 55 Ballot Pamphlet from 2004, which identified a need to construct schools to house one million pupils and modernize schools for an additional 1.1 million students.

²²⁰ *Kern, supra*, 30 Cal.4th 727.

²²¹ *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, pp. 1365-1366, hereinafter “*POBRA*”. Note that *POBRA* is the test claim statute that was formerly identified as “*POBOR*” by the Commission and Commission staff. However, as the *POBRA* Court pointed out at footnote 2, the statute’s commonly used name is “Peace Officers Bill of Rights Act” and the acronym “*POBRA*” was used by the Supreme Court in *Mays v. City of Los Angeles* (2008) 43 Cal. 4th 313, 317. Therefore, this analysis will use the acronym *POBRA*.

²²² *Kern, supra*, 30 Cal.4th 727, 754.

decline participation if and when it determines that the costs of program compliance outweigh the funding benefits. (Emphasis in original.)²²³

Likewise, the state School Facilities Program (SFP) provides new construction grant funding on a 50/50 state and local match basis. Districts that are unable to provide local matching funds and are able to meet the financial hardship provisions may be eligible for state funding of up to 100 percent.²²⁴ If a district decides not to acquire a new school site or build a new school with SFP funding, and hence not to comply with all the corresponding requirements including preparation of HMAs, there is no evidence of “draconian” consequences. Rather, the district will simply forgo the state matching funds for new construction and will need to figure out another way to house its students.

In *POBRA*, the court addressed the issue of the evidence needed to support a finding of practical compulsion. In that case, it was argued that districts “employ peace officers when necessary to carry out the essential obligations and functions established by law.”²²⁵ The Commission found that the *POBRA* statutes constituted a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.²²⁶ In 2006, the Commission reconsidered the claim, as required by Government Code section 3313, and found that *San Diego Unified* supported the Commission’s 1999 Statement of Decision. Specifically, with regard to schools, the Commission found that districts were practically compelled to employ peace officers based upon the district’s “obligation to protect pupils from other children, and also to protect teachers themselves from the violence by the few students whose conduct in recent years has prompted national concern.”²²⁷

The Commission’s Statement of Decision on reconsideration pointed out that, like the decision on mandatory expulsions in the *San Diego Unified* case, its decision was supported by the fact that the California Supreme Court found that the state “fulfills its obligations under the safe schools provision of the Constitution (Cal. Const., art. I, § 28, subd. (c)) by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.”²²⁸ The Commission relied on a general requirement in the law (i.e. to provide safe schools) to support a finding of practical compulsion to perform specific activities (i.e. to hire police officers and comply with the down-stream requirements of hiring those officers). This is precisely the line of reasoning that claimant urges the Commission to follow in this test claim.

However, the court in *POBRA* found that the superior court erred in concluding as a matter of law that, “[a]s a practical matter, the employment of peace officers by the local agencies is ‘not an optional program’ and ‘they do not have a genuine choice of alternative measures that meet

²²³ *Id.*, p. 753.

²²⁴ School Facility Program Handbook, *supra*, p. 61.

²²⁵ *POBRA*, *supra*, 170 Cal.App.4th 1355, 1368.

²²⁶ See CSM-4499.

²²⁷ CSM 05-RL-4499-01, p. 26, citing *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

²²⁸ *Id.*

their agency-specific needs for security and law enforcement." Moreover, the *POBRA* court did not find any evidence in the record to support a finding of legal or practical compulsion and the court provided some guidance regarding the kind of evidentiary showing required to make such a finding. Specifically, the court stated:

The 'necessity' that is required is facing 'certain and severe ... penalties' such as 'double ... taxation' or other 'draconian' consequences.' That cannot be established in this case without a concrete showing that reliance upon the general law enforcement resources of cities and counties will result in such severe adverse consequences.²²⁹

Thus, practical compulsion must be demonstrated by specific facts in the record showing that unless the alleged activity is performed, here the activity of acquiring new school sites, building new school facilities or modernizing existing schools and accepting SFP funding, issuing local bonds or opting to participate in other state programs to further such projects, which would in turn trigger the requirement to comply with the SFFRs that are a condition of those funding programs, the district faces "certain and severe ... penalties' such as 'double ... taxation' or other 'draconian' consequences.'" Only a showing that relying on alternative arrangements to house students would result in such severe consequences will meet the practical compulsion standard. Some alternatives that school districts can employ without requesting SFP funds, issuing local bonds or participating in the other voluntary programs pled in this test claim, thus triggering the requirement to comply with SFFRs, include but are not limited to:

- Transferring students to other schools;²³⁰
- Double session kindergarten classes;
- District boundary changes;
- Multi-track year round scheduling;
- Bussing; and,
- Reopening closed school sites in the district, where available.

Thus, staff finds that there has been no concrete showing, as required by the *POBRA* court, that reliance upon non-construction alternatives to house students would result in severe adverse consequences.

Thus, there is no evidence in the law or in the record that school districts that elect not to use SFP funds, issue local bonds, or participate in the other voluntary programs pled in this test claim, which would trigger the requirement to comply with the SFFRs, face certain and severe penalties such as double taxation or other draconian consequences.

Instead, the seeking of SFP funding, issuance of local bonds or participation in other voluntary programs pled in this test claim are discretionary decisions of the district, analogous to the situation in *City of Merced*. There, the issue before the court was whether reimbursement was

²²⁹ *POBRA, supra*, 170 Cal.App.4th 1355, 1368, (*POBRA*) citing *Kern, supra*, 30 Cal.4th at p. 754, quoting *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 74.) Exhibit S.

²³⁰ See California Code of Regulations, title 14, section 15301.

required for new statutory costs imposed on the local agency to pay a property owner for loss of goodwill, when a local agency exercised the power of eminent domain.²³¹ The court stated:

Whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.²³²

The Supreme Court in *Kern* reaffirmed the *City of Merced* rule in applying it to voluntary education-related funded programs:

The truer analogy between [*Merced*] and the present case is this: In *City of Merced*, the city was under no legal compulsion to resort to eminent domain – but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.^{233 234}

The holding in *City of Merced* applies in this instance. Any costs incurred under the SFRRs in the test claim statutes and regulations (excepting Health & Saf. Code § 25358.1) result from the

²³¹ *City of Merced, supra*, (1984) 153 Cal.App.3d 777, 777.

²³² *Id.* at 783.

²³³ *Kern, supra*, 30 Cal.4th 727, 743.

²³⁴ The Code of Civil Procedure provision that was cited in *City of Merced* states:

Nothing in this title requires that the power of eminent domain be exercised to acquire property necessary for public use. Whether property necessary for public use is to be acquired by purchase or other means or by eminent domain is a decision left to the discretion of the person authorized to acquire the property. (Code Civ. Proc. § 1230.030.)

The Law Revision Commission’s comment on this provision stated:

Section 1230.030 makes clear that whether property is to be acquired by purchase or other means, or by exercise of the power of eminent domain, is a discretionary decision. Nothing in this title requires that the power of eminent domain be exercised; but, if the decision is that the power of eminent domain is to be used to acquire property for public use, the provisions of this title apply except as otherwise specifically provided by statute. ... (California Law Revision Commission comment on Code of Civil Procedure section 1230.030, 2009 Thomson Reuters.)

school district's decision acquire new school sites, build new schools, undertake modernization projects, add portable classrooms or to request and accept SFP funding, issue local bonds or opt to participate in other state programs therefore. Under such circumstances, reimbursement is not required.²³⁵ Therefore, based on the above discussion, staff finds that school districts are not mandated by the state to undertake discretionary projects and participate in the voluntary funding programs pled in this test claim, which would subject them to SFFRs.

CONCLUSION

Staff concludes that the test claim statutes do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. Education Code sections 39003 and 39120 were repealed in 1993, prior to the beginning of the potential reimbursement period for this test claim and thus cannot be reimbursable.
2. The Commission does not have jurisdiction over Education Code section 17213.1, as added by Statutes of 1999, chapter 1002, because this statute was the subject of a final decision of the Commission, *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03).
3. Health and Safety Code section 25358.1, as Added by Statutes 1999, Chapter 23 does not impose a "program" and thus is not subject to reimbursement under article XIII B, section 6 of the California Constitution.
4. The Substantial Progress and Expenditure Audit Guide of May 2003, the School Facility Program Guidebook of January 2003, the State Relocatable Classroom Program Handbook of January 2003, and the Lease-Purchase Applicant Handbook of April 1988 are not executive orders subject to Article XIII B, section 6.
5. Health and Safety Code section 25358.7.1, as added by Statutes 1999, chapter 23, imposes requirements on DTSC, not school districts.
6. The statutes below, which generally require compliance school facility funding requirements, do not mandate school districts to perform any activities because:
 - a) School districts are not legally required to acquire new school sites, build new schools, undertake modernization projects, add portable classrooms or to request and accept SFP funding, issue local bonds or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations.
 - b) There is no evidence in the record to support a finding that school districts are practically compelled to acquire new school sites, build new schools, undertake modernization projects, add portable classrooms or to request and accept SFP funding, issue local bonds or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations. Rather, the requirement to comply with the SFFRs is triggered by a district's voluntary decisions to request

²³⁵ *San Diego Unified School Dist.*, supra, 33 Cal.4th 859, 880.

and accept state matching funds under the SFP, to issue local bonds or to participate in one of the other voluntary programs pled.

Education Code Sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, and 100620 as added or amended by Statutes 1976, Chapter 557; Statutes 1977, Chapter 242; Statutes 1978, Chapter 362; Statutes 1982, Chapter 735; Statutes 1990, Chapter 1602; Statutes 1991, Chapter 1183, Statutes 1996, Chapter 277; Statutes 1997, Chapters 513, 893, and 940; Statutes 1998, Chapters 407, 485, 691, 741, 848, 941, 957, and 1076; Statutes 1999, Chapters 133, 709, 858, 992; Statutes 2000, Chapters 44, 193, 443, 530, 590, and 753; Statutes 2001, Chapters 132, 159, 194, 422, 647, 725, 734 and 972; and Statutes, 2002, Chapters 33, 199, 935, 1075, and 1168

Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668; Statutes 2004, Chapter 689; Statutes 2007, Chapter 130; and Statutes 2008, Chapter 148

California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70

Staff Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

Glossary of Frequently Used SFFRs Related Terms and Acronyms:

CEQA: California Environmental Quality Act	An Act with the purposes of informing decisionmakers and the public about project impacts, identifying ways to avoid or significantly reduce environmental damage, preventing environmental damage by requiring feasible alternatives or mitigation measures, disclosing to the public reasons why an agency approved a project if significant environmental effects are involved, involving public agencies in the process, and increasing public participation in the environmental review and the planning processes.
CERCLA: federal Comprehensive Environmental Response, Compensation, and Liability Act	HSAA is a 1980 law passed to address the cleanup of abandoned toxic waste sites. DTSC administers CERCLA, commonly known as “Superfund”). Which is implemented in California through HSAA and related regulations.
DOE: California Department of Education	
DOF: California Department of Finance	
DTSC: California Department of Toxic Substances Control	
EIR: Environmental Impact Report	A detailed statement prepared in accordance with CEQA whenever it is established that a project may have a potentially significant effect on the environment. The EIR describes a proposed project, analyzes potentially significant environmental effects of the proposed project, identifies a reasonable range of alternatives, and discusses possible ways to mitigate or avoid the significant environmental effects. EIR can refer to the draft EIR (DEIR) or the final EIR (FEIR) depending on context. (Pub. Resources Code §§ 21061, 21100 and 21151; Cal. Code Regs., tit. 14, § 15362.)
HMA: Hazardous Materials Assessments	Environmental studies conducted to provide basic information for determining if there has been a release or there is a threatened release of a hazardous material or if there may be a naturally occurring hazardous material present at the site which may pose a risk to human health or the environment.
HSAA: The Hazardous Substance Account Act	California’s equivalent to CERCLA. HSAA funds the cleanup of toxic sites from a fund created from taxes and fines levied on the site’s polluters, and imposes requirements on affected property owners and potentially

	responsible parties and a number of related requirements on state agencies.
ND: Negative Declaration	A written statement by the lead agency that briefly states why a project subject to CEQA will not have a significant effect on the environment. An ND precludes the need for an EIR. (Pub. Resources Code § 21064; Cal. Code Regs., tit. 14, § 15371.)
OPSC : Office of Public School Construction	The administrative arm of the SAB whose primary responsibilities include: allocating state funds for projects approved by the SAB, reviewing eligibility and funding applications, and providing information and assistance to school districts.
Phase I Assessment	HMA prepared to identify the potential for hazardous material release or the presence of naturally occurring hazardous materials.
PEA: Preliminary Endangerment	HMA prepared if the Phase I Assessment identified potential or actual hazardous materials to evaluate the threat posed to public health or the environment.
SAB: State Allocation Board	The board responsible for approving all state apportionments for new school construction and modernization projects.
SFP: State School Facility Program	A state grant program, funded with statewide bonds, to fund new school facilities and the modernization of existing school facilities.
SFFRs: School Facilities Funding Requirements	Activities required as a condition of funding or participation in state school facility programs.

530 P.2d 605

13 Cal.3d 315, 530 P.2d 605, 118 Cal.Rptr. 637

(Cite as: 13 Cal.3d 315)

▷ SANTA BARBARA SCHOOL DISTRICT et al., Petitioners,
v.

THE SUPERIOR COURT OF SANTA BARBARA COUNTY, Respondent; C. RAYMOND MULLIN et al.,
Real Parties in Interest.

C. RAYMOND MULLIN et al., Plaintiffs and Respondents,
v.

SANTA BARBARA SCHOOL DISTRICT et al., Defendants and Appellants

L.A. No. 30054., L.A. No. 30086.

Supreme Court of California
January 15, 1975.

SUMMARY

In a class action under a complaint alleging two causes of action concerning the validity of the composition and election of a city board of education and one cause challenging the validity of a desegregation plan adopted at a board meeting, the trial court filed a memorandum of intended decision declaring an intent to enjoin implementation of the plan and also expressing the court's intent with respect to the other causes. However, before findings and conclusions were filed, the Supreme Court issued an alternative writ of prohibition limited in effect to the part of the intended decision concerned with implementation of the plan. Judgment was rendered on the first two causes. (Superior Court of Santa Barbara County, No. 96260, John T. Rickard, Judge.)

The Supreme Court ordered defendants' appeal from the judgment transferred from the Court of Appeal to it for consideration simultaneously with the writ proceeding. The judgment was reversed and the cause remanded with directions to enter judgment for defendants on the two causes relating to validity of the election and composition of the board. And a peremptory writ of prohibition issued to restrain the trial court's intended action in all respects except in enjoining implementation of the desegregation plan which had purportedly been adopted. It was held that the board had been without jurisdiction to adopt the plan at the meeting as a result of the failure of the posted agenda

for that meeting to give adequate notice that the particular plan would be considered at the meeting. Additionally, the court held that as enacted in Proposition 21, Ed. Code, § 1009.6, barring the assignment of pupils on the basis of race, is unconstitutional as applied to school districts manifesting segregation, but that the parts of the proposition which repealed Ed. Code, §§ 5002, 5003, declaring state policy of eliminating racial imbalance in schools, were severable from the invalid part and independently valid. And under the view that there is no constitutional right to a separate and elected elementary board of education and no unconstitutional infirmity in designating a city's board of education, elected from the full territory within its jurisdiction, to govern the lesser and wholly included elementary school district, the Supreme Court held that the Santa Barbara Board of Education, which has been designated by the Legislature to govern the city's elementary school district, may lawfully be the common governing board of the city's high and elementary school districts, even though they are not coterminous.

In Bank. (Opinion by Sullivan, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Schools § 10--School Districts--Assignment of Pupils on Basis of Race.

Ed. Code, § 1009.6, which bars assignment of pupils on the basis of race, is unconstitutional as applied to school districts manifesting either de jure or de facto segregation.

(2) Schools § 10--School Districts--Validity of Repealing Provisions of Initiative.

Inasmuch as a policy in favor of neighborhood schools is a reasonably conceivable one and such an expression of policy can in no way limit or affect the constitutional obligations of school districts, the provisions found in §§ 2, 3, and 4 of Proposition 21, repealing Ed. Code, §§ 5002, 5003, which had declared the state policy of eliminating racial imbalance in schools and had delineated factors to be considered in implementing the policy, and also repealing certain administrative guidelines, cannot be struck down as

constitutionally impermissible.

(3) Schools § 10--School Districts--Severability of Initiative Provisions.

The fact that, as enacted in Proposition 21, Ed. Code, § 1009.6, barring the assignment of pupils on the basis of race, is unconstitutional as applied to school districts manifesting segregation, does not necessarily invalidate the repealing provisions of the proposition, inasmuch as the repealing provisions are severable from the unconstitutional part not only mechanically, but also as to purpose and method, and are of independent validity and not inconsistent with the elimination of the invalid part.

(4a, 4b) Schools § 51 (5)--Administrative Officers--Boards--Meetings-- Jurisdiction.

Under Ed. Code, § 966, requiring the posting of an agenda 48 hours prior to a proposed meeting of a school board, the board cannot change its posted agenda within the 48-hour period next immediately preceding a regular meeting. If the board wishes to change the agenda substantially within that period, it must postpone a meeting at least 48 hours. Thus, where concerned parents and citizens could reasonably infer from the posted agenda that only those desegregation plans which had been previously presented would be considered at the meeting, the board had no jurisdiction to consider or approve a plan which was not presented until that meeting and which differed substantially from all the previously presented plans.

(5) Schools § 51 (5)--Administrative Officers--Boards--Meetings--Posted Agenda.

The proper posting of a school board meeting agenda, as required by Ed. Code, § 966, cannot be replaced by newspaper publicity.

(6) Schools § 51 (6)--Administrative Officers--Boards--Rights, Powers and Duties--Desegregation.

In desegregating a school system, a school board is not limited in the exercise of its powers to those acts reasonably necessary to effectuating desegregation.

(7) Schools § 77--Actions and Liability--Judicial Control Over Official Acts--Prohibition.

Prohibition was available to prevent the trial court from exceeding its jurisdiction by carrying out its memorandum of intended decision, insofar as the decision would amount to a substitution of the trial court's views for those of a school board with respect to a matter within the board's

discretion concerned with the closing down of certain schools.

[See Cal.Jur.2d, Rev., Schools, § 217; Am.Jur.2d, Schools, § 52.]

(8) Schools § 51 (1)--Administrative Officers--One Board as Governing Districts Which Are Not Coterminous.

There is no constitutional right to a separate, elected elementary board of education and no constitutional infirmity in designating a city's board of education, elected from the full territory within its jurisdiction, to govern the lesser and wholly included elementary school district. Therefore, the Santa Barbara Board of Education, which has been designated by the Legislature to be the governing board of the city's elementary school district, and which is elected in compliance with the "one man, one vote" rule, may lawfully be the common governing board of the elementary and high school districts despite the fact that they are not coterminous. And election of the board is not subject to attack on the theory that the election is also an election of the governing board of the elementary school district and that such latter election violates the "one man, one vote" rule as causing the dilution of the votes of electors residing in the elementary school district by the votes of non-resident electors.

COUNSEL

George P. Kading, County Counsel, Robert D. Curiel, Chief Assistant County Counsel, Marvin Levine and Don H. Vickers, Deputy County Counsel, for Petitioners and for Defendants and Appellants.

Michael Lawson, A. L. Wirin, Fred Okrand, Laurence R. Sperber, Nathaniel S. Colley, Primo Ruiz, Fred J. Hiestand, Gene Livingston, Jerome B. Falk, Jr., William F. McCabe, Peter Galiano, Robert A. Stafford, Stafford, Buxbaum & Chackmak, Gervaise Davis III, Walker, Schroeder, Davis & Brehmer and Anthony G. Amsterdam as Amici Curiae on behalf of Petitioners.

Price, Postel & Parma, Gary R. Ricks and Hollister, Brace & Angle for Real Parties in Interest and for Plaintiffs and Respondents.

No appearance for Respondent.

Bagley, Bianchi & Sheeks, William T. Bagley, Robert L. McWhirk, Levy & Van Bourg, Victor J. Van Bourg and

Stewart Weinberg as Amici Curiae. *319

SULLIVAN, J.

In this class action brought against two school districts and their common governing board of education, we are called upon to determine the validity of a desegregation plan for elementary schools. Our task also requires us to examine and pass upon the constitutionality of a recent initiative measure enacting certain anti-busing legislation and repealing existing statutes dealing with the prevention and elimination of racial and ethnic imbalance in pupil enrollment. Additionally we must examine the validity of the pertinent statute permitting the board of education in question to be the common governing board of the high school district and the elementary school district here involved. In essence, plaintiffs make two independent but cognate attacks - one against the board's plan and the other against the board itself. We take them up in that order, separately stating the facts proper to each. We first turn our attention to the desegregation plan.

I

Defendant Santa Barbara Board of Education (hereafter Board and referred to as defendant in the singular) is the common governing board of defendants Santa Barbara School District and Santa Barbara High School District. Defendant Norman B. Scharer is the Superintendent of Schools of Santa Barbara (superintendent).

Culminating a period of five years' planning and study aimed at correcting the racial imbalance in elementary schools, the Board on February 3, 1972, resolved "to move immediately toward the total desegregation of all Santa Barbara elementary schools beginning in September 1972." The Board adopted the following four-step procedure to effectuate this resolution: (1) the issuance by February 22, 1972, of a statement of policy on desegregation; (2) the creation of a "Task Force Committee for Desegregation," consisting of 22 members, to develop criteria for the study of proposed desegregation plans and to present such criteria to the Board no later than March 2, 1972; (3) the establishment of an "Education and Integration Study Committee," consisting of more than 100 members, under the chairmanship of the superintendent, to review various plans submitted for carrying out the desegregation-integration policy and to present to the Board, no later than May 4, 1972, two or three alternate plans; and (4)

the determination that "[o]n May 18, 1972, this Board of Education will adopt one plan to be implemented as fully as possible in September 1972." *320

Both committees met numerous times and completed all work on schedule. On March 2, 1972, the Board adopted 12 criteria for guidance in reviewing the proposed desegregation plans. One of the criteria stated that any desegregation plan should "provide for optimum use of and be capable of being implemented within existing facilities."

Nine desegregation plans were received and studied initially by the "Task Force" and thereafter by the larger Education and Integration Study Committee. The latter committee by a vote of 74 to 4 recommended to the Board a specific desegregation plan known as the Hord-Mailes-Christian-Belden Plan, named after the four sponsoring elementary school principals. The committee also approved two alternate plans and prior to May 4, 1972, presented all three to the Board. These three plans, together with the West-Anderson plan not recommended by the committee, were formally presented to the Board at its meeting held on May 4, 1972.

Due to various objections raised by members of the Board in the ensuing discussion at that meeting, the superintendent decided to develop his own plan. On May 16, 1972, just two days prior to the Board meeting scheduled for final adoption of a desegregation plan, the superintendent announced, in an article appearing in the Santa Barbara News Press, that he proposed recommending a new desegregation plan at that meeting. The next day the same newspaper contained a longer article describing the general outlines of the so-called "Administration Plan." That night the plan was discussed at a meeting of the Education and Integration Study Committee. However, there was no time for study or review prior to the Board meeting the following night.

At its meeting on the next night - May 18, 1972 - the Board discussed the three plans recommended by the committee, the West-Anderson Plan and the Administration Plan. The last named plan was presented orally because it had not yet been reduced to writing. Despite two petitions signed by 3,000 people requesting a postponement for further study, the Administration Plan was adopted by the Board as orally presented. On June 8, 1972, the plan was summarized in writing and submitted to the State Department of Education for approval.

On June 9, 1972, C. Raymond Mullin and Howard G. Larson, on behalf of themselves and of all other voters, parents and taxpayers similarly situated, commenced the instant action seeking: (1) a writ of mandate to compel a special election of the Board and (2) declaratory *321 and injunctive relief to prevent the implementation of the allegedly unlawful and inadequate desegregation plan. The complaint contained three causes of action: The first two which we discuss separately (see Part II, *infra*) concerned the validity of the election and composition of the Board; the third cause of action alleged that the adoption of the Administration Plan by the Board was: (1) invalid for failure to give notice as required by the Education Code and (2) an abuse of discretion, in that the Board hurriedly adopted an inadequately studied plan which failed to desegregate all the elementary schools, despite the closing of two elementary schools altogether and the changing of the kindergarten to grade six pattern in two other schools.

Following an eight-day trial, the court filed a memorandum of intended decision. In respect to the third count^{FN1} which attacked the validity of the Administration Plan, the court declared its intention to enjoin implementation of the plan. It rested this contemplated action on two bases. First, the court concluded that the Board had no jurisdiction to close the schools since it had failed to include notice of the proposed closure of two schools in its published agenda as required by section 966 of the Education Code. The court determined that the closure of the schools was such an integral part of the Administration Plan that the whole plan must fall. Secondly, the court concluded that the Board abused its discretion by adopting the Administration Plan requiring the closure of two schools since such closure was not reasonably necessary to the effective desegregation of the elementary schools.

FN1 The memorandum of intended decision also included a proposed decision on the first two causes of action as well, which is discussed in Part II of this opinion.

Before findings of fact and conclusions of law, based on the court's memorandum of intended decision were filed, defendants presented to this court a petition invoking our original jurisdiction and seeking a writ of prohibition restraining the trial court from entering judgment in accord with the memorandum of intended decision. We issued an alternative writ of prohibition.^{FN2} On August 28, 1972,

plaintiffs petitioned this court to modify the alternative writ so as to omit any stay of the trial court's proposed order enjoining implementation of the plan. Since in issuing the alternative writ, we had determined that the petition had made a prima facie showing that the proposed action of the trial court *322 was in excess of its jurisdiction and therefore that its proposed enjoining of the Administration Plan must be prohibited pending our final determination of the issue, we denied the petition for modification.

FN2 As prayed for in the petition, the alternative writ of prohibition was limited in effect to the intended decision on the third cause of action. The trial court thereafter entered judgment on the first two causes of action and defendants appealed. We ordered such appeal transferred from the Court of Appeal to this court so that we could consider it simultaneously with the writ proceeding.

Subsequently an additional factor was injected into the resolution of the above proceeding with the adoption by the electorate at the general election held on November 7, 1972, of the initiative measure denominated Proposition 21. Section 1 of that proposition added to the Education Code section 1009.6 providing: "No public school student shall, because of his race, creed, or color, be assigned to or be required to attend a particular school." Sections 2 and 3 of Proposition 21 repealed sections 5002 and 5003^{FN3} respectively of the Education Code, which had declared the state policy of eliminating racial imbalance in California schools and had delineated the various factors to be considered in implementing this policy. Section 4 of Proposition 21, repealed the administrative guidelines toward achieving racial balance in the schools adopted by the State Board of Education. (§§ 14020 and 14021 of tit. 5 of the Cal. Admin. Code.) *323

FN3 Section 5002 provides: "It is the declared policy of the Legislature that persons or agencies responsible for the establishment of school attendance centers or the assignment of pupils thereto shall prevent and eliminate racial and ethnic imbalance in pupil enrollment. The prevention and elimination of such imbalance shall be given high priority in all decisions relating to school sites, school attendance areas, and school attendance practices."

Section 5003 provides: “(a) In carrying out the policy of Section 5002, consideration shall be given to the following factors:

“(1) A comparison of the numbers and percentages of pupils of each racial and ethnic group in the district with their numbers and percentages in each school and each grade.

“(2) A comparison of the numbers and percentages of pupils of each racial and ethnic group in certain schools with those in other schools in adjacent areas of the district.

“(3) Trends and rates of population change among racial and ethnic groups within the total district, in each school, and in each grade.

“(4) The effects on the racial and ethnic composition of each school and each grade of alternate plans for selecting or enlarging school sites, or for establishing or altering school attendance areas and school attendance practices.

“(b) The governing board of each school district shall periodically, at such time and in such form as the Department of Education shall prescribe, submit statistics sufficient to enable a determination to be made of the numbers and percentages of the various racial and ethnic groups in every public school under the jurisdiction of each such governing board.

“(c) For purposes of Section 5002 and this section, a racial or ethnic imbalance is indicated in a school if the percentage of pupils of one or more racial or ethnic groups differs significantly from the districtwide percentage.

“(d) A district shall study and consider plans which would result in alternative pupil distributions which would remedy such an imbalance upon a finding by the Department of Education that the percentage of pupils of one or more racial or ethnic groups in a school differs significantly from the district-wide percentage. A district undertaking such a study may consider among feasibility factors the following:

“(1) Traditional factors used in site selection, boundary determination, and school organization by grade level.

“(2) The factors mentioned in subdivision (a) of this section.

“(3) The high priority established in Section 5002.

“(4) The effect of such alternative plans on the educational programs in that district.

“In considering such alternative plans the district shall analyze the total educational impact of such plans on the pupils of the district. Reports of such a district study and resulting plans of action, with schedules for implementation, shall be submitted to the Department of Education, for its acceptance or rejection, at such time and in such form as the department shall prescribe. The department shall determine the adequacy of alternative district plans and implementation schedules and shall report its findings as to the adequacy of alternative district plans and implementation schedules to the State Board of Education. A summary report of the findings of the department pursuant to this section shall be submitted to the Legislature each year.

“(e) The State Board of Education shall adopt rules and regulations to carry out the intent of Section 5002 and this section.”

Since the Administration Plan was adopted by the Board pursuant to and in furtherance of the repealed code sections, and since the plan involved the assignment of various ethnic minority students to certain schools in order to create a racial balance among the elementary schools in the district, Proposition 21, if valid, would provide an independent basis to support the trial court's intended invalidation of the Administration Plan. This court has, therefore, allowed various amici curiae to file briefs directed to the question of the validity and constitutionality of Proposition 21.

In 1970 the Legislature had added to the Education Code,

^{FN4} section 1009.5 which provided: "No governing board of a school district shall require any student or pupil to be transported for any purpose or for any reason without the written permission of the parent or guardian." This court in *San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937 [92 Cal.Rptr. 309, 479 P.2d 669] observed that this section was reasonably susceptible of two interpretations: "The ambiguity of section 1009.5 inheres in the phrase '*require* any student or pupil to be transported.' [Fn. omitted.] (Italics added.) One may 'require' a student to be transported by punishing a refusal or by physically forcing him onto a school bus; in a second sense, one may 'require' a student to be transported by *assigning* him to a school beyond walking distance of his home." (

FN4 Hereafter, unless otherwise indicated, all section references are to the Education Code. *Id.* at p. 945.) We reasoned that if the section were construed to prohibit assignment of pupils to a school beyond a reasonable walking distance from the pupil's home it would be unconstitutional. Applying the doctrine that where possible a statute will be construed in a manner that would uphold its constitutionality, we accordingly held that "section 1009.5 does no more than prohibit a school district from compelling *324 students, without parental consent, to use means of transportation furnished by the district." (*Id.* at p. 942.)

Shortly after our decision in *Johnson*, the Legislature passed the Bagley Act adding sections 5002 and 5003 (see fn. 3, *ante*) which directed school districts to "eliminate racial and ethnic imbalance in pupil enrollment" and specified certain factors to be considered in developing plans to achieve racial balance. The proponents of Proposition 21 in their published argument in support of the proposition characterized the Bagley Act as a "forced integration measure ... which could only be accomplished through forced busing ... without regard to neighborhood schools or parental consent." They asserted opposition to "mandatory busing for the sole purpose of achieving forced integration" and to "reassign[ing] pupils from their neighborhood schools to achieve racial and ethnic balance." Proposition 21 purported to eliminate this evil by repealing the Bagley Act (§§ 5002 and 5003), as well as the complementary administrative regulations, and by adding section 1009.6 which would prohibit forced integration and mandatory busing by denying the school district's power to assign

pupils to schools on the basis of race.

Defendants and various amici curiae urge that Proposition 21 is unconstitutional in its entirety, both insofar as it added section 1009.6 and as it repealed sections 5002 and 5003 along with the administrative guidelines.

We declared in *Johnson* that section 1009.5, if construed to bar assignment of pupils to a school beyond reasonable walking distance "would be unconstitutional if applied to districts manifesting racial segregation, whether de jure or de facto in character." (*San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d at p. 954.) Section 1009.6 which bars the assignment of pupils on the basis of race is unconstitutional in the same manner and for the same reasons set forth by us in *Johnson*. We deem it unnecessary to repeat here at length our rationale in that case; our opinion speaks for itself. We merely outline here its essentials, and underscore our conclusions with reference to subsequent United States Supreme Court cases.

First: We emphasized in *Johnson* that "Often the most effective program, and at times the only program, which will eliminate segregated schools requires pupil reassignment and busing. ... Since the U.S. Supreme Court has held that under the Constitution school boards in *de jure* segregated districts are 'clearly charged with the affirmative duty to *325 take whatever steps might be necessary' to eliminate segregation 'root and branch,' a statute which would proscribe a principal, and in some cases essential and exclusive step to achieve that end, must obviously violate constitutional requirements." (*San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d 937, 955.) (Italics added.)

Approximately three months after we expressed these views in *Johnson* in dealing with section 1009.5, the United States Supreme Court in *Board of Education v. Swann* (1971) 402 U.S. 43 [28 L.Ed.2d 586, 91 S.Ct. 1284] struck down a statute virtually identical with section 1009.6 ^{FN5} (added to the code in 1972 by Proposition 21) with an unmistakably clear and forceful expression of the same constitutional mandate. "Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid ... all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate dual school systems. [¶]

Similarly, the flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems. ... [¶] We likewise conclude that an absolute prohibition against transportation of students assigned on the basis of race, 'or for the purpose of creating a balance or ratio,' will similarly hamper the ability of local authorities to effectively remedy constitutional violations." (

FN5 North Carolina General Statutes section 115-176.1 (Supp. 1969) provides in relevant part: "No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this article is prohibited" *Id.* at p. 46 [28 L.Ed.2d at p. 589].)

Second: We further held in *Johnson* that section 1009.5 was unconstitutional as applied to school districts manifesting de facto as well as de jure racial segregation. Citing a number of decisions of lower federal courts (3 Cal.3d at p. 956, fns. 21-23), we observed that they had not drawn a clear distinction between de facto and de jure segregation and that some of them had defined de facto segregation as "that resulting from residential patterns in a nonracially motivated neighborhood school system." (*Id.* at p. 956, fn. omitted; citing inter alia, *Keves v. School District Number One, Denver, Colorado* (D.Colo. 1970) 313 F.Supp. 61, 73-75; *Swann v. Charlotte-Mecklenburg Bd. of Educ.* (4th Cir. 1970) 431 F.2d 138, 141; 3 Cal.3d at p. 956, fns. 21 and 22.) We noted the necessary *326 influence of school board decisions on the racial composition of residential areas.

Canvassing these federal precedents we concluded: "Thus under the current pattern of court decisions, neither school districts nor lower courts can determine with any confidence whether a pattern of school segregation should be classed as de facto or de jure. Consequently, if we held section 1009.5 unconstitutional only as applied to districts of de jure segregation, no school board in California ... could ascertain whether section 1009.5 could constitutionally apply within its district. Such a holding would, therefore, entail uncertain enforcement of section 1009.5, a confusion which would inhibit and delay school boards in their efforts to bring about full equality of educational

opportunity. The *Green* decision [*Green v. County School Board* (1968) 391 U.S. 430 (20 L.Ed.2d 716, 88 S.Ct. 1689)] calls for desegregation now; a statute which imports confusion and delay in the uprooting of de jure segregation violates both the rule prohibiting partial enforcement of legislation, when such enforcement entails the danger of vague future application, and the mandate of the Supreme Court of the United States." (*San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d at p. 957.)

(1) This reasoning has been substantially buttressed by the recent decision of the United States Supreme Court in *Keves v. School District, No. 1, Denver, Colo.* (1973) 413 U.S. 189 [37 L.Ed.2d 548, 93 S.Ct. 2686]. In *Keves* the high court defined de jure segregation as "current condition of segregation resulting from intentional state action." (*Id.* at p. 205 [37 L.Ed.2d at pp. 561-562].) As potentially probative of an intentional segregative action on the part of school boards, the court referred to "policies and practices with respect to schoolsite location, school size, school renovations and additions, student-attendance zones, student assignment and transfer options, mobile classroom units, transportation of students, assignment of faculty and staff etc." (*Id.* at pp. 213-214 [37 L.Ed.2d at p. 566].)

The high court further emphasized that segregatory intent on the part of the school board is not limited to actions in the immediate present. "We reject any suggestion that remoteness in time has any relevance to the issue of intent. If the actions of school authorities were to any degree motivated by segregative intent and the segregation resulting from those actions continues to exist, the fact of remoteness in time certainly does not make those actions any less 'intentional.'" (*Id.* at p. 210 [37 L.Ed.2d at p. 564].) We read this to mean that a school board therefore can ascertain *327 whether the segregation present in its district is de jure or de facto only by examining the full history of acts by the school authorities and determining if, at any time in that course of action, some acts were undertaken with segregatory intent. We think it is clear that no school board or lower court can ascertain with any degree of confidence whether section 1009.6 can constitutionally apply in its district and we further believe that therefore a determination by this court that section 1009.6 can apply to districts manifesting de facto segregation would involve uncertain enforcement and improperly delay elimination of de jure segregation.

The Supreme Court has continuously reiterated its com-

mitment to eliminating de jure racial segregation and its unwillingness to accept any limitation upon procedures necessary to the resolute and thorough accomplishment of that task. To allow school authorities to rest content in the assumption that the pattern of segregation in their district is de facto and therefore to claim that section 1009.6 prohibits them from eliminating that segregation by pupil assignment on the basis of race implemented through busing, would impermissibly impede the constitutionally mandated task of rooting out de jure segregation. “[I]f a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees.” (*Board of Education v. Swann, supra*, 402 U.S. at p. 45 [28 L.Ed.2d at p. 589].)

The high court has also recognized the discouraging fact of the “dilatatory tactics of many school authorities”; the “failure of local authorities to meet their constitutional obligations [has] aggravated the massive problem of converting from the state-enforced discrimination of racially separate school [s].” (*Swann v. Board of Education* (1971) 402 U.S. 1, 14 [28 L.Ed.2d 554, 565, 91 S.Ct. 1267].) In view of this history, it is all too clear to us that the elimination of de jure segregation would be seriously impeded if school authorities could claim a legal disability to assign or bus pupils merely by asserting that the segregation in their district was de facto in origin.

Consistently with our earlier holding in *Johnson* and indeed under the compulsion of the decisions of the United States Supreme Court in *Swann* and *Keyes* which confirm our views in *Johnson*, we hold, as *328 indeed we must, that section 1009.6 as applied to school districts manifesting either de jure or de facto segregation is unconstitutional.

We proceed to consider a related issue. It will be recalled that Proposition 21 not only added section 1009.6 but also repealed sections 5002 and 5003 as well as certain administrative guidelines. (See fn. 3, *ante*.) Various amici curiae urge that the repealing provisions of Proposition 21 (i.e., §§ 2, 3 and 4) are also unconstitutional, on two grounds: (1) the repeal of these sections significantly encourages and involves the state in racial discrimination and (2) even if constitutional in themselves, the repealing provisions are tainted by the unconstitutional portion of

Proposition 21 and cannot be severed from it.

On the first point amici argue that our holding in *Mulkey v. Reitman* (1966) 64 Cal.2d 529 [50 Cal.Rptr. 881, 413 P.2d 825] compels the conclusion that the repealing provisions are themselves unconstitutional. In *Mulkey* we held unconstitutional as violative of the equal protection clause of the Fourteenth Amendment of the United States Constitution, article I, section 26 of the California Constitution, an initiative measure appearing as Proposition 14 on the statewide ballot in the general election of 1964 and adopted by the electorate. That proposition nullified state statutes aimed at eliminating racial discrimination in housing and barred the state from legislating in the future so as to limit the right of private discrimination in the sale or leasing of property. We there focused on the distinction between racial discrimination resulting from state action and that resulting from the private acts of individuals, framing the issue before us thusly: “The only real question ... is whether the discrimination results solely from the claimed private action or instead results at least in part from state action which is sufficiently involved to bring the matter within the proscription of the Fourteenth Amendment.” (*Mulkey v. Reitman, supra*, 64 Cal.2d at p. 536.) Finding the requisite state action, we concluded: “Here the state has affirmatively acted to change its existing laws from a situation wherein the discrimination practiced was legally restricted to one wherein it is encouraged Certainly the act of which complaint is made is as much, if not more, the legislative action which authorized private discrimination as it is the final, private act of discrimination itself. ... When the electorate assumes to exercise the lawmaking function, then the electorate is as much a state agency as any of its elected officials.” (*Id.* at p. 542.) Amici contend that the repealing portions of Proposition 21 (i.e., §§ 2, 3 and 4) similarly were intended to, and will result in, preserving racial discrimination and *329 segregation, in this instance in the school systems, and thus that the very passage of Proposition 21 involves the state in racial discrimination.

However, *Mulkey* is actually of no assistance to the amici's argument. The mere fact that the initiative measures in both instances - Proposition 14 in *Mulkey* and Proposition 21 in the case at bench - represent state action proves nothing, since in the instant case, the state, *independent of the passage of Proposition 21*, is involved in education. Indeed in *Mulkey* we noted this critical difference: “[I]n *Jackson v. Pasadena City School Dist.*, ... the state, be-

cause it had undertaken through school districts to provide educational facilities to the youth of the state, was required to do so in a manner which avoided segregation and unreasonable racial imbalance in its schools." (*Mulkey v. Reitman, supra*, 64 Cal.2d at p. 537.) Proposition 21 by repealing the involvement of the state government in discharging the state's duty not to segregate, neither abrogated the school district's constitutional duty not to segregate nor removed the state from involvement through local school districts in the field of education. There is no problem of state involvement under the Fourteenth Amendment - it is simply a question whether the state involvement shall be solely by the local school districts or shall include involvement by the state government as well.

Amici curiae assert that, prior to the adoption of sections 14020 and 14021 of title 5 of the California Administrative Code and the passage of sections 5002 and 5003, local school districts had been very slow in seeking and achieving racial balance in the school system. As a result of the adoption of these sections and their enforcement in the courts, there was a significantly increased activity directed toward preventing, reducing and eliminating racial imbalance in the schools. It appears clear, amici argue, that the repeal pursuant to Proposition 21 (see fn. 3, *ante*, and accompanying text) of sections 5002 and 5003 will have the effect of retarding, if not reversing, this process of establishing racial balance in the schools of California. Finally, it is urged, the avowed purpose of Proposition 21 was opposition to these sections as a "forced integration measure ... which could only be accomplished through forced busing ... without regard to neighborhood schools or parental consent." (Ballot Pamphlet, argument in favor of Proposition 21, as presented to the voters of the State of California, General Election (Nov. 7, 1972).)

In one respect the gist of amici's argument is to ask this court to take judicial notice that local school districts fail to fulfill their constitutional obligation to desegregate, and thus to conclude that the passage of *330 Proposition 21 constituted state involvement in racial discrimination. Even if it were within our province to take such judicial notice, no facts have been presented to us supportive of amici's contention.

In another respect, the essence of the argument is to assert that the policy of the Legislature declared in sections 5002 and 5003 is inherently invulnerable to change through an initiative measure. On the contrary, since racial balance

determined according to a precise statutory formula is not a constitutional prerequisite but a matter of state policy, the people of California through the initiative process, have the power to declare state policy. The repealing provisions of Proposition 21 can conceivably be interpreted as an expression by the people of this state of their preference for a "neighborhood school policy." (See *Keyes v. School Dist. No. 1, Denver, Colo., supra*, 413 U.S. at p. 206 [37 L.Ed.2d at p. 562].) We deem it unnecessary to the resolution of the issues now before us to determine precisely what was the intention of the electorate in this respect and accordingly intimate no views on the subject. (2) We merely conclude that since a policy in favor of neighborhood schools is a reasonably conceivable one and since such an expression of policy can in no way limit or affect the constitutional obligations of school districts, the repealing provisions found in sections 2, 3 and 4 cannot be struck down as constitutionally impermissible. It may be that our assessment of the people's desires in this respect is erroneous; if so, constitutional processes are available to the people to reinstate what has been repealed.

We turn now to the second point of the argument, namely that the repealing sections of Proposition 21 (i.e., §§ 2, 3 and 4) cannot be severed from the unconstitutional portion thereof (i.e., § 1 adding § 1009.6 to the Ed. Code) and therefore the proposition in its entirety must fall as unconstitutional.

The rule on severability is set forth in *In re Blaney* (1947) 30 Cal.2d 643, 655 [184 P.2d 892]: "But if the statute is not severable, then the void part taints the remainder and the whole becomes a nullity. It is also true that in considering the issue of severability, it must be recognized that the general presumption of constitutionality, fortified by the express statement of a severability clause, normally calls for sustaining any valid portion of a statute unconstitutional in part. *This is possible and proper where the language of the statute is mechanically severable*, that is, where the valid and invalid parts can be separated by paragraph, sentence, clause, phrase, or even single words. [Citations.] On the other hand, where there is no possibility of mechanical severance, as where the *331 language is so broad as to cover subjects within and without the legislative power, and the defect cannot be cured by excising any word or group of words, the problem is quite different and more difficult of solution." (Italics added.) (In accord: *Villa v. Hall* (1971) 6 Cal.3d 227, 236 [98 Cal.Rptr. 460, 490 P.2d 1148]; *Mulkey v. Reitman, supra*, 64 Cal.2d 529,

543-544; In re Portnoy (1942) 21 Cal.2d 237, 242 [131 P.2d 1]; In re Bell (1942) 19 Cal.2d 488, 498 [122 P.2d 22]; Bacon Service Corporation v. Huss (1926) 199 Cal. 21, 32-33 [248 P. 235]; McCafferty v. Board of Supervisors (1969) 3 Cal.App.3d 190, 193 [83 Cal.Rptr. 229].

Proposition 21 contained a severability clause.^{FN6} The valid repealing portions can easily and accurately be mechanically severed from the invalid portion enacting section 1009.6. "Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable. [Citation.]" (*McCafferty v. Board of Supervisors, supra*, 3 Cal.App.3d at p. 193.) Such a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether "the remainder ... is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute" (*In re Bell, supra*, 19 Cal.2d 488, 498) or "constitutes a completely operative expression of the legislative intent ... [and] are [not] so connected with the rest of the statute as to be inseparable." (*In re Portnoy, supra*, 21 Cal.2d at p. 242.)

FN6 "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Amici curiae merely assert that the various portions of the proposition are clearly inseparable. However, it seems that the valid and invalid portions of the proposition, while subsumed within an overall purpose to eliminate forced integration by busing without regard to the desirability of maintaining neighborhood schools, reflect separable methods of achieving this purpose. The repealing provisions (the valid part) would eliminate a commitment to achieving racial balance in the schools, leaving local school districts with sole responsibility and without direction other than constitutional mandate; the enactment of section 1009.6 (the invalid part) went further and forced upon the local school districts the neighborhood school concept without forced busing as the only acceptable policy. Even though this restriction of local school *332 district discretion is unconstitutional and therefore the full purpose of

Proposition 21 cannot be realized, it seems eminently reasonable to suppose that those who favor the proposition would be happy to achieve at least some substantial portion of their purpose, namely to eliminate a state commitment to racial balance in the schools regardless of other considerations, and thereby to allow local control subject only to constitutional restriction. (3) Thus, the repealing provisions are not only mechanically severable in that they are physically separate sections of the proposition, but they are also severable as to purpose and method, of independent validity and not inconsistent with the elimination of the invalid part. We hold the repealing portions of Proposition 21 to be severable. We cannot say that these portions must necessarily fall, because we hold section 1009.6 unconstitutional.^{FN7}

FN7 Amici curiae also urge that a different test should be applied to the severability of portions of an initiative measure than the above described test applied to statutes passed by the Legislature. However, in applying settled rules of severability, we can discern no meaningful distinctions between statutes "enacted" by the people and statutes enacted by the Legislature. The cases cited by amici curiae (e.g., *Bennett v. Drullard* (1915) 27 Cal.App. 180 [149 P. 368]; *Alexander v. Mitchell* (1953) 119 Cal.App.2d 816 [260 P.2d 261]) involved the question of severability prior to submission to a vote and also tested severability by the degree of integration between the valid and invalid parts. However, integration is determined by the test set forth by us *supra*.

We therefore conclude that Proposition 21 does not provide an independent basis for sustaining the trial court's intended injunction of the implementation of the Administration Plan since section 1009.6 added to the Education Code by the proposition bars assignment of public school students by race and is therefore unconstitutional and void under the decisional law of the United States Supreme Court and of this court, regardless of the proposition's effective repeal of other sections of the code.

We accordingly proceed to address ourselves to the question whether entry of judgment by the trial court on the third count in accord with its memorandum of intended decision would be an act in excess of its jurisdiction. As we have already stated, the court intended to enjoin implementation of the Administration Plan on two grounds: (1)

that the Board had no jurisdiction to close the Garfield and Jefferson Schools because it had failed to include notice of the proposed closure of these schools in its published agenda as required by section 966; (2) that the Board abused its discretion in adopting the Administration Plan which required the closure of the above two schools, when in fact their closure was not reasonably necessary to effective desegregation. *333

Section 966 requires a school board to act at meetings open to the public, with certain exceptions relating to personnel and pupil discipline matters, and to post an agenda 48 hours prior to the meeting containing "[a] list of items that will constitute the agenda for all regular meetings." ^{FN8} In *Carlson v. Paradise Unified Sch. Dist.* (1971) 18 Cal.App.3d 196 [95 Cal.Rptr. 650], the court held the provisions of section 966 are mandatory, so that noncompliance therewith by failing to list an item of business on the agenda invalidates the board's action in respect thereto. In *Carlson* the school board's agenda listed as one item "Continuation school site change." The action in fact taken was to move the "continuation school" to the Canyon View school building, to discontinue elementary education at that school, and to transfer the Canyon View elementary pupils to Ponderosa School. The court held that the agenda listing "was entirely inadequate notice to a citizenry which may have been concerned over a school closure ... was entirely misleading and inadequate to show the whole scope of the board's intended plans." (*Carlson v. Paradise Unified Sch. Dist.*, *supra*, 18 Cal.App.3d at p. 200.)

"Thursday, May 4, 1972
"Thursday, May 18, 1972
"September 1972

"It is expected that the Board will take action at the meeting."

The trial court in its memorandum of intended decision concluded: "There was no possible way [the Administration Plan was not written and was not on file] that the public could discern from the posted agenda that the Board was about to consider the closure of two elementary schools, namely, Jefferson and Garfield, as indispensable ingredients of *334 any desegregation plan. ... Any possible reference to such matters in a published newspaper article would in no event suffice to cure the deficiency. ...

FN8 Section 966 provides in pertinent part: "Except as provided in Section 54957 of the Government Code or in Section 967, all meetings of the governing board of any school district shall be open to the public, and all actions ... shall be taken at such meetings and *shall* be subject to the following requirements: ... (b) A list of items that will constitute the agenda for all regular meetings *shall* be posted at a place where parents and teachers may view the same at least 48 hours prior to the time of said regular meeting" (Italics added.)

In the case at bench, the posted agenda of the meeting of May 18, 1972, contained under the heading "Desegregation/Integration Plans" Item No. 3a which read as set forth in the margin. ^{FN9} At the meeting, the Board adopted the Administration Plan, which among other things, closed the Jefferson School and discontinued elementary school education at the Garfield School.

FN9 Item 3a headed "Desegregation/Integration Plans" read as follows:

"On February 3, 1972 the Board of Education set the following timetable in regard to a Desegregation/Integration Plan for the Elementary District:

- Presentation of plans to the Board
- Adoption of a plan by the Board
- Implementation of plan as fully as possible

The Board did not comply with the provisions of section 966. It therefore lacked jurisdiction to adopt the Administration Plan The closure of the Jefferson and Garfield elementary schools is essential to this plan, and invalidates the same."

The Board contends that by listing adoption of a desegregation/integration plan, the posted agenda gave full and adequate notice of a wide range of possible Board actions including possible closure of schools. It is common knowledge that a desegregation/integration plan by its very nature involves a complete reworking of the school system and is likely to involve substantial changes in school at-

tendance patterns, including pupil assignment away from neighborhood schools and busing. Thus, the agenda item gave fair warning to parents of students at any of the elementary schools that the adoption of a plan might result in their children's not attending their neighborhood school, that is Jefferson, Garfield or any other elementary school, as the case might be. The fact that their children might end up attending a different school due to closure of their current school rather than to pupil assignment or school pairing is of little moment. The critical point is that parents were on notice that the Board at its meeting on May 18, 1972, might act in such a way that their children would no longer be able to attend Jefferson or Garfield schools.

This case is therefore clearly distinguishable from *Carlson*. There the item "continuation school site change" would have in no way notified parents of children attending Canyon View Elementary School that their children would be affected by such action and certainly would not have warned them that the school might be closed. It gave fair notice to parents of continuation school students as to impending changes and to people generally concerned about financial expenditures and priorities. However, the item in no way warned Canyon View Elementary School parents that their interests might be vitally affected.

In the case at bench, by contrast, the item concerning the adoption of a "Desegregation/Integration Plan," in our view gives clear notice to parents of students attending Jefferson, Garfield or any other elementary school that their interests might be vitally affected. We do not believe that the agenda item must specify the particular means by which the students involved would be sent to different schools, as for example by pupil assignment, busing, pairing of schools or closure of schools. It *335 seems to us that all such actions are fairly contained within the comprehensive language of the notice.

Indeed, if the agenda had simply indicated the adoption of a "Desegregation/Integration Plan for the Elementary District," we would entertain no doubt that it would have given adequate notice. However, item 3a on the agenda referred to the sequence of procedures adopted by the Board for formation of an integration plan throughout the year - "Thursday, May 4, 1972 - Presentation of plans to the Board. Thursday, May 18, 1972 - Adoption of a plan by the Board." (See fn. 9, *ante*.) Concerned parents and citizens could reasonably infer from this notice that no new plans were to be presented on May 18 but rather that the

Board would adopt one of the plans presented on May 4. If they had no objection to any of these plans, they might reasonably assume there was no need for them to attend the May 18 meeting.

However, the Administration Plan, which had *not* been presented at the May 4 meeting, differed radically from all the previous plans in many respects, most notably in providing for the closure of the Jefferson and Garfield schools. Parents of Jefferson and Garfield elementary school students had no notice that a plan involving closure of those two schools would be considered on May 18. Consequently we think that the notice by referring to the May 4 presentation of plans was misleading, by indicating that only those plans presented on May 4 would be considered for adoption on May 18. This is substantially confirmed by the very elaborate procedures adopted by the Board and participated in by the community in order to prepare and screen plans for presentation to the Board on May 4.

(4a) Section 966 specifies 48 hours' notice with respect to regular meetings. It is a fair construction of the section that a board cannot change its posted agenda within the 48-hour period next immediately preceding a regular meeting; in other words, if a board wishes to change substantially its agenda within that period, it must postpone a meeting at least 48 hours. Since the Administration Plan had not been presented at the May 4 meeting and since it differed substantially from all the other plans, the Board's decision to consider and act upon it represented a substantial deviation from the posted agenda and therefore required an amendment to the agenda and a postponement of the meeting for such a period of time as to provide no less than 48 hours' notice.

It is true that the Board could have adopted a plan involving the *336 closure of schools, if it had posted an agenda merely giving general notice of intention to adopt a desegregation/integration plan. However, once the Board posted notice that it would adopt one of the plans theretofore presented at the May 4 meeting, it thereby limited its power to consider any other substantially different plan since otherwise the posted agenda would be fatally misleading. It then became necessary for the Board to amend the posted agenda and reschedule the meeting so as to afford notice for the period of time specified by the statute.

The Board contends that the misleading effect of the notice was cured by newspaper publicity indicating that a new

plan was to be presented at the meeting of May 18. Two newspaper articles appeared explaining some of the details of the new plan. Only one of the two articles was released 48 hours or more before the meeting. (5) Moreover, newspaper publicity cannot replace the proper posting of an agenda. Section 966 requires notice by means of an agenda posted at a specified place. The newspaper article had no official status, its contents had not been checked or authorized by the Board, and there was no guaranty that it would have been read by all persons entitled to notice. On the other hand, under the statute all persons were presumed to know when and where the agenda of a meeting was to be posted and were entitled to rely on the contents of such statutory notice without being required to scour all newspapers and other publications for possible changes.

(4b) Accordingly we conclude that the trial court properly determined, albeit for the wrong reason, that the Board had no jurisdiction to consider or approve the Administration Plan due to its noncompliance with section 966. The trial court would therefore not act in excess of its jurisdiction in enjoining the implementation of the Administration Plan, unless and until the plan was adopted by the Board at a meeting preceded by the posting of an accurate and complete agenda as required by section 966.

The trial court, however, went further in its memorandum of intended decision and purported to permanently enjoin implementation of the Administration Plan on the ground that its adoption was an abuse of discretion by the Board since the closure of the two schools was not reasonably necessary to accomplish desegregation.^{FN10} (6) The major premise in the trial court's reasoning - that in desegregating a school *337 system, a school board is limited in the exercise of its powers to those acts reasonably necessary to effectuating desegregation - is utterly without support. The trial court concedes, as indeed it must, that the Board has power to close schools and convert them to other uses. It is, of course true that the Board is not free to exercise this power arbitrarily, but must act reasonably and in accordance with established procedure. "[A] court may not substitute its judgment for that of the administrative board [citation] and if reasonable minds may disagree as to the wisdom of the board's action, its determination must be upheld." (*Manjares v. Newton* (1966) 64 Cal.2d 365, 371 [49 Cal.Rptr. 805, 411 P.2d 901].) We have not found, nor have we been referred to, any authority supportive of the proposition that once a school board undertakes a desegregation/integration plan, its otherwise independent

power to close schools becomes limited to closing only those schools which must reasonably be closed in order to accomplish desegregation. Acceptance of such a proposition would blind school boards to the full realities of the world about them, as for example, by directing in effect that they are powerless to close unsafe schools because desegregation might be effectuated without such closure.

FN10 Plaintiffs also contend that the Board abused its discretion in adopting the Administration Plan because the plan does not meet the requirements of section 5003. Since we have held the repeal of this section valid, this argument must fail.

Indeed the case at bench presents exactly this situation. On August 12, 1971, the Board received a report that the Jefferson school was structurally unsafe within the requirements of section 15503.^{FN11} The report recommended that a structural engineer be retained to determine whether the school should be repaired or abandoned, since if it cannot be repaired, it must be abandoned pursuant to section 15516.^{FN12} On May 15, 1972, three days before the final meeting of the Board, the superintendent received a report concerning the rehabilitation or replacement costs of the Jefferson school. The report found that it would cost \$621,800 to make the existing structure safe and \$655,000 to build an entirely new building. Accordingly, in fashioning the Administration Plan, the superintendent made provision therein for closing the Jefferson school. The Board would certainly be properly exercising its discretion in a reasonable manner were it to approve abandoning this building in view *338 of the extreme cost. The determination of the questions whether a new school was needed to replace this structure or whether existing facilities could handle the Jefferson school students due to an expected drop in elementary enrollment, was properly within the Board's discretion. We do not think that the Board in exercising this discretion was perforce limited to determining the reasonable necessity of replacing the building and thus automatically precluded from determining the necessity of assigning students in order to achieve desegregation.

FN11 Section 15503, added in 1959 as part of the Field Act, requires all school buildings, not constructed pursuant to the Field Act, to be examined by January 1, 1970, in order to determine whether the building is safe for school use according to the standards set forth in the Field Act (§ 15451 et

seq.). If a school building is found to be unsafe, the governing board of that school district must prepare an estimate of the cost necessary to make the building safe.

FN12 Section 15516 provides: "No school building examined and found to be unsafe for school use pursuant to Section 15503 and not repaired or reconstructed in accordance with the provisions of this article shall be used as a school building for elementary and secondary school or community college purposes after June 30, 1975."

In 1969 the Board adopted a master plan to guide the development of the school district. Item 6 of that plan provided: "As soon as funds become available in the Elementary District to provide housing at expanded schools elsewhere, that Garfield School be closed and converted to a Special Education Center to provide for certain parts ... of the Special Education program." The superintendent incorporated this provision into his Administration Plan. Absent proof that there were no school facilities to absorb these students or no need for a special education center, ^{FN13} the Board, in the reasonable exercise of its discretion, could lawfully take this action. The mere fact that this action was part of a desegregation plan did not automatically strip the Board of its otherwise subsisting authority to act in this area, so that the establishment of an education center was contingent upon it being reasonably necessary to accomplish desegregation.

FN13 School boards have the authority to provide special education programs and facilities. (§§ 6500-6742, 6750-6946.)

(7) Since the trial court proposed to so limit the discretion of the Board, it would be substituting its judgment for that of the school board and therefore acting in excess of its jurisdiction. A writ of prohibition is the appropriate remedy where a threatened judgment of the trial court will be in excess of its jurisdiction. (*City & County of S.F. v. Superior Court* (1959) 53 Cal.2d 236, 243 [1 Cal.Rptr. 158, 347 P.2d 294]; 5 Witkin, Cal. Procedure (2d ed. 1971) Extraordinary Writs, §§ 36, 39, pp. 3810-3811, 3813.)

As to the instant writ proceeding (L.A. 30054) which is confined to plaintiffs' third cause of action below, we arrive at these final conclusions: (1) That section 1009.6

being unconstitutional and void does not bar the Board's Administration Plan for desegregation; (2) that the Board's power to close schools exists independently of its constitutional obligation to desegregate and is not contingent upon such closure being *339 reasonably necessary to effectuate desegregation; (3) that the posted agenda was defective insofar as it related to the closure of the two elementary schools because of the Board's failure to comply with section 966 and that, since said proposed action for closure was an inseparable part of the Administration Plan, the adoption of the plan as a whole was invalid because of such noncompliance; and (4) that in respect to the third count the trial court will not act in excess of its jurisdiction by enjoining the implementation of the Administration Plan upon the basis heretofore set forth by us, namely, for the failure of the Board to comply with section 966 but that in all other respects the intended action of the trial court as set forth in its memorandum of intended decision is in excess of the court's jurisdiction. Nothing herein, of course, shall prevent, or be deemed to prevent, the Board from adopting the Administration Plan at a new meeting held upon proper notice and in compliance with all other legal requirements.

It follows that in L. A. 30054, petitioners (defendants below) are not entitled to a peremptory writ of prohibition restraining respondent court from enjoining the implementation of the Administration Plan for failure of the Board to comply with section 966 but are entitled to such writ restraining the court's intended action in all other respects. (See *Brown v. Superior Court* (1949) 34 Cal.2d 559, 566 [212 P.2d 878]; see 5 Witkin, Cal. Procedure (2d ed. 1971) p. 3933.) The writ shall issue accordingly.

II

We now turn our attention to the appeal before us. (See fn. 2, *ante*.) This is from a judgment entered on the first two causes of action which were not stayed by our alternative writ of prohibition. The central issue here confronting us is whether the Board may lawfully be the common governing Board of both the Santa Barbara (elementary) School District and the Santa Barbara High School District despite the fact that such districts are not coterminous.

We deem it necessary to set forth the facts in some detail. The original Santa Barbara School District, which was organized sometime in the 1870's, comprised all the public schools within the city limits and conducted classes from

kindergarten through high school, under the leadership of the school trustees. The initial charter for the City of Santa Barbara, adopted February 20, 1899, created a school department, consisting of all the public schools in the school district, governed by a *340 five-man board of education. The charter specified the duties and powers of the board of education in great detail and provided that the board succeeded to all the property and rights of the former school trustees.

In 1902 this single geographical school district was divided functionally into two separate districts: the elementary school district (known as the Santa Barbara School District) and the high school district (known as the Santa Barbara High School District), comprising both junior and senior high schools. The two districts were coterminous; their boundaries were the city limits. The single board of education remained responsible for the governing of all the public schools in the school districts, since the charter was not amended following this functional division into two school districts. Upon the adoption of new charters in 1918 and again in 1927, former provisions dealing with the board of education were revised and simplified by replacing the detailed enumeration of the board's duties and powers with an incorporation of provisions set forth in the general laws of the state. Despite these revisions, nevertheless, the new charters retained a *single* board of education invested with control over all schools in that city.^{FN14}

FN14 Section 83 of the Charter of the City of Santa Barbara adopted in 1927 provided: "The Board of Education shall consist of five members. ..."

Section 84 provided: "The Board of Education shall have the entire control and management of the public schools in the city of Santa Barbara in accordance with the constitution and general laws of the state and said board is hereby vested with all the powers and charged with all the duties of such control and management."

Sections 55 and 56 of the charter adopted in 1918 contained virtually identical provisions.

Indeed the 1927 charter specified a single board of education even though the two school districts were no longer coterminous themselves or with the city. From 1902 to 1930 while the elementary school districts remained vir-

tually constant in size, incorporating only minor portions of adjacent unincorporated territory, the high school district annexed large portions of adjacent territory and far outstripped the elementary school district in size. By 1930 the pattern of annexations was complete. The high school district was comprised of the original high school district (i.e., coterminous with the city limits and the elementary school district) plus the geographical area of four additional elementary school districts, Montecito Union School District, Cold Springs School District, Hope School District and Goleta Union School District. These four elementary school districts were annexed solely for the purpose of becoming part of the Santa Barbara High School District. They continued to function as *341 wholly independent elementary school districts governed by their own elementary school board.

Despite these changes in the composition and size of the elementary and high school districts no change was made in the charter. That instrument continued to direct, as it did upon its adoption in 1927 that there be a single board of education having the entire control and management of all the public schools. In 1939, section 83 of the charter (see fn. 14, *ante*) was amended to provide that the members of the board should serve staggered six-year terms.

No further changes were made in the charter provisions concerning the board of education until a new charter was adopted in 1967. The new charter retained the provision for a single elective board of education, directed that its adoption should not affect boundaries of existing school districts and generally provided that all other requirements should be "as now or hereafter prescribed by the Education Code."^{FN15} Despite the changes in language the new charter provisions continued essentially the same educational scheme. The changes appear to correspond with those introduced into the Education Code in 1963, since section 900 of the charter tracks the language of section 1223 of the code.^{FN16} Thus, in short the charter directs that there shall be an elective board of education and leaves other requirements to those found in the code.

FN15 Article IX of the charter headed, Board of Education, provides: "Section 900. State Law Governs. The manner in which, the times at which, and the terms for which the members of the Board of Education shall be elected or appointed, their qualifications, compensation and removal and the number which shall constitute

such board shall be as now or hereafter prescribed by the Education Code of the State of California.

“Section 901. Effect of Charter on District. The adoption of this Charter shall not have the effect of creating any new school district nor shall the adoption of this Charter have any effect upon the existence or boundaries of any present school district within the City or of which the City comprises a part.”

FN16 Section 1223 of the Education Code provides: “Except as provided in Section 1222, whenever the charter of any city fails to provide for the manner in which, the times at which, or the terms for which the members of the city board of education shall be elected or appointed, for their qualifications, removal, or for the number which shall constitute such board, the provisions of this division shall apply to the matter not provided for.”

Section 1224 provides that the members of the board of education shall be elected at large from the territory within the boundaries of the school district or districts under the jurisdiction of the board of education, that for election purposes such territory shall include outside territory annexed to the city for school purposes, and that all qualified electors residing within the full territory shall be eligible to vote for, and *342 to be a member of, the board of education. FN17 Therefore all qualified electors residing within the high school district, which is geographically coterminous with the five elementary school districts - the Santa Barbara elementary school district plus the four annexed districts (Montecito, Cold Springs, Hope and Goleta) - are entitled to vote for the city board of education. At the time of trial, there were 80,203 registered voters residing within the high school district, of whom 38,174 or 47.6 percent resided within the Santa Barbara elementary school district and 42,029 or 52.4 percent resided within the four annexed elementary school districts.

FN17 Section 1224 provides: “The members of any elective city board of education shall be elected at large from the territory within the boundaries of the school district or districts which are under the jurisdiction of the city board of education, whether sitting as a board of education, high school board, or community college board,

and any qualified elector of the territory shall be eligible to be a member of such city board of education.

“When outside territory has been annexed to a city for school purposes it shall be deemed a part of the city for the purpose of holding the general municipal election, and shall form one or more election precincts, as may be determined by the legislative authority of the city. The qualified electors of the annexed territory shall vote only for the board of education or the board of school trustees.”

The four annexed elementary school districts continued to be governed by four separate elementary school boards elected separately by qualified electors residing within each elementary school district. The Santa Barbara elementary school district, however, did not have its own separate elementary school board. Instead, by virtue of the charter provisions and section 1222 of the Education Code incorporated in the charter (see fn. 15, *ante*), the Santa Barbara elementary school district was governed by the city board of education. FN18 Thus, an elector residing within one of the four annexed districts, for example Montecito, would be entitled to cast two votes - one to elect members to the Montecito Elementary School Board from the residents within that district and one to elect members to the city board of education. An elector residing within the Santa Barbara elementary school district would be entitled to cast only one vote - that one being to elect the city board of education.

FN18 Section 1222 provides: “Whenever the charter of a city comprising in whole or in part an elementary school district, fails to provide for the manner in which, the times at which, and the terms for which the members of the board of education of such city are appointed, and for the number which shall constitute such board, *the governing board of the elementary school district within which the city is located or with which the city is coterminous is the board of education of the city.*” (Italics added.)

As mentioned earlier, plaintiffs in their first two causes of action challenge the validity of the law permitting the city board of education to govern both the high school and the elementary school districts, despite the fact that the two

districts are not coterminous. The first cause of *343 action alleged that this system unconstitutionally diluted the vote of each registered voter and taxpayer within the elementary school district by over 100 percent by virtue of the votes cast by that portion of the electorate who live outside the Santa Barbara elementary school district. The second cause of action alleged that this system violated the requirements of section 924 that the governing board of an elementary school district shall consist of members elected at large from the territory comprising the elementary school district.

Following trial by the court on these two causes of action, the court made findings of fact, substantially as recited above and concluded in essence that the above voting scheme was unconstitutional as being violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution. We set forth in pertinent part in the margin the court's detailed conclusions.^{FN19} *344

FN19 "4. Insofar as the Board governs the affairs of the Elementary School District the scheme which permits the votes of 38,174 resident electors to be counted equally with the votes of the 42,029 non-resident electors, who are in no way concerned with the government of the Elementary District, constitutes a clear denial, dilution and debasement of the vote of the resident electors of the Elementary District and a deprivation of their constitutional right to the equal protection of the law.

"

.....

"7. The present dual function of the School Board governing a large high school district and much smaller elementary school district does not serve any governmental purpose, but is rather the result of unplanned, irregular annexations to the High School District.

"

.....

"9. The fact in this case that voters who reside

outside the boundaries of the Elementary School District, who exceed in number those who reside within the district, are given the right to vote for the School Board which formulates policy for the district, even though they are in no way subject to such policy and do not contribute any tax support thereto, is contrary to the principle that the government is to be chosen by the governed.

"10. The equal voting strength principle, which underlies the 'one person, one vote' doctrine, applies in this case to the electoral scheme currently employed in the election of members to the governing board of the Santa Barbara Elementary School District. That principle is violated because the votes of qualified resident electors in the plaintiffs' class are being wrongfully denied, debased and diluted by the votes of non-qualified, non-resident electors in the Elementary District election.

"11. There is no State interest sufficiently compelling to justify the voting scheme described herein. That scheme is unconstitutional. It violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

"

.....

"14. To interpret Section 1224 of the Education Code to sanction the election of a common governing board for two districts whose boundaries are not coterminous, by electing the members of such board at large from the territory of the larger district, which encompasses all of the area of the smaller district plus added territory of the larger district, is to unconstitutionally apply the statute.

"15. Section 1224 of the Education Code must be interpreted to grant common governing powers to an elective city board of education over two or more districts under its jurisdiction only in cases where the boundaries of the governed districts are coterminous. In a case such as here presented, where the boundaries of the districts are not co-

terminous, Section 1224 may not be so interpreted to grant multiple jurisdiction to such a single elective board.”

By way of remedy the court concluded that the Santa Barbara elementary school district must be governed by an independent board of resident electors of the Santa Barbara elementary school district elected at large from the territory within the elementary school district; that the present city board of education should be allowed to continue as the governing board of the high school district; that a new board consisting of five members and governing only the elementary school district should be elected on April 17, 1973, by resident electors within the Santa Barbara elementary school district and take office on July 1, 1973; that the three members with the highest vote should serve until June 30, 1977, and the remaining two members should serve until June 30, 1975, each member of the board thereafter serving a four-year term. Judgment granting a peremptory writ of mandate was entered accordingly. This appeal by defendants followed.^{FN20}

FN20 See footnote 2, *ante*, where the procedural history of this appeal as related to the disposition of the third cause of action is explained.

We begin by epitomizing the respective positions of the parties on the appeal. Plaintiffs contend that the method of electing members of the Santa Barbara Board of Education is invalid under the state and federal Constitutions as violative of the “one man, one vote” principle because the votes of *qualified, resident* electors in the elementary school district are debased and diluted by the votes of *nonqualified, nonresident* electors in the elementary district election. Plaintiffs argue that there should be, and the trial court properly ordered, a separate board of education to govern the elementary school district. Defendants, on the other hand, contend that the present method of electing members of the Board complies with applicable state law, that it does not violate the “one man, one vote” rule, and that the trial court’s ruling on this issue is in error. (8) As we explain, *infra*, we conclude that there is no constitutional right to a separate, elected elementary board of education, that there is no constitutional infirmity in designating the city board of education, elected from the full territory within its jurisdiction, to govern the lesser, wholly included elementary school district and that the “one man, one vote” principle has no relevancy to this case.

The city board of education is elected. Each qualified elector residing within the high school district, the largest geographical area within the *345 jurisdiction of the board of education, is eligible to become a member of the board and is entitled to vote in the election. The members are elected at large. Each vote counts equally and is weighted equally. Each qualified elector is governed by the board, subject to the policy adopted by the board, and liable for tax to support the board. It is clear and undeniable that the city board of education is elected in full compliance with the “one man, one vote” principle.

Indeed, as they must, plaintiffs concede the election of the city board of education is valid. However, plaintiffs claim that the election of the city board of education is also an election of the governing board of the Santa Barbara elementary school district and that the *latter* election violates the “one man, one vote” principle because the votes of nonresident electors dilute the votes of the electors residing in the Santa Barbara elementary school district. There is no basis in law or fact to support this claim. There is a single city board of education which is elected in a single election by qualified resident electors. This single city board of education, by virtue of section 1222, (see fn. 18, *ante*) is the governing board of the Santa Barbara elementary school district.^{FN21} The city board of education, which is elected in accordance with section 1224 (see fn. 17 *ante*) is designated by the Legislature in section 1222 to govern the Santa Barbara elementary school district.

FN21 See text accompanying footnotes 15 and 16, *ante*.

Thus, it is abundantly clear that the election of the city board of education is a single election of a single board. The real claim advanced by plaintiffs is that they, the resident voters, taxpayers and parents within the Santa Barbara elementary school district are entitled to be governed by an independent school board, comprised of members who reside within the district and elected solely by voters who reside in the district. The United States Supreme Court has held to the contrary. In *Sailors v. Board of Education* (1966) 387 U.S. 105, 108, 110-111 [18 L.Ed.2d 650, 653, 655, 87 S.Ct. 1549], the high court held that there is no constitutional right to elect members of boards of education: “We find no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, or by some other appointive means rather than by an election.

... [¶] Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation. At least as respects nonlegislative *346 officers, a State can appoint local officials or elect them or combine the elective and appointive system as was done here. ... For while there was an election here for the local school board, no constitutional complaint is raised respecting that election. Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of 'one man, one vote' has no relevancy."

The principles announced in *Sailors* were recently applied in California in *O'Keefe v. Atascadero County Sanitation Dist.* (1971) 21 Cal.App.3d 719 [98 Cal.Rptr. 878] to a factual situation so closely analogous to the facts in this case that we regard that case as highly persuasive authority. In *O'Keefe* the residents of the Atascadero sanitation district, which was located in San Luis Obispo County, challenged the procedure by which the directors of the sanitation district were selected. The county is divided into five districts for the purpose of electing the board of supervisors. The sanitation district was located wholly within the boundaries of one of the five supervisorial districts. The population within the sanitation district was approximately 10 percent of the county population. By virtue of state law, the directors of the sanitation district were the board of supervisors. Since the residents of the sanitation district lived wholly within one supervisorial district, they were able to vote for only one director, while the other nonresident voters elected the other four directors of the sanitation district. The sanitation district residents claimed that their votes were diluted and debased by the votes of electors who resided outside the sanitation district but within the county.

The court concluded, however, that the directors of the sanitation district were not elected but designated by the Legislature and that the election of a board of supervisors was a single election of a single board. "The board of directors of a county sanitation district is not elected. Rather, the members of such board are designated in Health and Safety Code section 4730. The composition of the board is determined by the location of the district in relation to other political subdivisions within the county. ...^{FN4} [¶] Since the board of directors is not chosen by election,

the 'one man, one vote' principle is not applicable Appellant argues that the principle nevertheless is applicable under the facts alleged, *347 because the county board of supervisors is elected [fn. omitted] and the members of the board of directors of the Sanitation District are 'in effect elected once removed.' ... [¶] Under section 4730 the members of the board of directors of a sanitation district are chosen by the Legislature, a method expressly sanctioned in *Sailors*." (*O'Keefe v. Atascadero County Sanitation Dist.*, *supra*, 21 Cal.App.3d at pp. 724-726.)

FN4 "Health and Safety Code section 4730: "The governing body of a sanitation district is a board of directors of not less than three members. ... If the district includes no territory which is in cities or sanitary districts, then the county board of supervisors is the board of directors of the district."

As in *O'Keefe*, the members of the governing board of the Santa Barbara elementary school district are designated by the Legislature. The Legislature in section 1222 (see fn. 21, *ante*, and accompanying text) designates the city board of education to be the governing board of the Santa Barbara elementary school district. This is an entirely proper procedure under *Sailors*. The fact that the city board of education is elected does not somehow constitute an election "once removed" of the governing board of the Santa Barbara elementary school district just as the election of the county board of supervisors did not constitute an election "once removed" of the directors of the sanitation district in *O'Keefe*.

We discern no constitutional infirmity in a system whereby the Legislature designates an elected city board of education to govern a lesser included elementary school district. We hold therefore that the present method of electing members of the Santa Barbara Board of Education is not violative of either the United States Constitution or the California Constitution and is in all respects valid under applicable state law.^{FN22}

FN22 The second cause of action claiming that the system whereby the city board of education is designated to serve as the governing board of the Santa Barbara elementary school district violated the provisions of section 924 has apparently been abandoned, since the trial court made no mention of it and since it has not been urged on appeal. Moreover, section 1222 rather than section 924

controls where a charter city with a city board of education is involved.

In L.A. 30054 let a peremptory writ of prohibition issue in accordance with the views herein expressed.

In L.A. 30086 the judgment is reversed and the cause is remanded to the trial court with direction to enter judgment in favor of defendants on the first and second stated causes of action set forth in plaintiffs' complaint. *348

Petitioners shall recover costs in L.A. 30054 and defendants shall recover costs in L.A. 30086.

Wright, C. J., McComb, J., Tobriner, J., Mosk, J., Clark, J., and Burke, J., ^{FN*} concurred. *349

FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

Cal.
Santa Barbara Sch. Dist. v. Superior Court
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▷ CANDID ENTERPRISES, INC., Plaintiff and
Respondent,
v.
GROSSMONT UNION HIGH SCHOOL DISTRICT
et al., Defendants and Appellants
L.A. No. 31877.

Supreme Court of California
Sep 26, 1985.

SUMMARY

The trial court granted a condominium developer's petition for a writ of mandate ordering a school district to refund fees for construction of additional school facilities, imposed as a condition of granting building permits, and prohibiting the district from collection of further fees. (Superior Court of San Diego County, No. 474776, Joseph A. Kilgarif, Judge.)

The Supreme Court reversed, holding that the School Facilities Act (Gov. Code, § 65970 et seq.), which encourages local school boards to identify and local governments to deal with the problem of overcrowding, and to that end permits the imposition of school-impact fees to finance certain temporary facilities, did not preempt local governments from imposing such fees to finance both temporary and permanent facilities. The court held the school-impact fees did not contradict or duplicate the provisions of the act, and that such fees have not entered an area fully occupied by state law. It further held that, because the act both permitted and recognized local measures, such as the school-impact fees, it did not have implied preemptive effect. The court further held the imposition of the fees did not violate equal protection. (Opinion by Mosk, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Mandamus and Prohibition § 6--Mandamus--Conditions Affecting Issuance-- Acts

and Duties Enforceable--Legislation.

The writ of mandate may be used to challenge the validity of a legislative measure.

(2a, 2b, 2c, 2d) Schools § 4--School Districts; Financing; Funds-- School-impact Fees Imposed on Developers--State Preemption.

The imposition by a local government of otherwise valid fees on real property development ("school-impact fees") to cover the cost of constructing and maintaining school facilities attributable to such development, was not preempted by the School Facilities Act (Gov. Code, § 65970 et seq.), where the school-impact fees did not contradict or duplicate the provisions of the act, and where the fees did not enter an area fully occupied by state law. The act does not even purport to deal with the construction of permanent facilities, and does not fully and completely cover the construction of temporary facilities. Moreover, the act recognizes alternative, local financing arrangements.

[See Cal.Jur.3d, Municipalities, § 200; Am.Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 375.]

(3) Municipalities § 26--Powers--Police Power--Scope.

Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. (Cal. Const., art. XI, § 7.) Apart from this limitation, the police power of a county or city is as broad as the police power exercised by the Legislature itself.

(4) Municipalities § 55--Ordinances, Bylaws and Resolutions--Validity-- Conflict With Statutes or Charter.

If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by the general law, either expressly or by legislative implication.

(5) Municipalities § 56--Ordinances, Bylaws and Resolutions--Validity-- Conflict With Statutes or

Charter--Test for Preemption.

In determining whether the Legislature has preempted by implication to the exclusion of local regulation, courts must look to the whole purpose and scope of the legislative scheme. There are three tests: the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become explicitly a matter of state concern; the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.

(6) Municipalities § 55--Ordinances, Bylaws and Resolutions--Validity-- Conflict With Statutes or Charter--Preemption by Implication.

Preemption of local laws by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations.

(7) Schools § 4--School Districts; Financing; Funds--Fees Imposed on Developers--Validity.

The imposition by the local government of otherwise valid fees on real property development to cover the cost of constructing and maintaining school facilities attributable to such development did not violate equal protection. As an instance of economic regulation, the fees were presumptively constitutional and were validated by their rational relationship to a legitimate public purpose.

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MOSK, J.

The major question we must decide in this case concerns what are commonly referred to as "school-impact fees" - i.e., fees that local *881 governments impose on real property development to cover the costs of constructing and maintaining school facilities attributable to such development. The precise question is whether the School Facilities Act (sometimes hereafter the Act) (Gov. Code, § 65970 et seq.)^{FN1} - which encourages local school boards to identify and local governments to deal with the problem of overcrowding, and to that end permits the imposition of school-impact fees to finance certain temporary facilities - preempts local governments from imposing such fees to finance both temporary and permanent facilities. We answer this question in the negative, and therefore reverse the judgment.

FN1 Unless otherwise noted, all statutory references are to the Government Code.

I

In California the financing of public school facilities has traditionally been the responsibility of local government. "Before the *Serrano v. Priest* decision in 1971, school districts supported their activities mainly by levying ad valorem taxes on real property within their districts." (Cal. Building Industry Assn., *Financing School Facilities* (Apr. 1983) p. 3 (hereafter *Financing School Facilities*)). Specifically, although school districts had received some state assistance since 1947, and especially since 1952 with the enactment of the State School Building Aid Law of

1952 (Ed. Code, § 16000 et seq.), they financed the construction and maintenance of school facilities mainly through the issuance of local bonds repaid from real property taxes.

After the *Serrano* decision (5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]) and to the present day, local government has remained primarily responsible for school facility financing, but has often been thrust into circumstances in which it has been able to discharge its responsibility, if at all, only with the greatest difficulty. In these years, the burden on different localities has been different: extremely heavy on those that have experienced growth in enrollment, light on those that have experienced decline, and somewhere in between on those that have remained stable.

In the early 1970's, because of resistance to increasing real property taxes, localities throughout the state began to experience greater difficulty in obtaining voter approval of bond issues to finance school facility construction and maintenance. As a result, a number of communities chose to impose on developers school-impact fees - such as those at issue here - in order to make new development cover the costs of school facilities attributable to *882 it. (See, e.g., *Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court* (1974) 13 Cal.3d 225 [118 Cal.Rptr. 158, 529 P.2d 582].)

With the passage of Proposition 13 in 1978 the burden of school financing became even heavier. "Proposition 13 prohibits ad valorem property taxes in excess of 1%, except to finance previously authorized indebtedness. Since most localities have reached this 1% limit, school districts cannot raise property taxes even if two-thirds of a district's voters wanted to finance school construction." (Financing School Facilities, *supra*, at p. 4; see Ed. Code, § 17786 ["the Legislature recognizes that the ad valorem tax is no longer available as a source of revenue for the construction of necessary school facilities"].) Moreover, although Proposition 13 authorizes the imposition of "special taxes" by a vote of two-thirds of the electorate, such special taxes have rarely been imposed, remain novel, and as consequence are evidently not perceived as a practical method of school facility financing - especially in view of the need for a two-thirds vote of the

electorate to approve them. (Financing School Facilities, *supra*, at pp. 4, 14.)

In the face of such difficulties besetting local governments, the state has not taken over any substantial part of the responsibility of financing school facilities, less still full responsibility. To be sure, in order to implement the *Serrano* decision the Legislature has significantly increased assistance to education. But it has channeled by far the greater part of such assistance into educational programs and the lesser part into school facilities; in fiscal year 1981-1982, for example, only 3.6 percent went for such facilities. (Financing School Facilities, *supra*, at pp. 3, 4, 6.) The Legislature has developed "no long-term, comprehensive solution to the acute and chronic facilities financing needs of local school districts," but rather has enacted merely "a series of stop-gap, patchwork measures." (*Id.* at p. 6.) Moreover, because of, among other things, the state budget crisis in the early 1980's and other factors the Legislature has not adequately funded such measures as it has enacted - indeed, "[i]n the past several years, state-supported construction finance has waned ..." (*Id.* at pp. 6, 16.) Thus, although the burden of financing school facilities appears too heavy for some localities to bear, they continue to bear it in large part alone.

II

In 1974 the Board of Supervisors of San Diego County adopted in the form relevant here a land-use policy, designated Policy I-43 (sometimes hereafter the Policy), to help assure orderly growth in the face of widespread and rapid development and a consequent general increase in population. In the Policy, the board of supervisors described the basic problem: *883 "In many cases, ... the required public services have not ... been installed by the time the development shows a need. The result has been that residents in the newly developed areas have been inadequately served with schools." It then went on to frame a solution: "Before giving approval to development proposals involving a special use permit or a rezoning, ... the proponent of the development proposal ... [must] make certain provisions, in conjunction with appropriate governmental agencies, to insure: [¶] That the proponent of the development present evidence satisfactory to the Planning Commission, at the time of its consideration

of the matter, and to the Board of Supervisors at the time of its consideration of the matter that public school services will in fact be provided concurrent with the need." As evidence that such services and facilities would be provided, the county accepted so-called "school-availability" letters from the local school districts.

In 1977 respondents Grossmont Union High School District (the District) and its governing board (the Board) recognized that developments being proposed at that time might cause overcrowding, and sent letters to that effect to the county. On the basis of such letters, the planning commission concluded that the District could not in fact provide adequate school facilities concurrent with the need created by the proposed developments, and accordingly permitted few if any such developments to proceed.

In the fall of 1977 the predecessor of petitioner Candid Enterprises, Inc. expressed its willingness to enter into an agreement with the District to permit its development to proceed: it would agree to pay fees for school facilities and the District would issue a school-availability letter to the county indicating that such facilities would be provided.^{FN2} The District approved the agreement in principle and, in order to facilitate it and others like it, adopted Revised Policy FF, which allowed for assessment, under Policy I-43, of school-impact fees from developers, to be used for temporary or permanent facilities. In the spring of 1978 the District entered into an agreement with petitioner's predecessor secured by the real property under development. By its terms the developer agreed to pay the established fees at the time it sought building permits, and the District issued a school-availability letter advising the county of the agreement and of its ability to provide adequate school facilities through use of the fees.

FN2 The president of petitioner and its predecessor is one and the same person.

Meanwhile, the School Facilities Act had become effective on January 1, 1978. Under the Act, cities and counties were authorized to enact ordinances to require developers to pay fees for temporary school facilities. *884 (§ 65974.) In the spring of 1978 the board of supervisors enacted such an ordinance, des-

ignated Ordinance 5120. Shortly thereafter, in order to facilitate agreements with developers for the payment of fees for temporary facilities under the Act, the District adopted a resolution finding that conditions of overcrowding existed and that it lacked financial resources to provide additional needed school facilities.

In 1978 and 1979 the District assessed some developers for fees for temporary facilities pursuant to the School Facilities Act and Ordinance 5120; with others it entered into secured agreements for the payment of fees for temporary or permanent facilities, in lieu of School Facilities Act fees, pursuant to Policy I-43 and Revised Policy FF. Because of a districtwide decline in enrollment, in February 1980 the District discontinued collecting School Facilities Act fees. At the same time it also discontinued entering into Policy I-43 secured agreements, although it stated its intent to continue to monitor proposed developments, enter into such agreements when necessary, and collect fees under existing agreements in order to provide adequate facilities concurrent with the need that the subject developments were expected to create.

Petitioner, which had purchased a three-lot condominium project from its predecessor, sought building permits late in 1980. In early 1981 it paid under protest \$23,500 in Policy I-43 school-impact fees pursuant to the secured agreement between the District and its predecessor. Petitioner then unsuccessfully sought a refund by a letter to the District. Next it requested to speak to the Board on the matter, and was granted permission. At the meeting petitioner asked that in view of declining districtwide enrollment, the Board refund the fees paid under protest and cancel its secured agreement and all other similar agreements. The Board found that the District (1) discontinued collecting School Facilities Act fees and entering into Policy I-43 secured agreements "since it was projected that funds committed under existing agreements would be sufficient to mitigate future impact[,]" (2) "reserved the right to require the commitment of fees from future developments which promised to upset this condition of balance[,]" and (3) never had "any intention to disregard existing agreements, since the housing from projects covered by those agreements will adversely impact the District at their time of completion." The Board then denied petitioner's request.

Petitioner initiated this proceeding for a writ of mandate pursuant to Code of Civil Procedure sections 1094.5 (administrative mandate) and 1084 (ordinary mandate). Respondents filed a demurrer and an answer. After a hearing the trial court overruled the demurrer and ordered that mandate issue. *885 From the ensuing judgment respondents appeal, arguing the substantive point that the imposition of Policy I-43 school-impact fees was not invalid on either preemption or equal protection grounds. (1)(See fn. 3.) As we explain below, we find their position meritorious. FN3

FN3 Respondents also press the procedural point that their demurrer should have been sustained. This argument, however, is untenable. Although the writ of administrative mandate does not lie because the Board was not required by law to grant petitioner a hearing on its request (Code Civ. Proc., § 1094.5, subd. (a); Court House Plaza Co. v. City of Palo Alto (1981) 117 Cal.App.3d 871, 880 [173 Cal.Rptr. 161]), the writ of ordinary mandate is available. Mandate requires that there be no “plain, speedy, and adequate remedy, in the ordinary course of law.” (Code Civ. Proc., § 1086.) There was no such remedy here: an action on the contract for refund of fees paid and release from payment of the remainder was inadequate because there were no grounds on which to allege a breach or to seek rescission; no statutory action for a refund then existed, although one now does (§ 65913.5, subd. (e)); and an action for declaratory relief was inappropriate insofar as petitioner was attacking the local legislation as applied (Mobil Oil Corp. v. Superior Court (1976) 59 Cal.App.3d 293, 307 [130 Cal.Rptr. 814]). The writ of mandate may of course be used, as it is used here, to challenge the validity of a legislative measure. (E.g., Jolicoeur v. Mihaly (1971) 5 Cal.3d 565, 570, fn. 2 [96 Cal.Rptr. 697, 488 P.2d 1].)

III

(2a) Respondents first contend that the imposition of Policy I-43 school-impact fees is not preempted by the

School Facilities Act and is accordingly valid. Petitioner concedes as it must that the imposition of school-impact fees is generally valid. (See Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court, *supra*, 13 Cal.3d 225, 232, fn. 6.) Respondents proceed to argue successfully that the local legislation is not preempted by the Act on the ground that there is no conflict.

(3) Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. (Cal. Const., art. XI, § 7.) Apart from this limitation, the “police power [of a county or city] under this provision ... is as broad as the police power exercisable by the Legislature itself.” (Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129, 140 [130 Cal.Rptr. 465, 550 P.2d 100].)

(4) If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. (People ex rel. Deukmejian v. County of Mendocino (1984) 36 Cal.3d 476, 484 [204 Cal.Rptr. 897, 683 P.2d 1150]; Lancaster v. Municipal Court (1972) 6 Cal.3d 805, 807 [100 Cal.Rptr. 609, 494 P.2d 681].) A conflict exists if the local legislation “duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.” (Citations omitted.) (People ex rel. Deukmejian v. County of Mendocino, *supra*, 36 Cal.3d at p. 484.) *886

(2b) Respondents argue and petitioner concedes that Policy I-43 school-impact fees do not contradict or duplicate the provisions of the School Facilities Act. Respondents further assert that such fees have not entered an area fully occupied by state law. They are persuasive.

First, the area of financing of school facilities needed by new development has not been expressly occupied by state law. The Legislature has not voiced such an intent in any of its enactments, and petitioner admits as much.

Second, the area has not been impliedly occupied by state law. (5) “In determining whether the Legislature has preempted by implication to the exclusion of local

regulation we must look to the whole purpose and scope of the legislative scheme. There are three tests: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.'" (*People ex rel. Deukmejian v. County of Mendocino*, *supra*, 36 Cal.3d 476, 485, quoting from *In re Hubbard* (1964) 62 Cal.2d 119, 128 [41 Cal.Rptr. 393, 396 P.2d 809]; accord, *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 708 [209 Cal.Rptr. 682, 693 P.2d 261] and cases cited.)

(2c) Petitioner concedes, as it must, that the imposition of Policy I-43 school-impact fees does not satisfy the third test, and respondents successfully urge that it satisfies neither of the other two.^{FN4}

FN4 How the relevant field occupied by the allegedly preemptive state legislation is defined is often crucial to the result: "If the definition is narrow, preemption is circumscribed; if it is broad, the sweep of preemption is expanded." (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 27-28 [61 Cal.Rptr. 618]; see *Gregory v. City of San Juan Capistrano* (1983) 142 Cal.App.3d 72, 84 [191 Cal.Rptr. 47].) The issue of definition, however, is not crucial here. Whether the School Facilities Act is held to occupy the narrow field of the financing of temporary facilities (as it evidently should be) or the broad field of the financing of all facilities (as it evidently should not be) is of no consequence in the case before us. As we shall explain, the Act recognizes and in fact permits local action, and thereby fails to occupy either field to the exclusion of local legislation.

First, the subject matter of the local measure - the

financing of the construction of both temporary and permanent school facilities to meet the demands imposed by new development - has not been so fully and completely *887 covered by general law as to clearly indicate that it has become exclusively a matter of state concern.

Taken by itself, the School Facilities Act does not even purport to deal with the construction of permanent facilities (see §§ 65970, subd. (e), 65974), and does not fully and completely cover the construction of temporary facilities. The Act recognizes alternative, local financing arrangements: "One year after receipt of any apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 ... for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement such district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the district." (§ 65979, italics added.) The Act, moreover, clearly permits such arrangements. The school district is required to notify the local legislative body if it finds that "(a) conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for such conditions existing; and (b) that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exist [*sic*] ..." (§ 65971.) The Act goes on to define "reasonable methods for mitigating conditions of overcrowding": they "shall include, *but are not limited to*, agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used." (§ 65973, subd. (b), italics added.)

Even if we consider the School Facilities Act together with other related state legislation, we come to the same conclusion: the subject matter of this local measure has not been fully and completely covered by state law. Although, as petitioner correctly argues, there are several state and local programs that provide funding for the construction of school facilities,^{FN5} the general situation may properly be described in the

words already quoted of one of petitioner's principal authorities: "Since the passage of Proposition 13, financing for school construction and facility maintenance has been a series of stop-gap, patchwork measures. There still exists no long-term, comprehensive solution to the acute and chronic facilities financing needs of local school districts." (Financing School Facilities, *supra*, at p. 6.) *888

FN5 These include, for example, the School Facilities Act, the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (hereinafter the Greene Act) (Ed. Code, § 17700 et seq.), the Mello-Roos Community Facilities Act of 1982 (§ 53311 et seq.), and the New Schools Relief Act of 1979 (Ed. Code, § 39050 et seq.).

The evident absence of implied preemptive intent in the terms of the School Facilities Act - whether we consider it by itself or with other related legislation - is confirmed by the failure of the Legislature to fully cover the financing of school facilities. First, not all school districts in need of funds for permanent facilities can qualify to receive them under the Greene Act. (See Ed. Code, § 17740.) Second, for a variety of reasons the Legislature has failed to provide adequate funding for even such "stop-gap, patchwork" programs as currently exist. In such circumstances, to construe alternative, local arrangements such as that before us to be preempted would severely impede local governments and school districts in carrying out their responsibilities. It would also frustrate the intent of the Legislature in enacting the School Facilities Act: "Adequate school facilities should be available for children residing in new residential developments." (§ 65970, subd. (a).) Thus, under this test - i.e., whether the subject matter of the local measure has been so fully covered by state law as to clearly indicate that it has become exclusively a matter of state concern - the Act is shown not to be preemptive.
FN6

FN6 We do not mean to imply that the Legislature may not occupy a field unless it appropriates the funds necessary to carry out its intent. We also note that in some cases the "inadequacy" of state funding may prove to be too speculative or subjective a criterion on

which to base a conclusion that the Legislature has not intended to preempt local action.

Second, the subject matter of this local measure has not been partially covered by state law couched in such terms as to indicate clearly that a paramount state concern will not tolerate additional local action. The evidence on which we base our conclusion is compelling: the School Facilities Act, as we have explained, unmistakably recognizes and permits local action. Thus, under this test too the Act is shown not to be preemptive.

(6) To summarize: "Preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations." (*People ex rel. Deukmejian v. County of Mendocino, supra*, 36 Cal.3d 476, 485.) (2d) Accordingly, we conclude that the School Facilities Act, because it both permits and recognizes local measures such as this, does not have implied preemptive effect.

To avoid this conclusion, petitioner relies heavily on an opinion by the Attorney General. (62 Ops.Cal.Atty.Gen. 601 (1979).) Among the questions addressed in the opinion is whether the School Facilities Act preempts the imposition of school-impact fees by local government to provide permanent facilities. (*Id.* at p. 601.) To this the Attorney General answered *889 yes. (*Id.* at pp. 605-609.) The conclusion is erroneous, however, because the analysis is faulty.

First, the opinion reasons that the Act restricts the fees that may be imposed to no more than "the amount necessary to pay five annual lease payments for the interim facilities," and that such a restriction "would be meaningless if a city council or board of supervisors could exact additional developer fees for permanent school facilities." (*Id.* at p. 607, quoting § 65974, subd. (d).) This position might be sound if the Act were intended to limit the authority of local government to make such exactions, but it is not. The purpose of the Act is to encourage local school districts to identify, and local governments to deal with, the effects of residential development on school facilities and to provide local government with "new and improved methods" to cope with the effects of such

development “within a reasonable period of time” and on a short-term basis. (See §§ 65970-65971.) Accordingly, the restriction on the amount of fees that may be imposed is properly to be construed as an attempt on the part of the Legislature to ensure that local governments not indefinitely avoid the problem of the construction of permanent facilities by agreeing to the long-term use of temporary facilities.

Second, the opinion reasons that the 1979 addition of section 65980, which expressly limits the scope of the Act to temporary facilities, when as initially enacted it “was arguably broad enough to cover permanent facilities [as well,] ... indicated an intent to restrict the amount and purpose of the fees to be collected from developers.” (62 Ops.Cal.Atty.Gen., *supra*, at p. 607.) This position is undermined, however, by the conclusions we reach above: the Legislature evidently intended that local governments use fees authorized by the Act as a short-term solution - *not* that local governments be prohibited from developing and implementing long-term solutions. It is also undermined by the language of section 65979, which was added to the Act at the same time as section 65980: “One year after receipt of an apportionment pursuant to the [Greene Act] ... for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement such district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the district.” (Italics added.) Thus, section 65979 expressly recognizes “other school facilities financing arrangement[s]” between local government and developers, and prohibits exactions pursuant to such arrangements *only* when the locality has received an apportionment for permanent facilities pursuant to the Greene Act. Had the Legislature intended the School *890 Facilities Act to preempt such “school facilities financing arrangement[s],” the reference to them would have been meaningless.

Third, the opinion reasons by analogy to the Subdivision Map Act that “the express grant of authority to impose school impact fees and dedications upon developers under [the Act], with strict limitations as to amount, evidences an intent by the Legislature to preempt the field to the exclusion of local regulation.” (62 Ops.Cal.Atty.Gen., *supra*, at p. 608.) But even if

the opinion is correct in concluding that the intent of the Legislature in the Subdivision Map Act is to prohibit local government from making exactions that the Act does not expressly authorize, it errs in reading such an intent into the School Facilities Act. Here the Legislature recognizes (§ 65979) and in fact permits (§§ 65971, 65973, subd. (b)) local legislation, and has accordingly indicated its clear intent that the “new and improved methods of financing for interim school facilities” that the Act provides are merely supplementary to, and not preemptive of, local action (§ 65970, subd. (e)).

IV

(7) Respondents' other contention is that the imposition of Policy I-43 school-impact fees does not violate the equal protection clause and is accordingly valid. This claim too is successful.

The imposition of school-impact fees is an undisputed and indisputable instance of economic regulation. As such, we must review it under “the basic and conventional standard,” which “invests legislation ... with a presumption of constitutionality and requir[es] merely that distinctions drawn by a challenged [measure] bear some rational relationship to a conceivable legitimate state purpose.” (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 16 [112 Cal.Rptr. 786, 520 P.2d 10]; see *Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court*, *supra*, 13 Cal.3d 225, 232-233.) As petitioner implicitly concedes, we may not review the challenged local measure under any stricter standard: developers do not constitute a “suspect class,” and development is not a “fundamental interest” (see *Trent Meredith, Inc. v. City of Oxnard* (1981) 114 Cal.App.3d 317, 328 [170 Cal.Rptr. 685]). Under the conventional standard, “the burden of demonstrating the invalidity of a classification ... rests squarely upon the party who assails it.” (*D'Amico v. Board of Medical Examiners*, *supra*, 11 Cal.3d at p. 17, italics in original.) Petitioner has failed to carry this burden.

If, as respondents argue and we are inclined to hold, the class of similarly situated persons comprises all developers who have entered into a secured *891 agreement to obtain a school-availability letter, then no discrimination at all appears: the Board has col-

lected fees as they have become due and has stated its intent to continue to collect them. But even if, as petitioner responds, the class comprises all developers who are currently building in the district, still no unlawful discrimination emerges. The Board entered into secured agreements covering certain developments proposed in 1978 and 1979 because it expected them to cause or aggravate overcrowding in neighboring schools. The Board has not entered into such agreements covering developments proposed subsequently because it has not expected them to have such an adverse effect. Thus if developers currently building in the district are treated differently, such difference is reasonable and therefore lawful: developers who are expected to cause or aggravate overcrowding are required to mitigate it, others are not.

The judgment is reversed.^{FN7}

FN7 Because of our disposition we do not reach the question whether petitioner waived its right to the fees it paid under protest by accepting the benefits of the agreement with the District.

Bird, C. J., Kaus, J., Broussard, J., Reynoso, J., Grodin, J., and Lucas, J., concurred. *892

Cal.
Candid Enterprises, Inc. v. Grossmont Union High School Dist.
39 Cal.3d 878, 705 P.2d 876, 218 Cal.Rptr. 303, 27 Ed. Law Rep. 950

END OF DOCUMENT

0985 California School Finance Authority

Created in 1985, the California School Finance Authority (CSFA) oversees the statewide system for the sale of revenue bonds to reconstruct, remodel or replace existing school buildings, and to acquire new school sites and buildings to be made available to public school districts, charter schools, and community colleges, and to provide access to financing for working capital and capital improvements. CSFA consists of the following three members: the State Treasurer who serves as chair, the Superintendent of Public Instruction, and the Director of the Department of Finance.

3-YR EXPENDITURES AND PERSONNEL YEARS

	Personnel Years			Expenditures		
	2009-10	2010-11	2011-12	2009-10*	2010-11*	2011-12*
20 Charter School Facilities Program	5.3	5.0	5.0	\$631	\$1,053	\$1,077
30 State Charter School Facilities Incentive Grants Program	-	-	-	10,671	20,125	20,125
TOTALS, POSITIONS AND EXPENDITURES (All Programs)	5.3	5.0	5.0	\$11,302	\$21,178	\$21,202
FUNDING				2009-10*	2010-11*	2011-12*
0526 California School Finance Authority Fund				\$-	\$50	\$50
0890 Federal Trust Fund				10,671	20,125	20,125
9734 2004 Charter School Facilities Account, 2004 State School Facilities Fund				446	574	598
9735 2006 Charter School Facilities Account, 2006 State School Facilities Fund				185	429	429
TOTALS, EXPENDITURES, ALL FUNDS				\$11,302	\$21,178	\$21,202

LEGAL CITATIONS AND AUTHORITY

DEPARTMENT AUTHORITY

Education Code Sections 17170-17199.5 and 17078.52-17078.66.

DETAILED BUDGET ADJUSTMENTS

	2010-11*			2011-12*		
	General Fund	Other Funds	Personnel Years	General Fund	Other Funds	Personnel Years
Workload Budget Adjustments						
Other Workload Budget Adjustments						
• Employee Compensation Adjustments	\$-	-\$31	-	\$-	-\$7	-
• Retirement Rate Adjustment	-	9	-	-	9	-
• Workforce Cap Adjustment	-	-19	-	-	-19	-
Totals, Other Workload Budget Adjustments	\$-	-\$41	-	\$-	-\$17	-
Totals, Workload Budget Adjustments	\$-	-\$41	-	\$-	-\$17	-
Totals, Budget Adjustments	\$-	-\$41	-	\$-	-\$17	-

PROGRAM DESCRIPTIONS

10 - SMART BONDS PROGRAM

Chapter 1438, Statutes of 1985, as amended by Chapter 598, Statutes of 1987, established the California School Finance Authority (CSFA) and authorized the issuance of \$400 million in revenue bonds or other debt instruments. The proceeds from the sale of the bonds were available for loans to school and community college districts to assist with the acquisition of equipment and new school sites, construction of new facilities, reconstruction of existing facilities, capital improvements, acquisition of portable/relocatable buildings, and to provide working capital. Effective January 1, 1997, Chapter 1071, Statutes of 1996, authorized the issuance of an additional \$400 million in revenue bonds per fiscal year for school districts and county offices of education that agreed to guarantee payment of the bonds with Proposition 98 funds. The total outstanding amount may not exceed \$4 billion at any one time. Pursuant to Chapter 741, Statutes of 1998, effective January 1, 1999, the \$400 million annual issuance cap was eliminated. Based on program amendments effective January 1, 2007, Chapter 325, Statutes of 2006 (AB 2717), CSFA offers financing opportunities for charter schools for capital improvements and working capital needs.

20 - CHARTER SCHOOL FACILITIES PROGRAM

Chapter 935, Statutes of 2002, as amended by Chapter 587, Statutes of 2003, created the Charter Schools Facilities

* Dollars in thousands, except in Salary Range.

0985 California School Finance Authority - Continued

Program, which provides funding for the new construction or renovation of charter school facilities. CSFA and the Office of Public School Construction jointly administer the program. The Charter School Facilities Program through the Kindergarten-University Public Education Facilities Bond Acts of 2002, 2004, and 2006, was funded \$100 million in bond proceeds from Proposition 47, \$300 million from Proposition 55, and \$500 million from Proposition 1D. To date, 65 schools have been awarded funding through the program's funding rounds.

The program provides a 50% state subsidy for the charter school facilities project costs, with the balance of the project costs being repaid (to the state) by the charter school in the form of a long-term lease. Recipient charter schools must provide site-based instruction, be deemed financially sound by CSFA, and meet other program eligibility requirements.

30 - STATE CHARTER SCHOOL FACILITIES INCENTIVE GRANTS PROGRAM

In 2004, CSFA was awarded a grant under the United States Department of Education's State Charter School Facilities Incentive Grants Program to provide California charter schools with assistance for facilities costs. The \$50 million federal grant was allocated over a five-year period (through 2009) to eligible charter schools. Grant funds are used toward a charter school's cost of rent, lease, mortgage or debt service payments for existing or new facilities or toward the costs of acquiring land and constructing or renovating a facility. Grants are awarded to charter schools based on preference points allotted for the percentage of low-income students, percentage overcrowded, not-for-profit status, and demonstrated student performance. Eligible charter schools must, at a minimum, be in good standing with their chartering authority, provide site-based instruction, and have completed at least one school year of instructional operations. Additional requirements are listed in the program regulations.

In 2009, CSFA received an additional grant of \$48 million from the United States Department of Education's State Charter School Facilities Incentive Grants Program. The award will be allocated over a five-year period and the program eligibility and criteria are similar to those under the first award of \$50 million. Under this round, CSFA implemented a change in regulations to award charter schools preference points if the school is providing better educational opportunities than surrounding public schools. First time applicants are also given preference as compared to past recipients.

CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

In 2010, CSFA was awarded \$8.3 million by the Credit Enhancement for Charter School Facilities Program (CFDA 84.354A) authorized under Title V, Part B, Subpart 2 of the Elementary and Secondary Education Act, to enhance credit for charter schools and enable them to access non-Federal funds that will address the costs of renovating, acquiring, and constructing school facilities. The grant funds will act as a reserve against any shortfalls in debt service on bonds that are issued by CSFA.

QUALIFIED SCHOOL CONSTRUCTION BONDS (QSCB)

The American Recovery and Reinvestment Act of 2009 (ARRA) provided funding for the new construction or renovation of school facilities through the use of Qualified School Construction Bonds (QSCBs). Of California's \$773 million in "volume cap" allocation for the issuance of QSCBs, approximately \$73 million was reserved for use by charter schools through the issuance of conduit revenue bonds by CSFA which will be designated as QSCBs. To date, CSFA has allocated a total of approximately \$50 million of the \$73 million. Additionally, in 2010, CSFA was awarded an additional \$68 million for the issuance of QSCBs through Assembly Bill 2560 (Chapter 266, Statutes of 2010).

DETAILED EXPENDITURES BY PROGRAM

		2009-10*	2010-11*	2011-12*
PROGRAM REQUIREMENTS				
20	CHARTER SCHOOL FACILITIES PROGRAM			
	State Operations:			
0526	California School Finance Authority Fund	\$-	\$50	\$50
9734	2004 Charter School Facilities Account, 2004 State School Facilities Fund	446	574	598
9735	2006 Charter School Facilities Account, 2006 State School Facilities Fund	185	429	429
	Totals, State Operations	\$631	\$1,053	\$1,077
PROGRAM REQUIREMENTS				
30	STATE CHARTER SCHOOL FACILITIES INCENTIVE GRANTS PROGRAM			
	State Operations:			
0890	Federal Trust Fund	\$110	\$125	\$125
	Totals, State Operations	\$110	\$125	\$125
	Local Assistance:			
0890	Federal Trust Fund	\$10,561	\$20,000	\$20,000
	Totals, Local Assistance	\$10,561	\$20,000	\$20,000

* Dollars in thousands, except in Salary Range.

0985 California School Finance Authority - Continued

	2009-10*	2010-11*	2011-12*
TOTALS, EXPENDITURES			
State Operations	741	1,178	1,202
Local Assistance	10,561	20,000	20,000
Totals, Expenditures	\$11,302	\$21,178	\$21,202

EXPENDITURES BY CATEGORY

1 State Operations	Positions/Personnel Years			Expenditures		
	2009-10	2010-11	2011-12	2009-10*	2010-11*	2011-12*
PERSONAL SERVICES						
Authorized Positions (Equals Sch. 7A)	5.3	5.0	5.0	\$364	\$323	\$330
Total Adjustments	-	-	-	-	-25	-
Estimated Salary Savings	-	-	-	-	-14	-14
Net Totals, Salaries and Wages	5.3	5.0	5.0	\$364	\$284	\$316
Staff Benefits	-	-	-	101	177	154
Totals, Personal Services	5.3	5.0	5.0	\$465	\$461	\$470
OPERATING EXPENSES AND EQUIPMENT				\$276	\$717	\$732
TOTALS, POSITIONS AND EXPENDITURES, ALL FUNDS (State Operations)				\$741	\$1,178	\$1,202

2 Local Assistance	Expenditures		
	2009-10*	2010-11*	2011-12*
Federal Grant Program	\$10,561	\$20,000	\$20,000
TOTALS, EXPENDITURES, ALL FUNDS (Local Assistance)	\$10,561	\$20,000	\$20,000

DETAIL OF APPROPRIATIONS AND ADJUSTMENTS

1 STATE OPERATIONS	2009-10*	2010-11*	2011-12*
0526 California School Finance Authority Fund			
APPROPRIATIONS			
Education Code Section 17181	-	\$50	\$50
TOTALS, EXPENDITURES	\$-	\$50	\$50
0890 Federal Trust Fund			
APPROPRIATIONS			
001 Budget Act appropriation	\$125	\$125	\$125
Budget Adjustment	-15	-	-
TOTALS, EXPENDITURES	\$110	\$125	\$125
9734 2004 Charter School Facilities Account, 2004 State School Facilities Fund			
APPROPRIATIONS			
001 Budget Act appropriation	\$614	\$615	\$598
Allocation for employee compensation	-	2	-
Adjustment per Section 3.60	1	9	-
Reduction per Section 3.90	-66	-19	-
Reduction per Control Section 3.91	-	-33	-
Totals Available	\$549	\$574	\$598
Unexpended balance, estimated savings	-103	-	-
TOTALS, EXPENDITURES	\$446	\$574	\$598
9735 2006 Charter School Facilities Account, 2006 State School Facilities Fund			

* Dollars in thousands, except in Salary Range.

0985 California School Finance Authority - Continued

1 STATE OPERATIONS	2009-10*	2010-11*	2011-12*
APPROPRIATIONS			
001 Budget Act appropriation	\$429	\$429	\$429
Totals Available	\$429	\$429	\$429
Unexpended balance, estimated savings	-244	-	-
TOTALS, EXPENDITURES	\$185	\$429	\$429
TOTALS, EXPENDITURES, ALL FUNDS (State Operations)	\$741	\$1,178	\$1,202
2 LOCAL ASSISTANCE	2009-10*	2010-11*	2011-12*
0890 Federal Trust Fund			
APPROPRIATIONS			
101 Budget Act appropriation as added by Chapter 1, Statutes of 2009, Fourth Extraordinary Session	\$3,000	-	-
Budget Adjustment	7,561	-	-
101 Budget Act appropriation	-	\$20,000	\$20,000
TOTALS, EXPENDITURES	\$10,561	\$20,000	\$20,000
TOTALS, EXPENDITURES, ALL FUNDS (Local Assistance)	\$10,561	\$20,000	\$20,000
TOTALS, EXPENDITURES, ALL FUNDS (State Operations and Local Assistance)	\$11,302	\$21,178	\$21,202

CHANGES IN AUTHORIZED POSITIONS

	<u>Positions/Personnel Years</u>			<u>Expenditures</u>		
	2009-10	2010-11	2011-12	2009-10*	2010-11*	2011-12*
Totals, Authorized Positions	5.3	5.0	5.0	\$364	\$323	\$330
Furlough Adjustments	-	-	-	-	-13	-
PLP Adjustments	-	-	-	-	-12	-
Total Adjustments	-	-	-	\$-	-\$25	\$-
TOTALS, SALARIES AND WAGES	5.3	5.0	5.0	\$364	\$298	\$330

* Dollars in thousands, except in Salary Range.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 39006 (now § 17215.5);
Statutes 1996, Chapter 509

Filed on July 22, 1998

Amended to add:

Education Code Sections 17213.1, and 17215.5
(former § 39006); Statutes 1996, Chapter 509;
Statutes 1999, Chapter 1002; Statutes 2000,
Chapters 135 and 443.

Filed on September 18, 2001

By Brentwood Union School District, Claimant

No. 98-TC-04, amended by 01-TC-03

Acquisition of Agricultural Land for a School Site

STATEMENT OF DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on September 30, 2004)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

PAULA HIGASHI, Executive Director

Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 39006 (now § 17215.5);
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REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on September 30, 2004)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on September 30, 2004. David Scribner, representing Schools Mandate Group, appeared on behalf of the claimant, Brentwood Union School District. Susan Geanacou, Blake Johnson, and Walt Schaff appeared on behalf of the Department of Finance (DOF).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 5-0.

BACKGROUND

Test claim legislation: The amended test claim includes claims made under two separate sections of the Education Code.

Education Code section 17215.5¹ requires that prior to acquiring property for "a new schoolsite in an area designated ... for agricultural use and zoned for agricultural production, the governing board of a school district shall make all of the following findings:"

- That the district has "notified and consulted" with the local zoning agency (city and/or county) that has jurisdiction over the proposed school site; and,

¹ Former Education Code section 39006 enacted by Statutes 1996, chapter 509, was renumbered to section 17215.5 by Statutes 2000, chapter 135, between the time of the original and amended test claim filings.

- That the final selection has been evaluated “based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land,” and,
- That the district will “attempt to minimize any public health and safety issue resulting from the neighboring agricultural uses....”

The California Farm Bureau sponsored the test claim legislation because restrictions imposed on pesticide use on agricultural land bordering schools resulted in a net loss of profitable land from the neighboring parcel. The sponsor argued that school districts locate schools in agricultural areas often, and that the intent of the legislation is not to stop siting schools in these areas, but rather to, “... require dialogue and exchange of information between the school district and the city or county when a school is proposed for an agricultural area.”²

Education Code section 17213.1³ requires that if a school district wishes to apply for state funds under the Leroy F. Greene School Facilities Act of 1998, it must perform a number of specified activities. The Leroy F. Greene School Facilities Act established a new state program in which the State Allocation Board would provide state per pupil funding for new school facilities construction and school facilities modernization. The act included Proposition 1A, passed by voters in November 1998, that authorized the sale of \$9.2 billion in general obligation bonds for K-12 schools (\$6.7 billion) and higher educational facilities (\$2.5 billion.) The proposition also limited, with some exceptions, the fees school districts could levy on developers and homeowners to finance school facilities.⁴ The activities required by section 17213.1 include the following:

- 1) Prior to acquiring the site, the school district must contract with an environmental assessor⁵ (assessor) to supervise the preparation of, and sign, a Phase I environmental assessment⁶ or the school district may choose to forgo a Phase I assessment and proceed directly to a preliminary endangerment assessment.⁷

² Senate Committee on Education, Analysis of Assembly Bill No. 1724 (1995-96 Reg. Sess.) as amended June 12, 1996, page 2.

³ Education Code section 17213.1 was amended by Statutes 2001, chapter 865 and Statutes 2002, chapter 935 subsequent to the amended test claim filing to make public review voluntary under subdivisions (a)(6)(A)-(a)(7).

⁴Office of the Legislative Analyst, analysis of Proposition 1A, Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, pages 3-4. <http://www.lao.ca.gov/ballot/1998/1A_11_1998.htm> [as of July 19, 2004].

⁵ Defined by Education Code section 17210, subdivision (b).

⁶ Defined by Education Code section 17210, subdivision (g).

⁷ Defined by Education Code section 17210, subdivision (h), as an “activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children’s health, children’s learning ability, public health or the environment.”

- 2) If the district chooses to complete a Phase I environmental assessment and the assessment concludes that further investigation of the site is not necessary the district must then submit the assessment to the Department of Toxic Substances Control (DTSC).
 - a) If the DTSC finds the assessment sufficient, it will notify the California Department of Education (CDE) that the assessment has been approved.
 - b) If the DTSC does not find the assessment sufficient, it will instruct the district on what steps need to be taken to complete the assessment.
 - c) The DTSC may also conclude that a preliminary endangerment assessment is required based on the findings of the Phase I environmental assessment.
- 3) If the Phase I environmental assessment concludes that further investigation of the site is necessary or if the district chooses to forgo a Phase I assessment and to move directly to a preliminary endangerment assessment, the district has two options:
 - a) it must either contract with an assessor to supervise the preparation of, and sign, a preliminary endangerment assessment, or,
 - b) it must enter into an agreement with the DTSC to prepare this assessment (including an agreement to compensate DTSC for assessment costs).
- 4) The preliminary endangerment assessment shall conclude EITHER:
 - a) further investigation is not required; or,
 - b) that a release of hazardous materials has occurred or there is a threat of a release of hazardous materials at the site.
- 5) The school district must publish notice that the preliminary endangerment assessment has been submitted and shall make the assessment available for public review according to guidelines provided by subdivision (a)(6).⁸
- 6) The DTSC shall then either find:
 - a) that no further study of the site is required; or,
 - b) that the preliminary endangerment assessment is not satisfactory and further action is necessary; or,
 - c) if a release of hazardous materials has been found to have occurred and the district wishes to go forward with the project the district must:
 - i) prepare a financial analysis of the costs of response action required at the school site; and,
 - ii) assess the benefits of the site; and,
 - iii) obtain approval from the CDE for the site.

⁸ Since the filing of the amended test claim, Statutes 2001, chapter 865 amended this to make public review voluntary under section 17213.1, subdivisions (a)(6)(A)-(a)(7).

Further, section 17213.1⁹, subdivision (11) states that “costs incurred by the district” may be reimbursed in accordance with section 17072.13. Section 17072.13, which is also part of the Leroy F. Greene School Facilities Act of 1998, allows for 50% of costs incurred by the district during the proposal and siting process to be reimbursed under the act. Section 17213.1 was enacted in response to Joint Legislative Audit Committee (JLAC) hearings, held in 1992, which concluded that the existing procedures for approval of school site acquisition must be “immediately reconfigure[d]... to ensure local compliance with the laws.” Specifically, the bill was in response to the actions of the Los Angeles Unified School District, which a legislative committee report alleged requested state approval for at least nine schools with knowledge that the sites may have contained toxic contamination.¹⁰

School District Facilities: Under current California law, school facilities can be constructed with or without state financial assistance. The School Facility Program (SFP) was created in 1998 under the Leroy F. Greene School Facilities Act¹¹ to administer state funds for school facility construction. The SFP was created to streamline the process for receiving state bond money for public school facilities construction. The program, which involves the State Allocation Board (SAB), Office of Public School Construction (OPSC), the School Facilities Planning Division (SFPD) of the CDE and the Division of the State Architect (SA), allocates funding to local school districts from statewide general obligation bonds passed by the voters of California.

The first funding for the SFP came from Proposition 1A, approved in 1998, which provided \$6.7 billion for K-12 facilities. The second funding came from Proposition 47, which included \$11.4 billion for K-12 facilities. An additional \$12.3 billion was added to this fund with the passage of Proposition 55 in March 2004.

A school district wishing to receive state funding submits a funding application package to the SFP. The OPSC then reviews and evaluates the package under its regulations and policies. Approval of the plans by both the SA and the SFPD are required before the SAB approves the apportionment.¹² The money is then released to the district, which is required to submit expenditure reports to the OPSC, which audits all allocations.¹³

In order to receive the required approval of the CDE, the school district must follow the appropriate guidelines under California Code of Regulations, title 5, division 1, chapter 13,

⁹ All statutory references are to the Education Code unless otherwise indicated.

¹⁰ Conference Report on Senate Bill No. 162 (1999-2000 Reg. Sess.) as amended July 12, 1999, page 4.

¹¹ This statute (Stats. 1998, ch. 407), among others, is the subject of test claim 02-TC-30, *School Facilities Funding Requirements*.

¹² The New Construction Program provides 50% state funds for public school projects while the Modernization Program provides 60% state funds.

¹³ See School Facility Program Guidebook. <http://www.documents.dgs.ca.gov/OPSC/PDF-Handbooks/SFP_GdBk.pdf> [as of July 19, 2004]. This document is also part of test claim 02-TC-30, *School Facilities Funding Requirements*.

subchapter 1.¹⁴ These regulations include guidelines on site selection,¹⁵ design of education facilities¹⁶ and procedures for plan approval.¹⁷

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code 17514. In the original claim, claimant alleges that the test claim legislation requires school districts to engage in the following reimbursable state-mandated activities:

1. Develop and adopt policies and procedures in accordance with Education Code section 39006 (now § 17215.5) for the acquisition of real property for a school site.
2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land.
3. Evaluate the property based on all factors affecting the public interest, not limited to selection based on the cost of the land.
4. Prior to the commencement of purchasing property for any school site:
 - a. research city and/or county general plans to determine if the desired parcel of land is designated in either document for agricultural use; and,
 - b. research city and/or county zoning requirements to determine if the desired parcel of land is zoned for agricultural production.
5. If the land sought to be purchased by the school district is designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production:
 - a. notify the city, county, or city and county within which the prospective school site is located; and,
 - b. consult with the city, county or city and county within which the prospective school site is located.
6. Prepare a report for the governing board that will allow the governing board to make the following findings:
 - a. the school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located; and,

¹⁴ See School Site Selection and Approval Guide. <<http://www.cde.ca.gov/ls/fa/sf/schoolsiteguide.asp>> [as of July 19, 2004].

¹⁵ California Code of Regulations, title 5, section 14010.

¹⁶ California Code of Regulations, title 5, section 14030.

¹⁷ California Code of Regulations, title 5, sections 14011 and 14012.

- b. the final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and,
 - c. the school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.
7. Conduct a meeting of the governing board to make the findings required by Education Code section 39006 (now § 17215.5).
8. Prepare and draft a board resolution with the following findings:
- a. the school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located; and,
 - b. the final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and,
 - c. the school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.¹⁸

In the amended test claim, claimant states that based on the Department of Finance (DOF) letter filed on January 26, 1999,¹⁹ the claimant now believes that the following activities “were part of prior law and therefore removes them from [the] amended test claim filing:” (3) evaluating the property based on all factors, (4) researching city and/or county zoning requirements and current use, and (5) notifying the city and/or county within which the site is located.²⁰ Further, claimant amended the test claim to add new alleged state-mandated activities, as follows:

- 1) contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site unless the governing board decides to proceed directly to a preliminary endangerment assessment (§ 17213.1, subd. (a)); or,
- 2) if the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement

¹⁸ Original test claim (98-TC-04), pages 13-14.

¹⁹ In a letter dated January 26, 1999, the DOF advised that activities [1] and [2] were reimbursable mandates, that activities [3], [4] and [5] were activities already required by state law and therefore not reimbursable mandates and that activities [6], [7] and [8] were not required by section 17215.5 and therefore also not reimbursable mandates.

²⁰ Amended test claim (01-TC-03), page 7.

with the DTSC to oversee the preparation of the preliminary endangerment assessment (§ 17213.1, subd. (a)(4)).²¹

Claimant commented on the draft staff analysis as follows. Under the Education Code, a school district must house and educate all students that establish residency in the district in a manner that does not risk the health or safety of its students. Claimant argues that the activities related to section 17515.5 are reimbursable if all discretion is removed from the district for siting and building a new school. Claimant states that school districts that are grossly overpopulated or facing an influx of students due to new development in the districts' boundaries have no choice but to build new school sites to house and educate pupils. Under circumstances of gross overcrowding in the district, claimant argues, the decision to build a new school site is practically compelled. Those districts that face overcrowding and have no choice but to seek out agricultural land for building a school site, according to claimant, are mandated to comply with section 17515.5 because there is no discretion afforded the district. Thus, claimant requests Commission staff to amend the analysis to include a limited exception to reimburse only those districts that can establish they are practically compelled to build a new school site due to overpopulation or expected additional development and growth within the district *and* that the only available option is to acquire agricultural land.

Claimant does not dispute the draft staff analysis conclusions regarding section 17213.1.

State Agency Position

In its January 1999 comments on the original test claim statute (§ 39006, now § 17215.5), DOF states that the alleged state-mandated activities of developing policies and procedures and training staff both appeared to be state-mandated activities of minimal cost. DOF states that the alleged state-mandated activities of evaluating the site on all factors and determining if the site is zoned for agriculture are already incorporated into state law under Education Code section 17212. And the requirement that the district notifies and consults with a city and/or county is also incorporated into state law under Education Code section 17213, subdivision (b). DOF states that since all three are previously required activities they are not new programs or higher levels of service. DOF also states that the alleged state-mandated activities of preparing a report, holding a meeting, and, passing a resolution, were not required by Education Code section 17215.5. DOF states that section 17215.5 only requires the governing board to make a finding; it does not require staff to prepare a report, conduct a specific meeting or prepare and pass a resolution.²²

In its December 2002 comments on the amended test claim statutes (§§ 17215.5 & 17213.1), DOF reiterates its prior statements on policy development and training, stating that both appear to be state-mandated activities that impose minimal cost. DOF argues that the newly alleged state-mandated activities, such as contracting for a Phase I environmental assessment, and contracting for a preliminary endangerment assessment are not state-mandated. DOF points out that the entire section 17213.1 begins with "As a condition of receiving funding pursuant to

²¹ Amended test claim (01-TC-03) page 16. A different numbering scheme is assigned to these activities on pages 9-10 of the amended test claim, but here the numbering scheme on pages 6-7 is used.

²² DOF comments on test claim 98-TC-04, dated January 26, 1999, pages 1-3.

Chapter 12.5...²³ Therefore, DOF argues that section 17213.1 sets out the requirements for an optional funding source and does not constitute state-mandated activities.

However, DOF reverses its position on the alleged state-mandated activities of preparing a report and a resolution, arguing that although they are not specifically required by the section 17215.5, these activities are “reasonable and consistent with the intent of the statute.”²⁴ DOF states that, in accordance with its previous comments, holding a meeting is not specifically required by section 17215.5 and the board could make the required finding at “a regularly scheduled board meeting.”²⁵

Finally, DOF points out that, “[t]he appropriate period in the State Mandates process for identifying reimbursable activities is the Test Claim phase ... [i]t is inappropriate to transform the Parameters and Guidelines phase ... into a venue for Claimants to seek reimbursement for activities they failed to identify in their test claims.”²⁶

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution²⁷ recognizes the state constitutional restriction on the powers of local government to tax and spend.²⁸ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”²⁹ A test claim statute or executive order may impose a reimbursable state program if it orders or commands a local agency or school district to engage in an activity or task.³⁰ In

²³ Education Code section 17213.1.

²⁴ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 3.

²⁵ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 2.

²⁶ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 3.

²⁷ Article XIII B, section 6 provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subjection of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders of regulations initially implementing legislation enacted prior to January 1, 1975.”

²⁸ *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727, 735.

²⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

³⁰ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.³¹

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.³² To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirement in effect immediately before the enactment of the test claim legislation.³³ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”³⁴ Finally, the newly required activity or increased level of service must impose costs mandated by the state.³⁵

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³⁶ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”³⁷

Issue: Do the test claim statutes impose a state-mandated activity on school districts within the meaning of article XIII B, section 6?

The courts have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs “mandated” by a new program or higher level of service imposed upon them by the

³¹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig*, (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

³² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875; reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

³³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878. *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

³⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

³⁵ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 187; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

³⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

³⁷ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

state.³⁸ Thus, the issue is whether the test claim statutes impose a state-mandated activity on school districts.

Education Code section 17215.5: This section requires the governing board of a school district to make three findings if the board wishes to acquire and build a new school on land zoned for agricultural use. The section states that before acquiring land zoned for agricultural use the governing board of a school district must find:

- 1) that the school district has notified and consulted with the city and/or county within which the site is located; and,
- 2) that the final site selection has been evaluated by the school governing board based on factors other than costs; and,
- 3) that the school district will attempt to minimize any public health issue resulting from neighboring agricultural uses.

The Commission finds that this section is not subject to article XIII B, section 6 because the decisions to construct a new school as well as where to site it are discretionary decisions made by the local governing board of a school district. Section 17215.5 does not require the acquisition of any land for a school, nor does it specify the type of land to be acquired (including land zoned for agricultural use.)

Although California law does express the intent of the Legislature that public education shall be a priority in the state and provided by the state,³⁹ there are no statutes or regulations requiring a school district or county board of education to construct school facilities. School districts are given the power by state law to lease⁴⁰ or purchase⁴¹ land for school facilities, to construct school facilities⁴² and to establish additional schools in the district.⁴³ However, in all of these statutes permissive language is used when describing the role of the governing board of the school district. In sections 17244 and 17245 the board "...is authorized..." and section 17342 states that the, "governing board of any school, whenever in its judgment it is desirable to do so, may establish additional schools in the district."

California courts have also found that the construction of school facilities within a school district is a discretionary decision of the school district. In *People v. Oken*, the court found that, "[w]here, when or how, if at all, a school district constructs school buildings is a matter within

³⁸ *Lucia Mar.*, *supra*, 44 Cal.3d 830, 835; *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th 1802, 1816.

³⁹ Education Code sections 16001, 16701 and 17001.

⁴⁰ Education Code section 17244.

⁴¹ Education Code sections 17340 and 35162.

⁴² Education Code sections 17245 and 17340.

⁴³ Education Code section 17342.

the sole competency of its governing board to determine.”⁴⁴ This was reiterated in a state Attorney General opinion in 1988.⁴⁵

With the conventional construction of school facilities, the question of “where, when or how, if at all, a school district shall construct a school building is a matter within the sole competency of its governing board to determine.” (*People v. Oken* (1958) 159 Cal.App.2d 456, 460.) The same is essentially true with the construction of a school facility under the Leroy F. Greene State School Building Lease-Purchase Law.⁴⁶

This language indicates that all aspects of new school facilities, including when they are constructed and if they are constructed at all, is a decision left to local school boards.

In other cases the courts have also held that the power to site a school belongs to the local school district and not the state. In *Town of Atherton v. Superior Court of San Mateo*, the court found that “[u]nder the statutes ... the state has expressly granted the power of location to its agencies, the school districts.”⁴⁷ In *City of Santa Clara v. Santa Clara Unified School District*, the court found that “the selection of a school site by a school district involves an exercise of legislative and discretionary action and may not be challenged as to its wisdom, expediency or reasonableness....”⁴⁸

Additionally, there are no statutes that direct school districts where to place schools. Former Education Code sections 37000 through 37008 did relate to the specific location of schools, but were repealed by Statutes 1989, chapter 1256. Currently, the only section that pertains to state agency involvement in school site selection is section 17521. However, section 17521 only requires that the CDE create standards for use by school districts in the selection of school sites and allows school districts to request advice on the acquisition of a proposed site.

Therefore, based both on statutes and case law, the decision to acquire land on which to site a school and the decision as to which land to acquire are both decisions that are made at the discretion of the school district. If a district’s decision is discretionary, no state-mandated costs will be found.

In *City of Merced v. State of California*,⁴⁹ the court determined that the city’s decision to exercise eminent domain was discretionary. The court found that no state reimbursement was required for loss of goodwill to businesses over which eminent domain was exercised, the court reasoned as follows:

⁴⁴ *People v. Oken* (1958) 159 Cal. App.2d 456, 460.

⁴⁵ “Although Attorney General opinions are not binding, they are entitled to great weight.” *Freedom Newspapers, Inc. v. Orange County Employees Retirement* (1993) 6 Cal.4th 829, 832.

⁴⁶ 71 Opinions Attorney General of California 332, 339 (1988).

⁴⁷ *Town of Atherton v. Superior Court of San Mateo* (1958) 159 Cal.App.2d 417, 428.

⁴⁸ *City of Santa Clara v. Santa Clara Unified School District* (1971) 22 Cal.App.3d 152, 161, footnote 4.

⁴⁹ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

We agree that the Legislature intended for payment of goodwill to be discretionary. The above authorities reveal that whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county rather than a mandate of the state. *The fundamental concept is that the city or county is not required to exercise eminent domain.*⁵⁰ [Emphasis added.]

In *Kern High School District*,⁵¹ the California Supreme Court found that costs associated with notices and agendas required by state law were not entitled to reimbursement if the requirements for notice and agendas were part of a program in which the school district had chosen to participate. In that case, the California Supreme Court affirmed the reasoning of the *City of Merced* case as follows:

[T]he core point articulated by the court in *City of Merced* is that activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds – even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.⁵²

The Supreme Court left undecided whether a reimbursable state mandate “might be found in circumstances short of legal compulsion—for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program.”⁵³ As explained below, there is no evidence in the record that school districts are “practically compelled” to acquire agricultural land to build schools. The test claim statute does not impose a penalty for noncompliance.

Although the Supreme Court declined to extend the *City of Merced* holding in a recent case,⁵⁴ its core point stands: there is no state mandate where a local government or school district freely undertakes activities at its option. The Commission is not free to disregard the clear statement of the California Supreme Court interpreting mandates law. Thus, pursuant to state law, school districts remain free to site new schools where they choose. The statutory duties imposed by section 17215.5 flow from the decision to site a school on land zoned for agricultural use. Based on the *Kern High School Dist.* case, since this decision is a local discretionary activity, any requirements imposed by the state on the local decision do not constitute a reimbursable state mandate.

Claimant argues that the Commission should find a limited exception to reimburse those districts that can establish they are practically compelled to build a new school site due to overpopulation

⁵⁰ *Ibid.*

⁵¹ *Kern High School District, supra*, 30 Cal.4th 727.

⁵² *Id.* at page 742.

⁵³ *Ibid.*

⁵⁴ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878. The Court reached its decision on alternative grounds not involving the *City of Merced* rationale.

or expected additional development and growth within the district and that the only available option is to acquire agricultural land.

The Commission disagrees because claimant does not submit any evidence as to the existence of this situation. The Commission must base its findings on substantial evidence in the record.⁵⁵

...[S]ubstantial evidence has been defined in two ways: first, as evidence of ponderable legal significance ... reasonable in nature, credible, and of solid value [citation]; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion. [The finding must be supported by] ...all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by "substantial evidence."⁵⁶

Moreover, the Commission's regulations require that all factual evidence be supported by either a signed declaration and/or sworn testimony.⁵⁷

Since claimant has not submitted evidence describing a situation where a school district meets the hypothetical criteria claimant suggests, the record does not support a finding of a state-mandated program. Therefore, the Commission finds that section 17215.5 does not impose a state-mandated activity on school districts within the meaning of article XIII B, section 6.

Education Code section 17213.1: This section, enacted in 1999, lays out the additional requirements⁵⁸ that school districts must satisfy in order to receive funding from the Leroy F. Greene School Facilities Act of 1998.⁵⁹ It requires school districts to contract for a Phase I environmental assessment or if necessary a preliminary endangerment assessment if the school district wishes to request state funding for the facility. These requirements specifically address the study of new school sites for natural, previous or potential releases of hazardous or toxic substances.

When construing a statute, the Commission, like a court, must ascertain the intent of the Legislature so as to effectuate the purpose of the law.

⁵⁵ *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; Government Code section 17559, subdivision (b).

⁵⁶ *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

⁵⁷ California Code of Regulations, title 2, sections 1183.03, subdivision (b)(1) and 1187.5, subdivision (b).

⁵⁸ Basic requirements for school siting can be found in California Code of Regulations, title 5, sections 14001-14012 and Education Code section 17251.

⁵⁹ Section 17072.13 provides that a school district may request up to 50% of the cost of implementing this section if it chooses to request funding from the State Funding Program (SFP). If a school district qualifies as eligible for financial hardship under section 17075.10 or if the site meets the environmental hardship criteria in section 17072.13, subdivision (c)(1), then up to 100% of this cost can be requested from the SFP.

In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose [citation]. At the same time, we do not consider statutory language in isolation [citation]. Instead, we examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts [citation]. Moreover, we read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness [citations].⁶⁰

Section 17213.1's first sentence states, "As a condition of receiving state funding..." The plain meaning of this section is that the requirements in section 17213.1 only apply to school districts that decide to request funding through the Leroy F. Greene School Facilities Act of 1998. Thus, the district's decision to seek funds under this act is discretionary and not mandatory. DOF alleges that approximately 58% of districts do not apply for funding under the 1998 Leroy Greene Act.⁶¹

As stated above, if a district's decision is discretionary, no state-mandated costs will be found.⁶²

Therefore, the requirements imposed on the conditional funding from the Leroy F. Greene School Facilities Act of 1998 are not state-mandated activities, so section 17213.1 is not a reimbursable mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution.

CONCLUSION

The Commission finds that the test claim statutes, Education Code sections 17215.5 and 17213.1, do not impose a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. This conclusion is based on the following findings:

- 1) For Education Code section 17215.5, the specified findings the school district must make if the proposed school site is on land zoned for agricultural use is not state-mandated because the decision to build a school, as well as where to locate it, including the acquisition of agricultural land for a school, is a discretionary decision left to local school districts by state law.
- 2) For Education Code section 17213.1, the procedures a school district must follow when it seeks state funding pursuant to the Leroy Greene School Facilities Act of 1998 (commencing with Ed. Code, § 17070.10) are not state-mandated because the school district is not required to request state funding under section 17213.1.

⁶⁰ *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043.

⁶¹ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 2.

⁶² *Kern High School District, supra*, 30 Cal.4th 727, 742; *City of Merced v. State of California, supra*, 153 Cal.App.3d 777, 783.

FINANCING SCHOOL FACILITIES IN CALIFORNIA

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Executive Summary

California's system of school facility finance is best described as a partnership between the state and local school districts. The state provides districts with financial support for new school construction and modernization projects through the School Facility Program (SFP), which was established in 1998. The SFP represented a major change in the way the state financed school facilities and was designed to simplify the overall structure of the state's schools facilities program and create a more transparent and equitable funding mechanism. Under the program, new school construction projects are funded on a 50/50 state and local matching basis while modernization projects are funded on a 60/40 basis. Although the program has gone through numerous changes since 1998, the basic structure of the SFP is still in place today. Since 1998, voters in California have approved three statewide bond issues to fund the School Facility Program and are scheduled to vote on a fourth this November. The three bond issues that have passed provided K-12 public schools with \$28.1 billion in state funding for school facility needs. If approved by voters in November of this year, Proposition 1D, the Kindergarten-University Public Education Facilities Bond Act of 2006, will provide an additional \$7.3 billion in state funding. Local school districts finance their share of school construction and modernization project costs primarily with revenue raised through local general obligation bond elections. Since 1998, those local bond elections have provided school districts with an additional \$36 billion to finance school facility improvements.

This study provides a comprehensive review of California's system of school facility finance. In so doing, it attempts to answer five broad questions related to the way California finances its school facility needs: (1) How has the level of school facility funding changed over time and how does it compare to the level of funding in other states; (2) How is the level of school facility funding distributed across school districts; (3) What are the primary causes of inequities in school facility funding across districts; (4) Is facility funding reaching those districts with the greatest facility needs; and (5) How do charter schools obtain funding for school facilities and what are the special issues related to charter school facility finance? This report attempts to answer those questions by reviewing the history of school facility finance in California, documenting California's current system of school facility finance, and examining the level and distribution of school facility funding since 1998.

School Facility Funding has Increased Dramatically in Recent Years

Since the passage of Proposition 1A in 1998, California's system of school facility finance has become more streamlined and the level of support for K-12 school facilities, both state and local, has increased dramatically. As noted above, since 1998 voters have approved \$28.1 billion in statewide general obligation bonds and an additional \$36 billion in local general obligation bonds to support school construction and modernization projects throughout the state. Prior to 1998, spending per pupil on school

facilities in California lagged behind the rest of the nation and even further behind states with similar enrollment growth trends. Since 1998, the level of spending has surpassed the national average and is now comparable to the level found in other states with similar enrollment growth rates.

There are Wide Disparities in School Facility Funding across Districts

Revenue per pupil for school construction and modernization varies widely across districts. For example, in unified school districts the difference between the 75th and 25th percentiles of facility revenue per pupil (total revenue raised over the period 1998-2005 divided by student enrollment) is over \$10,000. Similar disparities in facility funding exist among elementary and high school districts. Part of the variation across districts in facility funding is due to differences in need, another part is due to differences in the ability to pay for school facility projects. In terms of need, districts with higher enrollment growth rates and those that have not invested heavily in school facilities in the recent past tend to have substantially higher revenue per pupil. In terms of ability to pay, districts with higher property wealth also tend to have substantially higher revenue per pupil. In particular, disparities in school facility funding across districts is systematically related to the assessed value of property within districts. Districts with higher assessed value per pupil are able to raise substantially more revenue through local general obligation bond issues and consequently, tend to have substantially higher total revenue per pupil. There also appears to be little relationship between facility revenue and the ethnic composition of districts. If anything, districts with higher concentrations of minority students tend to have higher facility revenue per pupil.

Critically Overcrowded Schools Serve a Disproportionate Number of Disadvantage and Minority Students -- They Also Have Higher Facility Funding

In 2002 the state legislature created the Critically Overcrowded Schools (COS) program to help direct state aid towards districts with the greatest facility needs. The program was funded with \$4.1 billion of Proposition 47 and 55 bond revenue. To qualify for COS program funding, a school must have a student density that is double the density recommended by the California Department of Education. Critically overcrowded schools contain a disproportionate number of disadvantaged and minority students. For example, among schools classified as critically overcrowded the average percentage of students qualifying for free or reduced price lunch is 77%. Among all other schools that percentage is only 45%. Districts that contain critically overcrowded schools also tend to have higher facility revenue per pupil. For example, among the 42 districts that contain critically overcrowded schools, local bond revenue between 1998 and the present averaged \$5,722 per pupil and total revenue per pupil averaged \$11,323. In other districts local bond revenue averaged \$3,825 and total revenue averaged \$9,061. Thus, on average, total revenue per pupil is approximately 25% higher in districts that contain critically

overcrowded schools. Los Angeles Unified, which contains nearly 50% of all critically overcrowded schools, has experienced a particularly large increase in facility funding. In that district, total facility funding per pupil is more than twice the statewide average.

The Facility Dilemma Facing Charter Schools Is Improving but Challenges Still Remain

Since charter schools were first introduced in California in 1993, they have faced significant facility challenges. During the 1990's there were few facility funding options available to charter schools and most charter schools, particularly non-conversion charter schools, faced significant barriers to obtaining adequate school facilities. The facility dilemma facing charter schools began to improve in 2000 when California voters passed Proposition 39. Prior to the passage of Proposition 39, districts were only required to make facilities available to charter schools if such facilities were not currently being used for instructional or administrative purposes or if such facilities had not been historically used for rental purposes. Under the charter school provisions contained in Proposition 39, it became the legal responsibility of school districts to make every reasonable effort to house charter school students in facilities that were essentially equivalent to those used to house other students within the district. Thus, Proposition 39 substantially increased the responsibility of school districts to provide charter schools with adequate school facilities. In recent years a number of grant and loan programs have also been established to help charter schools obtain adequate school facilities. For example, Propositions 47 and 55 contained \$400 million in funding for charter school facilities. Proposition 1D, if approved by voters in November of this year, would provide an additional \$500 million in facility funding for charter schools.

Although the facility dilemma facing charter schools has improved in recent years, challenges still remain. For example, according to a 2002 survey of charter schools conducted by the Rand Corporation, 62% of all charter schools surveyed stated they were struggling to finance their school facility needs. In addition, a 2005 survey of charter schools conducted by EdSource revealed that among the 135 charter schools that submitted Proposition 39 requests for facilities to their districts, 53 or 39% of schools reported they did not receive satisfactory facilities in response to their initial request or through continued negotiations.

1. Introduction

On November 7th of this year, Californians will vote on Proposition 1D, the Kindergarten-University Public Education Facilities Bond Act of 2006. If approved by voters, the Act would provide K-12 public schools with \$7.3 billion in funding for new school construction and modernization projects. It would also represent the fourth such bond issue approved by voters since 1998. Collectively, those four bond issues will have provided \$35.4 billion in state funding for K-12 school facility needs. Local school districts have also been active in securing funding for school facilities: since 1998, local voters have approved over \$36 billion in local general obligation bond issues to finance school facility improvements.

California's willingness to support school construction and modernization efforts comes in the wake of several reports which concluded that underinvestment in school facilities had resulted in a school facilities crisis. For example, according to a 1995 report conducted by the U.S. General Accounting Office, the condition of California's school facilities ranked among the worst in the nation.¹ Furthermore, as recently as 2001, the Legislative Analyst's Office (LAO) reported that about one-third of all schoolchildren in California attended an overcrowded school or one in need of modernization.² To correct those problems, the LAO estimated that state and local governments would need to invest \$30 billion in the near term and significantly more in the future to meet California's ongoing school facility needs.

The purpose of this report is to provide a comprehensive review of California's system of school facility finance. Section 2 reviews the history of school facility finance in California. That chapter borrows liberally from Cohen (1999) who provides an excellent account of how California's system of school facility finance has evolved over time. Unfortunately, that account ends in 1999, just as the state was adopting a new system of school facility finance. Thus, section 2 builds on the work of Cohen by providing a review of California's system of school facility finance from the origins of California statehood to the present. Following that review, section 3 examines how school facility funding in California has changed over time and how it compares to the level of funding in other states. That section shows that school facility spending in California has fluctuated dramatically over time. It also shows that until recently, spending per pupil on school facilities in California lagged behind the rest of the nation. For example, between 1988 and 1996, California spent about 20% less on school facilities than the rest of the nation. The gap in school facility spending was even larger if one compares California to other states with similar enrollment growth trends, such as Texas and Florida. However, since 1998, spending per pupil on school facilities in California has increased dramatically. Facility spending in California now

¹ U.S. General Accounting Office (2005).

² Legislative Analyst's Office (2001).

exceeds the national average and it is as high, if not higher, than the level of spending observed in states with similar enrollment growth.

After providing an historical overview of California's system of school facility finance, Section 4 turns to describing the current system. In particular, the section provides an overview of the School Facility Program which was established in 1998 with the enactment of AB 50 and the passage of Proposition 1A. The section documents the various steps school districts must follow to access state funds for new school construction and modernization projects. It also provides an overview of the Critically Overcrowded School Facilities (COS) program which was established in 2002 to address several concerns about the equitable distribution of Proposition 1A funds.

Sections 5, 6 and 7 turn to examining the level and distribution of school facility funding since the enactment of the School Facility Program in 1998. Section 5 shows that since 1998 state and local governments in California have raised over \$71 billion to fund new school construction and modernization projects throughout the state. State and local general obligation bond revenue accounts for 84% of that revenue with local general obligation bonds being the largest single source of revenue (approximately 53%). The section also shows that school facility funding varies widely across districts. The causes of these wide disparities in funding are the focus of section 6. That section shows that part of the variation in facility funding can be explained by differences in need. Districts with higher enrollment growth, and districts that have not invested heavily in school infrastructure in the recent past, tend to have significantly higher levels of facility funding. However, section 6 also finds that disparities arise from differences across districts in the ability to pay for new school construction and modernization projects. In particular, school facility funding varies systematically with district property wealth. High-wealth districts tend to have significantly higher local general obligation bond revenue per pupil and consequently, significantly higher total revenue per pupil.

Section 7 examines whether districts with the most critical facility needs receive higher levels of facility funding. To date, no comprehensive measure of school facility need is available in California. However, there are two objective measures of need that can be examined: schools that are classified by the California Department of Education as critically overcrowded and schools that operate on a multi-track year-round calendar. Section 7 begins by examining how the characteristics of critically overcrowded and multi-track schools differ from other schools. It then examines how facility funding in districts that contain critically overcrowded or multi-track schools compares to other districts. The section reveals that, compared to other schools, those that are classified as critically overcrowded or operate on a multi-track calendar, tend have significantly higher proportions of disadvantaged and minority students. It also shows that districts that contain critically overcrowded schools tend to receive significantly higher facility funding, particularly Los Angeles Unified.

Section 8 examines school facility funding for charter schools in California. It begins by discussing the unique facility challenges charter schools face and how those challenges have affected their ability to obtain adequate facilities. The section then documents how Proposition 39 impacted the ability of charter schools to obtain adequate school facilities. It also discusses the various sources of revenue that have recently become available to charter schools to finance their school facility needs. The report concludes by summarizing the main findings presented in Chapters 2 through 8 and linking those findings to research reports that have recommended various changes to the current system of school facility finance in California.

2. A History of School Facility Finance

California's system of school facility finance has evolved slowly over time. Up until the mid-1900's, school construction and modernization projects were funded almost entirely with local revenue. State involvement in the system emerged with the creation of the State Allocation Board in 1947, which was directed by the state legislature to allocate state funds for school construction and renovation. Since that time, school facility finance has evolved from a locally-financed system to a system best described as a partnership between local school districts and the state. This section describes the history of school facility finance in California and documents the various programs that have been used to finance K-12 facilities.

From the early days of California statehood until 1933, state involvement in school facility finance was restricted to providing land grants to local communities for the purpose of establishing public schools. The State Constitution of 1849 mandated the state legislature to "encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement."³ The Constitution set aside large tracts of public land for the creation of public schools and mandated that every district in the state operate a public school for at least three months a year. The construction and renovation of these schools was financed entirely with local tax revenue.⁴ In 1879, the California State Constitution was revised and school districts were granted the authority to issue bonds to finance school construction projects, subject to the approval of two-thirds of voters within the district. Local bonds were repaid with property tax revenue raised from a special tax assessment on all property located within a school district. School districts could issue additional bonds up to their debt capacity level which was set at 1.25 percent of assessed value for elementary and secondary districts and 2.5 percent for unified districts. From that

³ Constitution of the State of California, 1849. Text obtained from California State Archives: http://www.ss.ca.gov/archives/level3_const1849txt.html

⁴ During the early years of California statehood, state aid for education was limited to support for teacher salaries. Districts built schools when they could raise enough tax revenue or when civic-minded residents volunteered their time and resources to build a school. (Falk, 1968).

time forward, proceeds from local school bond elections became the primary source of local revenue for school construction projects.

The state first became involved in school construction and renovation activities in 1933, following the Long Beach earthquake. The earthquake, which struck just hours after classes ended on March 10th 1933, caused numerous school buildings in Long Beach and surrounding communities to collapse and provoked “public outcry over the vulnerability of school building to earthquake-related damage.”⁵ In response, the state legislature passed the Field Act on April 10th 1933.⁶ The Act mandated the Division of the State Architecture (DSA) to develop earthquake-resistant design and construction for all public schools in the State. It also required architects, engineers and inspectors to file reports verifying that schools were in compliance with the provisions of the Field Act.⁷ Thus, state involvement in school construction and renovation began with state oversight of construction design and mandatory construction inspections. Although the Field Act has been updated overtime, the basic structure of the Act is still in place today.⁸

The post-World War II baby boom caused a surge in student enrollment in California which in turn led to a public school “building boom” starting in the late 1940’s.⁹ From the late 1940’s to the early 1960’s, schools were built in record numbers.¹⁰ In the late 1940’s the State Legislature recognized that school districts would need financial assistance to house California’s growing number of students. In response, the state legislature established the State Allocation Board in 1947 and charged the board with allocating state funds for the construction and renovation of schools.¹¹ In addition to its allocation role, the Board is also responsible for establishing policies and regulations for the programs it oversees.

In 1949, the Legislature passed the State School Building Aid Law which was designed to provide assistance to school districts for the construction and acquisition of new school facilities. To secure funding for the new program, California’s first statewide school bond initiative, Proposition 1, was placed on the November 1949 statewide ballot and approved by voters. The proposition authorized the sale of \$250 million of state bonds for the purpose of providing school districts with funds for new school construction and improvement. The State School Building Aid Law of 1949 was set up as a loan program. To enter the program, a district had to be bonded to capacity and obtain voter approval to

⁵ Heumann (2002), p. 9.

⁶ The Field Act was named after California State assembly member Charles Field who spearheaded the legislation.

⁷ State of California Seismic Safety Commission (December 2004), p. 6.

⁸ For a complete description of the Field Act see the California education code section 17280-17317.

⁹ From 1950 to 1960, student enrollment in California doubled from a total enrollment of 1,689,425 in 1950 to a total enrollment of 3,368,101 in 1960. (California Department of Education, Enrollment Reports for 1950 – 1979).

¹⁰ According to EdSource, most of California’s schools were built during this period.

¹¹ The State Allocation Board consists of ten members: the Director of the Department of Finance, the Director of the Department of General Services, the Superintendent of Public School Construction, one person designated by the Governor, three State Senator, and three State Assembly Members.

accept a state loan. Districts were then required to maintain a property tax rate equivalent to the rate necessary to finance general obligation bonds at the district's debt capacity level. After 30 years, if the state loan was not fully repaid, any outstanding balance was forgiven.¹²

For the next two decades, California's system of school facility finance remained relatively unchanged: school districts provided most of the funds for new school construction and the state provided limited assistance via loans for the State School Building Aid program.¹³ Between 1952 and 1966, California voters approved 7 statewide school bond initiatives, which provided \$1.54 billion for the State School Building Aid program. Throughout this period, state aid was limited to loans that could only be used for the purpose of new school construction. School districts wishing to renovate or modernize existing school facilities had to finance those renovations with local revenue.

By the late 1960's, many of California's schools were over 20 years old and in need of renovation. Recognizing this need, the state legislature in 1966 declared that it was in the "interest of the state and the people thereof to provide assistance to school districts in rehabilitating or replacing structurally unsafe school facilities."¹⁴ In 1968, state assistance for the modernization of urban schools built prior to 1943 was added to the education code.¹⁵ Further changes to California's system of school facility finance began to emerge in the early 1970's. In response to damage caused by the 1971 San Fernando earthquake, the legislature designed a new program to provide funding for earthquake-damaged schools and schools that were not in compliance with the Field Act. The new program was funded with revenue from two statewide school bond initiatives: the School Building and Earthquake Reconstruction and Replacement Bond Law of 1972, which provided \$350 million for the construction and renovation of schools, and the State School Building Aid and Earthquake Reconstruction and Replacement Bond Act of 1974, which provided an additional \$150 million.¹⁶ While most state aid to school districts remained in the form of loans, the new legislation included provisions to forgive loans for school districts that had reached their bonding capacity and also provided grants to school districts that would otherwise not be eligible for funding. Thus, by the early 1970's, state involvement in school facility finance had expanded to include aid for school renovation and modernization and the role of the state had begun to change from one of a primary lender to one of a grantor.

¹² California Education Code, State School Building Aid Law, 1949, Section 15738.

¹³ The State School Building Aid Law of 1949 was updated when the State School Building Aid Law of 1952 was passed by the state legislature. While more detailed, the new program retained the same basic structure of its predecessor.

¹⁴ California Education Code, School Housing Aid for Rehabilitation and Replacement of Structurally Inadequate School Facilities, Section 16312.

¹⁵ California Education Code, Urban School Construction Aid Law of 1968, Sections 16700-16734.

¹⁶ In November 1972, California voters also passed Proposition 9, the Bond Vote for Structurally Unsafe School Buildings. The proposition allows districts to issue general obligation bonds, subject to the approval of a simple majority of voters (rather than a super-majority) for the purpose of repairing or replacing structurally-unsafe school buildings.

In 1976, the state legislature enacted the Leroy Greene State School Building Lease-Purchase Law. The law established a fund to provide loans to school districts for both new construction and modernization. Eligibility for new construction funding was based on housing capacity. To qualify, a district had to demonstrate that existing seating capacity was insufficient to house either current student enrollments or anticipated student enrollments based on a 5-year projection of enrollment growth. To qualify for modernization funding, a school building had to be at least 30 years old, or in the case of a portable classroom, at least 20 years old. The new program also established a system of “priority points” for the allocation of state funds. In the original 1976 legislation these priority points depended on factors such as the number of unhoused students, projected enrollment growth rates and the degree of renovations necessary.¹⁷ Although the Lease-Purchase Program was signed into law in 1976, funding for the new program was never approved by voters: in June of 1976 voters rejected a \$200 million state bond initiative that was designed to fund the new program. At first, the lack of funding appeared to be of little consequence. Between 1970 and 1982, student enrollment in California’s public schools was declining and hence there was little demand for state funds. Things began to change, however, following the passage of Proposition 13 in June of 1978.

The passage of Proposition 13 shifted the primary responsibility for financing new school construction and modernization from local school districts to the state. By prohibiting property tax overrides to fund local general obligation bonds, Proposition 13 eliminated the primary source of local revenue for new school construction and modernization. Consequently, in the aftermath of Proposition 13, school districts were forced to turn to the state to meet their school facility needs. The state legislature responded to Proposition 13 by turning the Lease-Purchase Program into what essentially amounted to a grant program. School districts that chose to participate entered into a 40-year lease-purchase agreement with the state, with payments of \$1 per project per year. Although school districts were expected to contribute up to 10% of a project’s cost, many school districts could no longer raise the required match and thus asked the State to fund their entire projects.¹⁸ The increased demand for state funding, coupled with the fact that in June of 1978, voters once again rejected a statewide bond initiative designed to fund the Lease-Purchase Program, led to a large shortfall in funding for new school construction and modernization.

The state legislature responded to the need for school facility funding in a number of ways. First, in 1982 and then again 1984, it placed school bond initiatives on the statewide ballot. Voters approved both initiatives, which collectively provided the Lease-Purchase Program with \$950 million. Second, in 1982, the state legislature passed legislation allowing school districts, for a ten year period, to pay just 1

¹⁷ Cohen (1999), p. 12.

¹⁸ Cohen (1999), p. 13.

percent of the costs of state-funded projects rather than the 10 percent required in the original 1976 Lease-Purchase Program legislation. Third, in 1982, the state also implemented the Mello-Roos Community Facilities District Act. The Act allows school districts to create Community Facility Districts (CFD's) within the boundaries of the district to fund new school construction. The owners of land within the boundaries of a CFD are assessed a special tax to finance new construction projects. The tax must be approved by two-thirds of the voters within the proposed CFD or, when the district has fewer than 12 property owners, by majority vote of the owners.¹⁹ Fourth, to reduce the costs associated with school construction projects, in 1983 the state legislature passed legislation (Chapter 498, Statutes of 1983) giving districts a financial incentive to place students into a multi-track year-round education (MTYRE) program. Districts that participated in the program were eligible for a grant of up to 10 percent of the cost that would have been necessary to build a new facility to house the students.²⁰

By the mid-1980's however, it became apparent that these measures were not sufficient to meet the growing facility needs of school districts. Student enrollment in California had begun to grow again in the 1980's, creating further pressure on the state for increased facility funding. In addition, both the federal and California state governments passed asbestos removal legislation in 1986, which led to an increase in the number of applications for modernization and rehabilitation funding. By June of 1986, the State Allocation Board had received applications for funding that totaled nearly \$2.3 billion.²¹ To meet the ever-growing demands on the Lease-Purchase Program, the state legislature placed seven statewide bond initiatives on the ballot between 1986 and 1992. All seven of the bond initiatives passed, providing the state with an additional \$6.8 billion for school facility projects. Voters and the state legislature also passed a number of new programs designed to reinstate the authority of local school districts to raise revenue for new school construction and modernization. In June of 1986, voters passed Proposition 46, which reestablished the authority of local school districts to issue general obligation bonds, subject to the approval of two-thirds of the voters within a district. Also in 1986, the state legislature approved AB 2926 which authorized school districts to directly impose developer fees to finance new school construction. Developer fees could only be imposed on new industrial, commercial, or residential development. Furthermore, the maximum fee a district could impose was set at \$1.50 per square foot for residential development and \$0.25 per square foot for commercial and industrial development.²²

¹⁹ Rivasplata (1997), p. 42.

²⁰ Cohen (1999), p. 14.

²¹ Cohen (1999), p. 15.

²² While fees were capped in theory, some school districts managed to find ways around the caps. In particular, several school districts argued that the caps only applied to the school district rate. As a result, they petitioned their city and/or county governments to impose additional fees, leading to a total fee that exceeded the cap of \$1.50 per square foot for residential property and \$0.25 per square foot for commercial property. The cases led to three

As the 1990's unfolded, demands on the Lease-Purchase Program continued to mount. Attempts to conserve limited resources led the state legislature and the State Allocation Board to implement numerous changes to the program. In 1990, a new priority system was implemented, based on when an application was received and a complex set of additional priorities. One year later, the priority system was changed to include six priorities of funding. A district was given priority 1 funding status if the district covered at least 50% of the project costs with local funds and had a substantial enrollment in year-round schooling programs. Priority 2 status was granted if the district requested 100% state funding of the project and had a substantial enrollment in year-round schooling programs. Districts received lower priority if they did not have substantial enrollment growth, were not requesting funds for a year-round schooling project, or were requesting 100% funding from the state. Due to the limited funding available from the state, the vast majority of projects that received funding were either priority 1 or priority 2 projects. In 1996 the priority system was changed yet again to take into consideration new class-size reduction legislation and finally, in 1997, the priority system was replaced altogether by a first-come first-served system.²³ Despite these numerous changes to the Lease-Purchase Program and the passage of another \$3 billion statewide bond initiative in March 1996, the backlog of projects faced by the State Allocation Board remained at approximately \$6 billion at the end of 1996.

In November 1998, the legislature passed SB 50, The Leroy Greene School Facilities Act of 1998. The legislation replaced the Lease-Purchase Program of 1976 with a new program called the School Facility Program (SFP). The new state program was funded with bond revenue from Proposition 1A, a \$9.2 billion state bond initiative approved by voters in November of 1998. The initiative provided \$6.8 billion for K-12 school construction projects over a four-year period. Specifically, the bond included \$2.9 billion for new school construction, \$2.1 billion for modernization, \$1 billion for districts facing financial hardship, and \$700 million for class-size reduction projects. The School Facilities Program represents a major change in the way the state finances school facilities. Under the new program, state funding for new school construction and modernization is provided in the form of per-pupil grants with supplemental grants available for site development, site acquisition and other site-specific costs.²⁴ New school construction projects are funded on a 50/50 state and local matching basis while modernization projects are funded on a 60/40 state and local matching basis.²⁵ The SFP also implemented numerous reforms to the old Lease-Purchase program that were designed to stream-line the application process, simplify the overall structure of the state school facilities program, and create a more transparent and

separate law suits in which the courts ultimately upheld the practice. The three decisions collectively became known as the Mira-Hart-Murietta decisions.

²³ Cohen (1999), p. 17.

²⁴ School Facility Program Handbook (February 2006), p. 1.

²⁵ Under the original 1998 legislation, modernization projects were funded on an 80/20 state and local matching basis. The matching rate was reduced to a 60/40 state and local basis following the passage of AB 16 in 2002.

equitable funding mechanism. In his excellent review of the history of school facility finance in California and the role of the State Allocation Board, Joel Cohen notes:

Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.²⁶

The basic structure of the School Facilities Program remains in place to this day and is discussed in detail in section 4.

While the Leroy Greene School Facilities Act of 1998 (henceforth SB 50) was designed to streamline and simplify the process for allocating state funds, it wasn't long before the new program was called into question. In March of 2000, the *Godinez v. Davis* lawsuit was filed in the Los Angeles Superior Court on behalf of a group of parents and students from the Los Angeles Unified School District. The suit contended that the method by which Proposition 1A funds were allocated discriminated against large urban school districts. Among other things, the lawsuit called into question the priority point system the State Allocation Board (SAB) used to allocate Proposition 1A funding. The original SB 50 legislation required the SAB develop a priority point system, based upon the percentage of currently and projected unhoused pupils, to allocate state funds once those funds became insufficient to fund the applications submitted by school districts.²⁷ In 1999, AB 562 was enacted to make the timing of implementing priority points more specific. The new legislation required that the system of priority points must be implemented once either of the following two conditions were met: (1) funds necessary to fund approved applications exceed funds available, or 2) only \$300 million remains in new construction funding.²⁸ In the case of *Godinez v. Davis*, the plaintiffs argued (among other things) that in large urban districts, it took longer to file a formal application for reasons beyond the direct control of the district and since the SAB allocates funds only to those districts that have filed a formal application for funding, the funding process put large urban districts at a disadvantage. In essence the plaintiffs argued that, even though large urban districts were “high need” districts, and thus should receive a high priority for state funding, the state funding process placed such districts at a disadvantage since it took them longer to file applications. In August of 2000, Judge Yaffe, the presiding judge in the *Godinez* case, ruled that the State

²⁶ Cohen (1999), p. 1.

²⁷ Up until the point where state funds became insufficient, Proposition 1A funds were allocated on a first-come first-served basis.

²⁸ Coalition for Adequate School Housing, News Archives, July 11, 2001.

Allocation Board was not apportioning funding in accordance with AB 562 and ordered the SAB to develop rules that would provide greater funding opportunities for high need districts such as LA Unified.²⁹

In response to the court's ruling, the SAB adopted a revised priority system in December of 2000. The new system set aside \$450 million of remaining Proposition 1A funding for high-priority urban districts until August of 2002. It also required that the remaining \$1 billion in new construction funding be released on a quarterly rather than monthly basis at the rate of approximately \$125 million per quarter and that those funds be allocated to projects based upon their priority point order. As a result of these changes, the *Godinez* plaintiffs agreed not to pursue any further litigation.

Around the same time *Godinez v. Davis* was first making its way through the courts, plaintiffs in *Williams v. State of California* filed a class-action lawsuit in the San Francisco Superior Court. Among other things, the plaintiffs argued that the state failed to provide students with equal access to safe and decent school facilities, particularly low-income students and students of color. Specifically, the plaintiffs argued that disadvantaged and minority students were more likely to be housed in facilities with "extremely hot or cold classrooms, unkempt or inadequate bathroom facilities, and unrepaired and hazardous facilities such as broken windows, vermin infestations, leaky roofs, or mold."³⁰ In August of 2004, the state agreed to a settlement. As part of that settlement, the state agreed to dedicate \$800 million in funding for emergency repairs for low-performing schools.³¹

To address some of the problems encountered after the first round of funding for the new School Facility Program, the state legislature enacted AB 16 in April of 2002. AB 16 added to the SFP a new program called the Critically Overcrowded Schools program. The program allowed districts with schools that were classified by the California Department of Education as critically overcrowded to reserve state funding for new school construction for a period of up to four years. Thus, the Critically Overcrowded Schools program allowed districts such as LA Unified, who argued it took them longer to file applications for funding, to reserve state funds prior to submitting an application for funding.³² AB 16 also put before voters two new statewide school bond issues: Proposition 47 and Proposition 55. The two bond issues, which were respectively approved by voters in November of 2002 and March of 2004, provided an additional \$21.4 billion in state funding for school facility projects. The bonds include \$4.8 billion to

²⁹ Building Industry Association of Southern California, February, 2001.

³⁰ Pastor and Reed (2005), p. 22.

³¹ The settlement requires the state to allocate \$800 million to a new School Facilities Emergency Repair Account which will reimburse districts for emergency repairs. Only schools ranked in the bottom three deciles of the 2003 Academic Performance Index (API) are eligible for emergency repair funding.

³² Other significant elements of AB 16 were the creation of a Joint-Use Program and the elimination of priority points for new school construction and modernization projects. In essence, the need for a priority point system was eliminated by the creation of the Critically Overcrowded Schools program.

fund previously-approved projects that did not receive Proposition 1A funding, \$4.1 billion for the Critically Overcrowded Schools program, \$3.7 billion for school modernization projects and \$8.8 billion for new school construction.³³

In addition to passing two of California's largest school bond initiatives, in November of 2000 California voters also passed Proposition 39, the Smaller Classes, Safer Schools and Financial Accountability Act. The Act allowed a district to issue local general obligation bonds subject to the approval of 55 percent of voters (rather than two-thirds voters), conditional on several accountability requirements. Specifically, the Act required school districts to set up a citizen's oversight committee to ensure bond proceeds were allocated properly. It also required school districts provide a list of specific projects to be funded with any bond revenue and to conduct annual performance and financial audits. Districts seeking to avoid these requirements may still ask their electorate to approve a bond issue but any such bonds must be approved by a two-thirds majority rather than a 55 percent majority.

Proposition 39 also had ramifications for School Facility Improvement Districts (SFID's) which consist of a portion of the territory within a school district. Similar to school districts, SFID's can issue general obligation bonds for new school construction subject to the approval of voters within the SFID. The state legislature authorized the establishment of SFID's in 1998 to address a problem faced by districts that currently had a Mello-Roos Community Facility District (CFD) within their boundaries.³⁴ Since voters within a CFD were already being taxed to support school facilities within their CFD, the passage of a district-wide general obligation bond issue would lead to the double taxation of residents within the CFD.³⁵ Up until 2002, the issuance of general obligation bonds by a SFID required the approval of two-thirds of voters within the SFID. Senate Bill 1129, which became effective on January 1st of 2002, permits SFID's to hold a Proposition 39 school bond election and therefore issue bonds subject to the approval of 55 percent of voters.

Looking towards the future, the Office of Public School Construction estimates that even after all Proposition 47 and 55 funds are depleted by 2007, the state will need an additional \$6.8 billion to fund its portion of new school construction and modernization projects.³⁶ As a result, the state legislature enacted AB 127, the Kindergarten-University Public Education Facilities Bond Act of 2006, in May of 2006. The legislation provides for a new statewide bond issue of \$10.4 billion dollars to fund K-12 and higher education facility needs. If approved by voters in November of 2006, the legislation would provide K-12

³³ de Alth and Rueben (2005).

³⁴ SFID's were first established by the state legislature in 1994 but no SFID's were formed in response to the legislation. Subsequent legislation in 1996 and 1997 broadened the potential use of SFID's and the first SFID was established in 1998. As of June of 2006, 25 SFID elections had been held of which 13 were successful.

³⁵ SFID's can only be established in districts that currently have a CDF within in their boundaries and they may not include the territory of the CFD.

³⁶ Notes from the Assembly Education Committee, Education Infrastructure Hearing #1, January 25, 2006.

public schools with \$1.9 billion in funding for new school construction project, \$3.3 billion for modernization projects, \$500 million for charter school facilities, \$1 billion for severely overcrowded schools, \$500 million for career technical facilities, and \$129 million for other projects.

3. Changes in School Facility Funding over Time and Comparisons to other States

As the previous section makes clear, California's system of school facility finance has changed frequently over time. This section documents how the numerous changes to the system, and the cyclical nature of statewide school bond initiatives, have affected the level of school facility funding over time. It also documents how spending on school infrastructure in California compares to the rest of the nation and individual states with similar enrollment growth trends.

Figure 1 documents the historical trend in per-pupil school facility spending in California from 1960 to the present.³⁷ Spending levels are adjusted for inflation with 2005 as the base year. As the figure makes clear, facility spending has fluctuated quite dramatically over time. From 1960 to 1982, spending per pupil on school facilities declined rather continuously, with brief upswings that correspond to the passage of statewide school bond initiatives. Part of this decline is directly related to changing demographics and a natural pattern of infrastructure finance; i.e., periods of heavy investment in infrastructure reduce the need for further investment for a period of time. For example, the decline in school facility spending that occurred during the 1960's was a natural response to the large investment in school facilities that was made during the "building boom" of the late 1940's and 1950's. Similarly, the decline in spending that occurred during the 1970's was partly due to the decline in student enrollment that occurred over that time period.

Figure 1 also illustrates that California experienced a dramatic decline in facility spending between 1978 and 1984, the period during which Proposition 13 prohibited local school districts from issuing local general obligation bonds. Since 1984, facility spending has risen rather continuously, with brief declines occurring when little or no statewide bond revenue was made available. The rise in spending that occurred during the 1980's was primarily driven by three factors: the rise in student enrollments that began in the early 1980's, the passage of Proposition 46, which reestablished the authority of local school districts to issue general obligation bonds, and the passage of AB 2926 which authorized school districts to levy developer fees. The dramatic rise in facility spending that has occurred since 1996 is primarily due to the passage of large statewide bond initiatives in 1996, 1998, 2002 and

³⁷ Data on school facility spending over time was obtained from annual school finance records prepared by the California Department of Education. Specifically, data from 1960 to 1986 comes from annual reports on the "Financial Transactions Concerning School Districts in California," while the data from 1987 to 2005 comes from J200 and SACS accounting records prepared by the California Department of Education.

2004, and the passage of Proposition 39 in 2000 which lowered the vote requirement on local general obligation bonds to 55%.

The impact of recent increases in school facility spending is further illustrated in Tables 1 and 2, which document the history of K-12 state and local general obligation bond initiatives in California. Table 1 summarizes the history of statewide school bond initiatives. For each time period listed in column 1, columns 2 through 6 give the number of bond issues proposed, the number of bond issues that passed, the total amount proposed, and the total amount that was ultimately passed measured in both current and constant 2005 dollars.³⁸ As the table reveals, 26 statewide bond elections have been held in California since 1949 and of those, all but three have been approved by voters. Measured in constant 2005 dollars, these bond issues have collectively made available over \$56 billion for school construction and modernization. Of this \$56 billion, \$33.52 billion, or nearly 60%, was approved by voters since 1996 and \$23.3 billion, or approximately 41%, was approved by voters since 2001 and the passage of Propositions 47 and 55.

Table 2 provides the same information as Table 1 for local school bond initiatives. Since 1986, California school districts have held a total of 1,215 local general obligation bond initiatives. Of those, 760, or approximately 63%, have been approved by voters. Measured in constant 2005 dollars, these local initiatives have raised over \$51 billion for school construction and modernization projects. Table 2 also makes apparent the impact of Proposition 39 on the passage rate of local school bond initiatives and the amount raised through these initiatives. Between 1996 and 2000, the period just prior to the passage of Proposition 39, approximately 63% of local school bond initiatives were approved by voters. In contrast, between 2001 and 2005, voters approved 80% of the bond issues they were asked to support. The amount raised locally through bond initiatives has also increased dramatically since the passage of Proposition 39. In the five year period just prior to the passage of Proposition 39, voters approved \$16.4 billion in local general obligation bonds (measured in constant 2005 dollars) in 282 elections. In the five year period following the passage of the proposition, voters have approved over \$28 billion in local G.O. bonds in 285 elections. In fact, approximately 55% of all local bond revenue approved by voters since 1986 has been approved since the passage of Proposition 39.

Although school facility spending has risen dramatically since 1996, it remained below the national average until 2000. Figure 2 compares school facility spending per pupil in California with spending per pupil in the rest of the U.S between 1988 and 2004.³⁹ Spending levels are adjusted for

³⁸ Information on statewide school bond initiatives was obtained from the Los Angeles County Law Library's, "Guide to California Ballot Propositions." <http://lalaw.lib.ca.us/ballot.html>.

³⁹ Data on K-12 School facility spending in the U.S. comes from the U.S. Department of Commerce, Bureau of the Census, Annual Survey of Local Government Finances. Annual facility spending is measured as the sum of total

inflation, with 2005 as the base year. On average, between 1988 and 1996 California spent about 20% less on school facilities per pupil than the rest of the nation. With the passage of two large statewide bond initiatives in 1996 and 1998, spending per pupil in California began to rise relative to the rest of the nation. Since 2000, and the passage of Propositions 39, 47, and 55, school facility spending in California has risen above the national average.

Table 3 compares school facility spending in California with spending in other states between 1988 and 2004. For each time period listed in column 1, columns 2 through 8 respectively give the average level of facility spending in the U.S. except California, in California, and in five other states with enrollment growth similar to California. All spending levels listed in Table 3 are adjusted for inflation and measured in constant 2005 dollars. As the table reveals, prior to 2001, California consistently spent less per pupil on K-12 school facilities than other states with similar enrollment growth trends.⁴⁰ For example, between 1988 and 1992 California spent about \$100 less per pupil on school facilities than Texas. Similarly, between 1997 and 2000 it spent about \$260 less per pupil than Texas. Between 2001 and 2004, however, spending per pupil on school facilities in California had reached or exceeded the spending levels observed in other states with similar enrollment growth. Nevertheless, despite the recent up-tick in spending, spending per pupil on school facilities over the entire time period still lags behind the level observed in other states. For example, between 1988 and 2004, spending per pupil in California averaged \$818 while it averaged \$1,172 in Florida and \$963 in Texas.

In summary, between 1960 and 1982, spending per pupil on school facilities in California was consistently falling. Although spending per pupil has risen ever since, throughout the 1980's and 1990's it remained below the national average, and even farther below the level found in states with similar enrollment growth trends. Since 1998, spending per pupil in California has increased dramatically so that spending on school facilities in California is now higher than the national average and it is as high, if not slightly higher, than the spending levels observed in states with similar enrollment growth trends. With that in mind, the next section turns to a discussion of California's current system of school facility finance.

4. The Current System of School Facility Finance

California's current system of school facility finance is best described as a partnership between the state and local school districts. The state provides funding for school facility projects via the School Facility Program (SFP), which is subdivided into five major programs: the New Construction Program,

state and local capital expenditures. Prior to 1988, data on capital outlays by state and local governments for K-12 education were not reported in a consistent manner. As a result, the analysis begins in 1988.

⁴⁰ Carroll, et. al. (2005) show that between 1990 and 2000 California also spent less per pupil on school facilities than the four other most populous states, namely, Texas, New York, Florida, and Illinois.

the Modernization Program, the Critically Overcrowded Schools (COS) program, the Joint-Use Projects program, and the Charter School Facilities program. With the exception of the Modernization Program, all these state programs are funded on a 50/50 state and local matching basis. The Modernization Program is funded on a 60/40 state and local matching basis. Local school districts finance their share of school facility projects with funding obtained primarily from two sources: local general obligation bonds and developer fees. Thus, the current system is designed to be a collaboration between the state and local school districts, with each entity providing a portion of the costs associated with any given new construction or modernization project. This section describes the major programs the state uses to fund school facility projects and delineates the various steps school districts must complete to obtain state funding.⁴¹

Overview of the SFP Program

In order to obtain funding for new school construction and modernization projects, school districts must interact with, and obtain approval from, a number of state agencies. These include the State Allocation Board (SAB), the Office of Public School Construction (OPSC), the Division of the State Architect (DSA) of the Department of General Services, the School Facilities Planning Division (SFPD) of the California Department of Education, the Department of Toxic Substance Control (DTSA), and the Department of Industrial Relations (DIR).

As mentioned previously, the SAB is responsible for approving all state apportionments for new school construction and modernization projects. The board meets monthly to review applications for funding, act on appeals, and implement policies associated with the School Facility Program. The OPSC is the administrative arm of the SAB. Its primary responsibilities include: allocating state funds for projects approved by the SAB, reviewing eligibility and funding applications, and providing information and assistance to school districts. The DSA has been involved in the process of school construction since the Field Act was first passed in 1933. The primary responsibility of the agency is to review and approve construction plans and to ensure those plans are in compliance with the Field Act. DSA approval is required for all new school construction and modernization projects. The primary role of the School Facilities Planning Division (SFPD) is to approve school district site and construction plans. The agency reviews the “educational adequacy” of proposed projects to ensure they meet the needs of students and teachers. The agency also works with the Department of Toxic Substance Control to review any potential environmental hazards associated with a project. The final agency involved in the process is the Department of Industrial Relations (DIR). The primary responsibility of this agency is to ensure that

⁴¹ This section focuses on the New Construction Program, the Modernization Program, the Critically Overcrowded Schools program and the Joint-Use Projects program. Section 8 contains a detailed description of the Charter School Facilities program.

school districts are in compliance with labor laws relating to contractors and employers. Before any funding from the SFP is released to a school district, the district must obtain certification that its Labor Compliance Program has been approved by the DIR.

The School Facility Program provides funding for two major types of school construction projects: new school construction and modernization. The process of obtaining state funding is divided into two steps: an application for eligibility and an application for funding. Applications for eligibility are reviewed by the OPSC and then presented to the SAB at one of their monthly meetings for approval. Upon receiving approval from the SAB, a district may request funding by submitting a funding application to the OPSC. The funding application must include supporting documentation that shows that the district's plans for construction have been approved by the DSA and the SFPD. The completed funding application is reviewed by the OPSC and then submitted to the SAB for a funding apportionment. Funds apportioned by the SAB are released once the district has provided evidence that it has secured funding for required local matching funds (50% of new school construction projects costs and 40% of modernization project costs), and evidence that it has entered into a binding contract for at least 50% of the proposed construction project. Figure 3 illustrates the steps districts must follow to obtain funding for either new school construction or modernization projects.⁴²

As noted in the previous section, the SFP was designed to stream-line the application process and simplify the overall structure of the state's school facilities program. According to the Office of Public School Construction (OPSC), most funding applications can now be reviewed and receive final approval from the State Allocation Board within 60 to 90 days. Relative to the old Lease-Purchase Program, the SFP also involves less project oversight by the state and allows districts considerable independence in determining the scope of any new school construction or modernization project. However, this greater independence comes at a potential cost; all state grants are considered to be full and final apportionments by the SAB. Thus, districts are now responsible for any cost overruns or unanticipated costs associated with a project. Under the old Lease-Purchase Program, some of those costs were reimbursed by the state.

Establishing Eligibility

To obtain state funding for new school construction projects, districts must first demonstrate that existing seating capacity is insufficient to house existing students or anticipated students using a five-year projection of enrollment. Districts may establish eligibility on a district-wide basis or, if only some areas within the district are facing capacity constraints, on a High School Attendance Area (HSAA) basis. Establishing eligibility involves three steps. In the first step, form SAB 50-01 is used to compute a five-year enrollment projection based on current and historical enrollment figures. Districts that are

⁴² Figure 3 is adopted from a schematic created by Abel et. al. (Winter 2004/2005), p. 11.

experiencing rapid residential growth may supplement these enrollment projections using information on the number of unhoused students that are anticipated as a result of new residential development. To do so, the district must submit to the OPSC either approved or tentative valid tract maps that show the size and density of proposed new developments.⁴³ In the second step, form SAB 50-02 is used to compute a district's existing capacity based on an inventory of the number of existing classrooms (or space that could be used as a classroom). Pupil capacity is computed by multiplying the number of existing classroom spaces by a load factor of 25 for elementary classrooms, 27 for middle and high school classrooms, 13 for non-severely disabled classrooms, and 9 for severely disabled classrooms. In the third step, form SAB 50-03 is used to determine eligibility. Existing pupil capacity is subtracted from projected enrollment to determine the number (if any) of unhoused students. The number of students computed to be unhoused represents the district's eligibility for new school construction grants.

The eligibility requirements for modernization projects are less complex. The eligibility application for modernization projects consists of a single form, SAB 50-03. To qualify for funding, a school building must be at least 25 years old or, in the case of a portable classroom, at least 20 years old. In addition, districts may submit applications for modernization projects on a site by site basis, rather than the district or HSAA-wide basis used for new school construction eligibility.

Applying for Funding

New school construction projects are funded by the state on a per-pupil basis. The amount of the grant is determined by multiplying the number of unhoused students (determined in the eligibility phase), by a per-pupil grant that is adjusted annually by the SAB to account for changes in construction costs.⁴⁴ The current grant amounts per unhoused pupil are listed in Table 4. Supplemental grants are also available to fund special project needs. The most common supplemental grants are site acquisition grants and site development grants, which respectively cover costs associated with purchasing a site and preparing a site for construction.⁴⁵ Site acquisition and development grants are made on a 50/50 state and local matching basis.

The funding application for new school construction consists of a single form, SAB 50-04. While the form itself is relatively simple, districts must also file with their application a number of supporting

⁴³ In 2005, the legislature enacted AB 491 which provides districts with an alternative enrollment projection. Districts that do not meet the standard criteria for eligibility may still be eligible for funding if they meet the following two criteria: (1) the district has two or more school sites with a pupil population density greater than 115 pupils per acre for elementary schools and 90 pupils per acre for middle and high schools, and (2) the district can not meet its housing needs at the impacted site after considering all existing eligibility mechanisms.

⁴⁴ The SAB uses the Class B construction Cost Index to annually update the per-pupil grants.

⁴⁵ Other supplemental grants include: fire code requirements, energy efficiency, special education, multi-level construction, project assistance, replacement with multi-story construction, geographic location, small size projects, new school projects, urban locations. For a detailed description of these supplemental grants see the School Facility Handbook.

documents. These include: (1) an appraisal, escrow closing statement or court order and a CDE site approval letter if the project involves site acquisition, (2) DSA approval of construction plans, (3) CDE approval of final plans, and (4) a set of district certifications that include (among other things) the establishment of a restricted maintenance account,⁴⁶ certification that the district will fund its share of the project, and certification that the district's Labor Compliance Program has been approved by the Department of Industrial Relations.

Modernization projects are also funded by the state on a per-pupil basis. The amount of the grant is determined by multiplying the number of students to be housed in a modernized building by a per-pupil grant that is adjusted annually by the SAB to account for changes in construction costs. Table 5 lists the per-pupil grant amounts for modernization projects. The funding application process for modernization projects is very similar to the process for new school construction. The application process consists of a single form, SAB 50-04, and a set of supporting documents that ensure the district has obtained DSA and CDE approval for its construction plans and obtained the requisite certifications. These certifications include: the establishment of a restricted maintenance account, verification that the building to be modernized was not previously modernized under the old Lease-Purchase Program, evidence that the district has obtained funding to meet its required 40% match for project costs, and approval from the DIR for the district's Labor Compliance Program.

Financial Hardship

School districts unable to contribute some or all of the local matching funds required for new school construction and modernization projects may apply to the OPSC for financial hardship status. If financial hardship status is granted, districts can receive up to 100% state funding for eligible new school construction and modernization projects. Districts seeking financial assistance must have their financial hardship status approved prior to submitting an application with the OPSC for funding. To qualify for financial hardship funding, a district must demonstrate the following: (1) it is levying developer fees up to the maximum amount allowed by law; (2) it has made every reasonable effort to raise local revenue to fund a project;⁴⁷ and (3) evidence of financial inability to contribute the required local matching funds.⁴⁸

⁴⁶ The SFP requires school districts that receive state funding for new construction or modernization projects establish a restricted maintenance account to ensure that projects are kept in good repair. For a period of 20 years, districts are required to deposit no less than three percent of their general fund budget annually into the restricted maintenance account. Small districts may deposit less than three percent into the account if they can demonstrate an ability to maintain their facilities using a smaller amount of money.

⁴⁷ Specifically, a district must provide evidence of at least one of the following: existing debt is at least 60% of the district's bonding capacity, total bonding capacity is less than \$5 million, or evidence that the district held a successful school bond election in the past two years.

⁴⁸ The OPSC conducts an analysis of a district's financial status to determine whether it is eligible for financial hardship status. The process involves a number of worksheets used to determine a district's share (if any) of project costs.

The Critically Overcrowded School Facilities Program

The Critically Overcrowded School (COS) Facilities program was created in 2002 with the passage of AB 16. The program allows districts with critically overcrowded school sites to reserve funding for new school construction projects for a period of up to four years. At the end of the four year period, districts with an approved COS project must convert their COS project into a new school construction project and meet all funding criteria set forth by the SFP's New Construction Program. Unlike the New Construction Program, the COS program allows eligible districts to reserve funding for new school construction prior to having identified a site for the construction and prior to having bid-ready construction plans.⁴⁹ Thus, the COS programs gives qualifying districts substantially more time to prepare an application for funding.

To qualify as critically overcrowded, elementary schools must have a student density greater than 115 students per acre while middle and high schools must have a student density greater than 90 students per acre.⁵⁰ The California Department of Education is responsible for maintaining a list of critically overcrowded schools. Once a school within a district has been placed on the CDE's critically overcrowded schools list, the district can file an Application for Preliminary Apportionment (a reservation of funds application) with the OPSC. Any project funded under the COS program must meet the following conditions: (1) relieve overcrowding by increasing the capacity of the district, (2) identify a minimum of 75% of the proposed student occupancy for the project as coming from schools listed on the CDE critically overcrowded schools list, and (3) be located within a one-mile radius of an elementary school that qualifies as critically overcrowded or within a three-mile radius of a secondary school that qualifies as critically overcrowded. Figure 4 illustrates the steps qualified districts must follow to obtain funding under the COS program.⁵¹

Joint-Use Projects

The legislature enacted the Joint-Use Program with the passage of AB 16 in April of 2002. The program was further amended with the passage of SB 15 in 2003. The program allows districts to enter into a cost-sharing agreement for specified projects with a qualified joint-use partner.⁵² In so doing, the program allows districts to consider projects that they may not have been able to afford otherwise. One hundred million dollars of Proposition 47 and 55 funding has been made available for the program. The

⁴⁹ Abel et. al. (Winter 2004/2005), p. 10.

⁵⁰ These densities represent 200% of the CDE standard (recommended site density). Prior to implementing the program, the state legislature considered other density factors such as 150% or 125% of the CDE standard. Of course, the lower the density factor, the higher the number of schools that would qualify for the COS program. PolicyLink and MALDEF (2005) have suggested the density factor be reduced to allow more districts to participate in the COS program. This issue and other issues related the COS program are discussed in section 9.

⁵¹ Figure 2 is taken from a schematic created by Abel et. al. (Winter 2004/2005), p. 10.

⁵² Qualified joint-use partners include: governmental agencies, institutions of higher education, and nonprofit organizations.

Joint-Use Program funds two types of projects, commonly referred to as Type I and Type II. Type I joint-use projects must be part of a qualified new construction project that increases the size and/or cost of a project beyond what is necessary for school use of a multipurpose room, a gymnasium, a childcare facility, a library or a teacher education facility. Type II joint-use projects can be part of a modernization project or a stand-alone project that will add or expand a multipurpose room, gymnasium, childcare facility, library, or a teacher education facility.

Funding for joint-use projects is made on a 50/50 state and local matching basis. The joint-use partner is responsible for contributing a minimum of 25% of project costs and thus a local school district is responsible for a maximum of 25% of project costs.⁵³ Furthermore, if a school district passed a general obligation bond issue for the explicit purpose of building a joint-use project, the district may contribute the full 50% of the required local match. Similar to other programs administered under the SFP, all applications for joint-use projects must be accompanied by supporting documentation that demonstrates the district has received DSA and CDE approval for its construction plans. Apportionments for joint-use projects are made on a first-come first-served basis.

5. The Size and Distribution of School Facility Spending Since 1998

As previously noted, California's current system of school facility finance was established in 1998 with the passage of SB 50. Since that time, revenue from state and local general obligation bond issues, developer fees and several other revenue sources have provided approximately \$71 billion for new school construction and renovation projects throughout the state. This section describes the level and distribution of school facility funding in California since 1998.

The Level of School Facility Funding

Table 6 summarizes the total revenue made available to local school districts for new school construction and modernization projects from 1998 to the present. The first column of Table 6 lists five sources of revenue for school facility projects. The second column lists the aggregate revenue raised from each of those sources, while the third column lists the percentage of total revenue derived from each source.⁵⁴ As Table 6 reveals, most revenue for new school construction and modernization comes from three sources: local general obligation bonds, state aid and developer fees. Collectively, these three sources of revenue represent 93% of all funding available to school districts.⁵⁵ School districts also

⁵³ Unlike other SFP programs, financial hardship assistance is not available for joint-use projects. If a district is unable to fund some portion of its share of project costs, the state apportionment is reduced.

⁵⁴ All revenue figures reported in Table 6 are adjusted for inflation using the producer price index and measured in constant 2005 dollars.

⁵⁵ Information on the revenue raised through successful local general obligation bond elections was obtained from EdSource and represents all revenue raised from 1998 through June 2006. Information on state apportionments to

receive revenue from successful Mello-Roos and School Facility Improvement District elections (approximately 1% of total funding) and from various “other” revenue sources (approximately 6% of total funding). These “other” sources include: Certificates of Participation (COP’s) which represent short-term debt, revenue from the sale or lease of land and/or buildings, federal aid, and other smaller sources of revenue.⁵⁶ Between 1998 and June of 2006 school districts raised \$38.4 billion for new school construction and modernization projects through local general obligation bond issues. Over the same time period, the state apportioned \$21.9 billion to local school districts. That amount represents nearly all of the revenue from Proposition 1A and Proposition 47 and approximately 56% of the revenue from Proposition 55.

Two other studies examined the composition of revenue for new school construction and renovation projects in California during the period just prior to the passage of SB 50. A comparison of the results reported in those studies with the results reported in Table 6 suggests that since 1998, local school districts have relied more heavily on local general obligation bonds to finance school construction and modernization projects. Specifically, Brunner and Rueben (2001) examined the composition of revenue for new school construction and modernization between 1992 and 1998. Over that time period, local general obligation bonds constituted approximately 32% of total facility funding, state aid constituted approximately 30% and developer fees constituted approximately 11%. Similarly, the Legislative Analyst’s Office (2001) examined the composition of revenue between 1987 and 1998 and found that local general bonds constituted about 32% of total funding, while state aid and developer fees respectively constituted about 40% and 17%. Thus, in recent years, the share of revenue coming from local general obligation bonds has risen from approximately 32% to 53%. This increased reliance on G.O. bond revenue is most likely attributable to the passage of Proposition 39 in November of 2000.

Table 7 summarizes the three largest sources of revenue in terms of average revenue per pupil. The per-pupil revenue figures reported in the table represent the sum of all revenue raised between 1998 and the present (measured in constant 2005 dollars) divided by the average enrollment over the time period. Local general obligation bond revenue averaged \$4,051 in unified districts, \$3,293 in elementary districts, and \$6,951 in high school districts. Furthermore, these averages mask considerable variation in the number of districts that held a successful G.O. bond election and the amount of revenue raised by those school districts that held a successful election. For example, 57% of unified school districts (188

school districts was obtained from the Office of Public School Construction and represents all apportionments made from 1998 through June 2006 (the data of the last SAB meeting). Finally, information on developer fee revenue was obtained from yearly school district accounting records (J-200 and SACS) provided by the California Department of Education and represents all revenue raised from 1998-99 through 2004-05.

⁵⁶ Information on successful Mello-Roos and SFID elections was obtained from EdSource while information on “other” sources of revenue was obtained from yearly school district accounting records prepared by the California Department of Education.

out of 331) held at least one successful G.O. bond election over the time period and among those districts the average amount raised per pupil was \$7,134. Similarly, 30% (166 out of 548) of elementary districts and 58% (48 out of 83) of high school districts held a successful G.O. bond election over the time period and among those districts the average amount raised was \$10,872 for elementary districts and \$12,019 for high school districts. One district in particular stands out, namely Los Angeles Unified. Between 2002 and 2005, voters in LA Unified approved \$11.2 billion in local general obligation bonds or, on a per-pupil basis, \$15,114. Overall, local G.O. bond revenue constitutes 42% of total per-pupil funding for unified districts, 40% for elementary districts and 50% for high school districts. Similarly, state aid constitutes 36% of total funding for unified districts, 42% for elementary districts and 34% for high school districts.

The Distribution of School Facility Funding

The averages reported in Table 7 mask wide variations in the distribution of school facility funding across districts. Table 8 illustrates how per-pupil revenue for new school construction and modernization is distributed across school districts. The percentiles listed in the table are weighted by the number of students in each district. For example, 10% of students in unified school districts were enrolled in a district where total revenue per pupil was less than \$4,274. For each type of school district, the first row gives the distribution of local general obligation bond revenue per pupil. The second row shows how the distribution changes when state aid per pupil is added to local G.O. bond revenue. Finally, the third row shows the distribution of total revenue per pupil (local G.O. bond revenue plus state aid plus all other sources of revenue). For all three types of school districts, total revenue per pupil at the 75th percentile is more than double that of the 25th percentile. These large disparities are partly due to the distribution of local general obligation bond revenue across districts. For example, in unified school districts, local G.O. bond revenue at the 75th percentile is more than seven times that of the 25th percentile. These large disparities in local bond revenue per pupil are partially offset by state aid and other sources of revenue but large disparities persist across districts.

Of course, part of this variation in school facility funding across districts may simply reflect differences in need. For example, student enrollment might be increasing rapidly in some districts and declining or remaining stable in others. Similarly, some districts might have invested heavily in new school construction and modernization in the period just prior to 1998 and thus have little need for further investment in school facilities. On the other hand, the variation in school facility funding across districts might also reflect differences in the ability to fund new school facility projects. High-income districts and districts with high property wealth, for example, might be more willing and able to finance new school construction and modernization projects. The next section addresses these possibilities by examining how variation in school facility funding is related to measures of need and measures of ability to pay.

6. Explaining the Variation in School Facility Funding

The need for school facility funding arises primarily for two reasons: (1) capacity constraints due to enrollment growth and (2) modernization/renovation needs due to the aging of the existing capital stock. Consequently, this section begins by examining how variation in school facility funding across districts is related to enrollment growth and prior investment in school infrastructure.

Need and the Distribution of School Facility Funding

Table 9 illustrates how per-pupil facility funding is related to the growth rate of district enrollment between 1998-99 and 2004-05. For each type of school district, the table shows how revenue per pupil is distributed when school districts are separated into quintiles of enrollment growth.⁵⁷ The quintiles listed in the table are weighted by student enrollment so that each quintile contains 20% of the total student enrollment in the state. For example, 20% of students in unified school districts were enrolled in a district where enrollment growth was less than 0.8% (the first quintile). Similarly, 20% of students in unified districts were enrolled in a district where enrollment growth was greater than 18% (the fifth quintile).

As Table 9 reveals, school facility funding appears to be positively related to enrollment growth. In unified districts, total revenue per pupil averaged \$7,960 among districts in the first quintile of enrollment growth while it average \$14,725 among districts in the fifth quintile. Elementary and high school districts with the highest enrollment growth rates also tend to have higher total revenue per pupil. Table 9 also reveals that the distribution of total revenue per pupil is primarily driven by the distribution of state aid. For each type of school district, state G.O. bond apportionments increase steadily across the quintiles of enrollment growth. Of course the strong positive relationship between enrollment growth and state aid is to be expected, given that funding for new school construction is based primarily on current and projected enrollment growth. What is slightly more surprising is the relationship between local general obligation bond revenue and enrollment growth. One would expect local G.O. bond revenue to be positively related to enrollment growth as districts with high enrollment growth rates should have greater need for school facility funding. However, Table 9 reveals that local G.O. bond revenue is only weakly related to enrollment growth. In particular, among unified and elementary districts there appears to be no systematic relationship between local bond revenue per pupil and enrollment growth. Districts in the first quintile of enrollment growth raise about the same amount of revenue through local G.O. bond

⁵⁷ For the remainder of this study per-pupil revenue is measured as the sum of all revenue raised between 1998 and the present (measured in constant 2005 dollars) divided by the average enrollment over the time period.

elections as districts in the fifth quintile.⁵⁸ Among high school districts, there is a large difference in local bond revenue between the first and second quintiles of enrollment growth but little difference in revenue between the remaining quintiles.

Table 10 illustrates how revenue per pupil is related to an alternative measure of need, namely the amount districts spent in previous years on school construction and modernization projects. For each type of district, the table shows how revenue per pupil is distributed across school districts when districts are separated into quintiles of previous investment in school facilities. The quintiles are once again weighted by student enrollment. Previous school facility investment is measured as the sum of all school facility spending within a district from 1969 to 1997, adjusted for depreciation. Specifically, for each school district, the aggregate value of school facility investment over the 29 year period spanning 1969 to 1997 was calculated as:

$$K_{1998} = \sum_{j=0}^{28} I_j \cdot (1 - \delta)^{28-j},$$

where K_{1998} denotes the aggregate value of school facility investment as of 1998, I_j denotes school facility investment in year j (1969, 1970 ..., 1997), measured in constant 2005 dollars, and δ is the geometric rate of depreciation.⁵⁹ Data on aggregate investment for various years were obtained from the *Annual Report of Financial Transactions Concerning School Districts of California*, prepared by the California State Controller. The nominal investment data were converted into constant 2005 dollars using the producer price index.⁶⁰

As Table 10 illustrates, among unified districts there appears to be no systematic relationship between prior investment in school facilities and current facility revenue per pupil. Local G.O. bond revenue, state aid and total revenue per pupil are relatively evenly distributed across quintiles.⁶¹ In contrast, among elementary and high school districts there appears to be a negative relationship between

⁵⁸ The relatively large spike in the 3rd quintile of local G.O. bond revenue for unified districts is driven by Los Angeles Unified which makes up the bulk of that quintile. Excluding Los Angeles Unified from the analysis causes local G.O. bond revenue in the 3rd quintile too fall to levels similar to other quintiles.

⁵⁹ Holtz-Eakin (1993) reports an estimate of the depreciation rate of non-residential state and local capital of 4.1%. I use his depreciation rate to calculate the aggregate value of school facility investment in prior years.

⁶⁰ Between 1969 and 1998, a substantial number of California's elementary and high school districts were consolidated into unified districts. For those school districts, I used school district consolidation records, obtained from the California Department of Education, to identify the elementary schools and high schools that merged to form a new unified school district. For the years prior to the formation of a unified school district, I measured total capital outlay for that school district as the sum of all capital outlays made by the elementary and high school districts that eventually consolidated to form the unified district. Using that procedure I was able to obtain a complete time series of annual investment flows for all school districts currently operating in California.

⁶¹ Los Angeles Unified falls in the 2nd quintile. Omitting Los Angeles Unified from the analysis does not affect the pattern of results reported in Table 10.

prior investment and total revenue per pupil. For example, total revenue per pupil averaged \$9,941 among elementary districts located in the first quintile (the lowest quintile of prior investment) while it averaged only \$6,579 among districts located in the fifth quintile (the highest quintile of prior investment). Similarly, local bond revenue averaged \$4,656 among elementary districts located in the first quintile while it averaged only \$2,467 among districts in the fifth quintile. High school districts exhibit a similar pattern, with districts in the first quintile of previous investment having substantially higher local bond revenue and total revenue than districts in the fifth quintile.⁶²

Collectively, Tables 9 and 10 suggest that at least part of the variation in school facility funding across districts can be explained by differences in need: in general, districts with higher enrollment growth rates and districts with lower levels of prior investment in school facilities tend to have higher revenue per pupil. Nevertheless, given the large disparities in school facility funding reported in Table 8, it seems likely that other factors are also driving the distribution of funding across districts. The next part of this section therefore focuses on examining how the distribution of school facility funding is related to measures of ability to pay for new school construction and modernization projects.

Ability to Pay and the Distribution of School Facility Funding

Table 11 shows the distribution of revenue per pupil when districts are separated based on quintiles of median household income.⁶³ The quintiles are once again weighted by student enrollment. As Table 11 reveals, there appears to be a relatively strong positive relationship between median household income and revenue per pupil: districts with the highest median household income tend to have substantially higher revenue per pupil.⁶⁴ For all three types of school districts, total revenue per pupil among districts in the fifth quintile is double that of districts in the first quintile. For example, total revenue per pupil averaged \$10,196 among high school districts in the lowest quintile of income while it averaged \$24,186 among districts in the highest quintile of income. The distribution of total revenue per pupil in Table 11 is primarily driven by the distribution of local bond revenue. In particular, local G.O. bond revenue appears to increase rather continuously with district income. Furthermore, compared to districts in the first through fourth quintiles, districts in the fifth quintile (those districts with the highest median income) appear to raise substantially more revenue through local G.O. bond elections.

⁶² I also examined the sensitivity of these results to the time span chosen to measure prior investment expenditures. In particular, I also created a measure of prior investment that only included investment from 1986 (when local general obligation bonds were reinstated) to 1998. Using this alternative measure of prior investment I obtained results that were qualitatively similar to those reported in Table 10.

⁶³ Data on the median household income of districts comes from special school district tabulations of the 2000 census prepared by the U.S. Census Bureau and the National Center for Education Statistics.

⁶⁴ Los Angeles Unified falls in the 1st quintile. Omitting Los Angeles Unified from the analysis does not affect the pattern of results reported in Table 11.

Table 11 provides another explanation for the large disparities in school facility funding across districts, namely a willingness among high-income districts to spend more on school facilities than low-income districts. In particular, high-income districts tend to have higher total revenue per pupil primarily because they tend to raise more money through local general obligation bond elections than low-income districts. However, income is only one of the factors that affects the willingness and ability of districts to fund new school construction and modernization projects. The other primary factor is district property wealth.

As noted in section 2, the passage of Proposition 46 in 1986 reinstated the authority of school districts to issue general obligation bonds, subject to the approval of voters within a district. General obligation bonds are repaid with revenue raised from property tax overrides that remain in effect until the bonds are fully repaid. The reliance upon the local property tax to finance general obligation bonds leads naturally to the question of how differences across districts in assessed value per pupil affect the ability and willingness of districts to finance school facility spending locally. Specifically, property wealth affects the ability of school districts to raise revenue through local general obligation bond elections in two distinct ways. First, school districts can only issue bonds up to their debt capacity limit, which is set at 1.25 percent of assessed value for elementary and secondary districts and 2.5 percent for unified school districts. Thus, debt limits may place an institutional constraint on the amount of bond revenue low-assessed value districts can raise. While debt capacity limits may not be binding for unified and high school districts, which tend to have relatively high limits, an analysis by the Coalition for Adequate School Housing (CASH) suggests that these debt capacity limits may significantly constrain the ability of many elementary districts from raising funds through general obligation bond issues (CASH 1997). Second, differences across districts in assessed value per pupil directly affect the tax-price of school facility spending. The tax-price is the additional property tax burden a homeowner faces when spending per pupil is increased by one dollar. That tax-price equals the assessed value of a voter's home divided by the district's total assessed value per pupil. Note that the tax-price of school facility spending is inversely related to the assessed value of property within a district. Thus, all else equal, districts with higher assessed value per pupil face a lower tax-price which may manifest itself in a higher demand for school facility spending.⁶⁵

⁶⁵ Note that the tax-price of school spending may differ across school districts for other reasons as well. First, holding the assessed value of property within districts constant, districts with lower enrollments will have a higher assessed value per pupil and thus face a lower tax-price. Second, all else equal, residents in districts with a higher percentage of nonresidential property will face a lower tax-price since some of the additional tax burden necessary to finance an increase in facility spending is shifted to the owners of nonresidential property.

Table 12 documents the relationship between school facility funding and assessed value per pupil.⁶⁶ For each type of school district, the table shows how revenue per pupil varies when school districts are separated into quintiles of assessed value per pupil. Once again, these quintiles are weighted by student enrollment. As Table 12 reveals, there appears to be a strong positive relationship between local bond revenue per pupil and assessed value per pupil.⁶⁷ Compared to districts in the lowest quintile of assessed value per pupil, districts in the highest quintile have substantially higher local bond revenue. In unified and high school districts it is more than three times higher and in elementary school districts is more than ten times higher.

Table 12 also reveals a strong positive relationship between assessed value per pupil and total revenue per pupil. Total revenue per pupil averaged \$6,889 among unified districts in the first quintile while it averaged \$13,507 among districts in the fifth quintile. Similar disparities in total revenue per pupil across quintiles exist for elementary and high school districts. The wide variation in total revenue per pupil across districts is directly related to the variation in local bond revenue. For example, in unified districts, the \$4,482 difference in average local G.O. bond revenue between the first and fifth quintiles explains approximately 68% of the difference in total revenue. In elementary and high school districts, differences in local bond revenue across quintiles account for an even greater proportion of the difference in total revenue.

Finally, it is worthwhile to note that the averages reported in Table 12 mask considerable variation across quintiles in the amount of revenue raised by school districts that held successful general obligation bond elections. For example, of the 79 unified districts with assessed value per pupil of \$337,000 or less (those in the first quintile), 40 held a successful bond election and among those districts bond revenue per pupil averaged just \$4,002 per pupil. In contrast, among the 78 unified districts with assessed value per pupil of \$800,000 or more, 45 held a successful bond election and among those districts bond revenue per pupil averaged \$11,328. The relationship between assessed value per pupil and local bond revenue per pupil is illustrated more clearly in Figure 5. The vertical axis gives local G.O. bond revenue per pupil for those districts that held a successful local bond election between 1998 and June of 2006, while the horizontal axis gives the assessed value per pupil in those districts. Figure 5 illustrates a strong positive relationship between assessed value per pupil and local bond revenue per

⁶⁶ To my knowledge, no state agency collects information on the assessed value of property within school districts. Consequently, I contacted the Auditor Controller's office of each county in California and requested the data. Fifty out of 58 counties responded to my request and provided data on assessed value by school district for the 2005-06 tax year. With the exception of San Joaquin County, all of the counties that did not respond were small rural counties. As a result, while the data on assessed value covers only 50 out of California's 58 counties, it covers 95% of all school districts and 97.5% of all students.

⁶⁷ Los Angeles Unified falls in the 3rd quintile. The results reported in Table 12 are essentially unchanged if Los Angeles Unified is omitted from the analysis.

pupil. Furthermore, as Table 13 reveals, this strong positive relationship between assessed value and local bond revenue translates directly into a strong positive relationship between assessed value and total revenue per pupil.

Table 13 examines how school facility funding is related to one final measure of interest to policy makers, namely the percentage of students that are nonwhite. Specifically, Table 13 shows how revenue per pupil is distributed across school districts when districts are separated into quintiles based on the percentage of nonwhite students.⁶⁸ In contrast to the results reported in Tables 11 and 12, there appears to be no systematic relationship between revenue per pupil and the percentage of nonwhite students. For all three types of school districts, local bond revenue, state aid, and total revenue per pupil are all rather equally distributed across quintiles.⁶⁹

Taken together, Tables 9 through 12 and Figure 5 suggest that disparities in school facility funding across districts are related to both measures of need, such as enrollment growth and prior facility investment, and measures of willingness and ability pay, such as income and assessed value per pupil. To determine which factors are most important in explaining the level of school facility funding, the remainder of this section turns to multivariate regression analysis.

Regression Results

Column one of Table 14 reports coefficient estimates from a model designed to explain total revenue per pupil. The dependent variable is the log of total facility funding per pupil over the period 1998 to the present. The primary independent variables are: the log of assessed value per pupil, the log of median household income, the growth rate of enrollment between 1998 and 2005, the log of previous facility investment expenditures per pupil, and the fraction of students that are nonwhite in a district. The model also includes the log of district enrollment to account for economies of scale and size effects on the level of school facility funding and two indicator variables: one that takes the value of unity if a district is an elementary district and the other that takes the value of unity if a district is a high school district. These final two variables are included in the model to allow the level of school facility funding to differ across types of districts.

The coefficient estimates reported in column one of Table 14 are generally consistent with expectations. For example, the estimated coefficients on the log of assessed value per pupil and enrollment growth are both positive and statistically significant at the 5% level. Similarly, the coefficient on previous investment is negative and statistically significant, indicating that districts that invested

⁶⁸ Data on the ethnic composition of school districts in 2004-05 comes from reports prepared by the California Department of Education. The quintiles reported in Table 13 are weighted by district enrollment.

⁶⁹ Los Angeles Unified is located in the 4th quintile. Omitting Los Angeles Unified from the analysis causes local G.O. bond revenue in the 4th quintile to fall considerably from \$4,644 to \$2,862.

heavily in the past in school facilities tend to receive lower facility funding. Furthermore, consistent with the results reported in Table 11, the fraction of minority students in a district appears to have little effect on the level of school facility funding. Turning to the interpretation of the estimated coefficients, the results indicate that a 1% increase in assessed value per pupil results in approximately a 0.56% increase in total revenue per pupil while a 1% increase in enrollment growth results in approximately a 0.76% increase in total revenue per pupil. District size also appears to have a large effect on revenue per pupil. Specifically, the results indicate that a 1% increase in district enrollment leads to approximately a 0.53% increase in total revenue per pupil. Of course, the enrollment variable most likely captures the fact that elementary districts, which tend to be much smaller, also tend to receive lower funding per pupil.

The second column of Table 14 reports coefficient estimates from a model designed to explain local G.O. bond revenue per pupil. The dependent variable in the model is the log of local bond revenue per pupil. The independent variables are the same variables used to explain total revenue per pupil. Districts that failed to raise any revenue through local bond elections are excluded from the sample. As a result, the sample size falls from 904 observations to 386 (the number of districts that held a successful bond election between 1998 and June of 2006). In column 2, the estimated coefficients on the log of assessed value per pupil and the log of median household income are both positive and statistically significant. Thus, the results indicate that high-wealth and high-income districts tend to raise more revenue through local bond elections. The estimated coefficient on the log of assessed value per pupil is also quite large. Specifically, the results indicate that a 1% increase in assessed value per pupil leads to approximately a 0.77% increase in bond revenue per pupil. In fact, assessed value per pupil is responsible for explaining most of the variation in local bond revenue. Specifically, a simple regression of the log of local bond revenue per pupil on the log of assessed value per pupil yields an R-Squared of 0.52, indicating that 52% of the variation in local bond revenue is explained by this variable alone. Furthermore, as seen by the R-Squared reported in column 2, adding all the other explanatory variables to the model only increases the R-Squared from 0.52 to 0.57. Several of the other coefficients reported in column 2 are also of interest. For example, the coefficient on percent minority is positive and statistically significant indicating that districts with higher fractions of minority students tend to raise more money through local G.O. bond elections. Similarly, the coefficient on enrollment growth is positive and statistically significant at the 10% level. Note, however, that the magnitude of the estimate coefficient on enrollment growth is small. Thus, consistent with the results reported in Table 9, bond revenue per pupil appears to be only weakly related to enrollment growth.

The final column of Table 14 reports coefficient estimates from a model designed to explain the probability of having a successful local G.O. bond election. In this model, the dependent variable is an indicator variable that takes the value of unity if a district had a successful bond election between 1998

and June of 2006 and zero if it did not. Once again, the independent variables are the same as those used in columns 1 and 2. The model is estimated as a logistic regression. The coefficient on assessed value per pupil is positive and statistically significant indicating that districts with higher assessed value per pupil are more like to hold a successful G.O. bond election. The results also indicate that larger districts and those with a higher percentage of minority students are more likely to hold a successful bond election. In contrast, districts that invested heavily in the past in school infrastructure are less likely to hold a successful bond election. Finally, relative to unified and high school districts, elementary districts are significantly less likely to hold a successful bond election.

The results reported in Table 14 reveal several interesting patterns. First, total revenue per pupil is positively related to assessed value per pupil primarily because assessed value per pupil is the primary determinant of local G.O. bond revenue. Specifically, assessed value per pupil drives both the level of bond revenue raised (conditional on having a successful bond election), and the probability of having a successful bond election. Second, while there is only a weak positive relationship between enrollment growth and local bond revenue per pupil, there is a much stronger positive relationship between total revenue per pupil and enrollment growth. As Table 9 illustrated, this strong positive relationship between total revenue and enrollment growth is driven primarily by the distribution of state aid. Finally, conditional on other factors, there is only a weak positive relationship between total revenue per pupil and district income. High-income districts tend to have higher total revenue per pupil primarily because they raise more revenue through local G.O. bond elections.

To more clearly see how assessed value per pupil, enrollment growth and other factors affect the distribution of total revenue per pupil, Table 15 presents the predicted level of total facility funding per pupil calculated using the coefficient estimates reported in column 1 of Table 14. Specifically, Table 15 shows how moving from the 25th percentile of a given variable to the 75th percentile of that variable affects the level of total facility funding per pupil while holding all other variables at their means. For example, if enrollment growth increased from -8% (the 25th percentile of enrollment growth) to 15% (the 75th percentile) total revenue per pupil would increase from \$3,144 to \$3,741, or by \$597. Similarly, if a district's assessed value changed from \$392,052 to 1,130,002 total revenue per pupil would increase by \$2,064. As Table 15 reveals, both measures of need and measures of ability to pay appear to be important determinants of the distribution of facility funding across districts. Measures of need such as enrollment growth and previous investment in school facilities have relatively large effects on the distribution of facility funding. In terms of ability to pay, assessed value per pupil appears to play the dominant role in explaining the distribution of facility funding across districts.

To examine the robustness of the results reported in Table 14, I also estimated models based on several alternative specifications. To examine whether the results were sensitive to regional variation in

the demand for school facility spending, I first estimated models that included a set of 11 regional fixed effects. These regional fixed effects control for any unobserved regional variation in the demand for school facility spending. The regions consist of contiguous counties and are described in detail by Betts, Reuben and Danenberg (2000). The inclusion of these regional fixed effects caused the coefficient on assessed value to rise slightly in the total revenue equation and in the probability of holding a successful bond election equation. In general, however, results based on models that included regional fixed effects were qualitatively and quantitatively similar to those reported in Table 14. I also estimated separate regression models for each type of school district (unified, elementary and high school). Results based on those alternative specifications are reported in Tables 1A, 2A, and 3A of the Appendix. Specifically, Table 1A reports results when the total revenue equation is estimated separately for each type of district. Similarly, Tables 2A and 3A report results when the bond revenue equation and the probability of having a successful bond election equation are estimated separately for each type of school district. A brief inspection of the results reported in those tables reveals several interesting patterns. First, for unified and elementary districts, the coefficients on assessed value per pupil reported in Tables 1A, 2A, and 3A are quite similar to those reported in Table 14, suggesting that assessed value has a similar effect on both types of districts. In contrast, for high school districts, the coefficient on assessed value per pupil is statistically insignificant in both the total revenue equation and the probability of having a successful bond election equation, suggesting that assessed value plays a less important role in those districts. However, given the small sample size for high school districts, those results should be interpreted with caution. Table 1A also suggests that income tends to play a more important role in explaining variation in total revenue per pupil across elementary and high school districts, and that enrollment growth tends to play the most important role in explaining variation in total revenue per pupil across high school districts.

7. Critically Overcrowded and Multi-Track Year-Round Schools

The previous section demonstrated that districts with higher enrollment growth and/or lower levels of previous investment in school facilities tend to receive higher levels of facility funding. Thus, districts with greater facility needs appear to receive higher levels of facility funding. On the other hand, it also appears that ability to pay has a relatively large impact on facility funding. Districts with high assessed value per pupil tend to have significantly higher levels of school facility funding. These results raise an important question: do districts with the most critical facility needs receive higher levels of facility funding? While quantifying facility needs is difficult, there are two objective measures of need that can be examined: schools that the California Department of Education (CDE) classifies as critically overcrowded and schools that operate on a multi-track year-round calendar. This section examines how the characteristics of critically overcrowded and multi-track schools differ from other schools. It also

examines how school facility funding in districts that contain critically overcrowded and multi-track schools compares to other districts.

As noted previously, the CDE classifies a school as critically overcrowded if it has a student density that is 200% or more of the CDE's recommended density. For elementary schools, that translates into a density of more than 115 students per acre while for middle and high schools it translates into a density of more than 90 students per acre. The multi-track year-round calendar was introduced in California to help alleviate overcrowding. Multi-track year-round calendars allow schools to increase their seating capacity by 30% or more, by placing students into tracks and then rotating those tracks throughout the year. Thus, at any given point in time, one track is on vacation while the other tracks are attending classes.⁷⁰ Currently, approximately 804,000 students attend one of the 751 schools operating on a multi-track year round calendar.⁷¹ Districts that choose to implement a multi-track calendar are eligible for additional operational funding to compensate for the multi-tracking of students. Specifically, the Year Round Grant Program, administered by the State Department of Education, provides additional funding to districts that implement or maintain a year-round multi-track program. Funding is based on the percentage of pupils certified in excess of facility capacity. The amount of the grant increases with the percent of students housed in excess of facility capacity. For example, if 5 to 9 percent of students are housed in excess of facility capacity the maximum grant amount is \$824.50 per student in excess of capacity. If 20 to 24 percent of students are housed in excess of facility capacity the maximum grant amount is \$1,401.65 per student in excess of capacity.⁷² Districts that receive funding under the Year Round Grant program have their new construction eligibility in the SFP program reduced based on the number of pupils for whom they have received funding. Thus, school districts that participate in the program are voluntarily choosing to reduce their eligibility for new school construction funding.

Table 16 shows the percent of students in California that attend critically overcrowded or multi-track schools as of 2004-05.⁷³ Overall, approximately 16% of students are enrolled in a school that the CDE defines as critically overcrowded, while 22% of students are enrolled in a school that is either critically overcrowded or utilizes a multi-track year-round calendar.⁷⁴ As Table 16 reveals, a disproportionate number of nonwhite and low-income students attend critically overcrowded or multi-track schools. For example, while overall 16% of students attend critically overcrowded schools, only 5%

⁷⁰ See Oakes (2002) for an excellent discussion of multi-track year-round schooling.

⁷¹ Assembly Education Committee, Education Infrastructure Hearing #1, January 25, 2006.

⁷² These grant amounts are as of 2005-06. See the California Department of Education website for the latest grant amounts under the Year Round Grant Program.

⁷³ Table 16 is an update of a table created by Pastor and Reed (2005) who use data from 2002-03.

⁷⁴ These calculations were made using data from the California Department of Education on school-level enrollment in 2004-05 and the CDE's list of critically overcrowded schools and schools that operate on a multi-track year-round calendar.

of White students attend such schools while 22% of African American and 23% of Hispanic students attend these schools. Furthermore, as the last two columns of Table 16 reveal, in Los Angeles Unified nearly 80% of all students attend a critically overcrowded or multi-track school. However, unlike other school districts, critically overcrowded schools in Los Angeles Unified do not appear to enroll a disproportionate number of African American students. Specifically, while overall 78% of students in Los Angeles Unified are enrollment in a critically overcrowded school, only 70% of African American students attend such a school.

Table 17 provides the same information as Table 16 in a slightly different manner. It shows how the characteristics of critically overcrowded and multi-track schools differ from other schools. For example, in the average critically overcrowded or multi-track school, approximately 73.2% of students are eligible for free or reduced price lunch. In all other schools, that percentage is only 45.2. Overall, Table 17 reveals that critically overcrowded and multi-track schools contain much higher percentages of poor and minority students and much lower percentages of white students.

Table 18 compares the level of school facility funding among districts that contain critically overcrowded or multi-track schools to the level of funding in other districts. Facility funding is expressed in per-pupil terms and is measured as the sum of all revenue raised between 1998 and the present divided by average enrollment over the time period. Compared to districts that contain no critically overcrowded or multi-track schools, those that do, tend to have higher revenue per pupil. For example, total revenue per pupil averaged \$11,323 among the 46 districts that contained critically overcrowded schools and \$10,459 among the 107 districts that contained either critically overcrowded or multi-track schools. In comparison, total revenue per pupil averaged \$9,061 among the remaining 855 districts. Table 18 also illustrates that districts with critically overcrowded and multi-track schools tend to have higher local bond revenue per pupil and higher state aid per pupil.

While total revenue per pupil tends to be higher in districts with critically overcrowded schools, it is much higher in Los Angeles Unified, which contains nearly 50% of all schools on the CDE's critically overcrowded school list. For example, total revenue per pupil in Los Angeles Unified is nearly twice the level of other districts with critically overcrowded schools and more than twice the level of districts with no critically overcrowded or multi-track schools. Similarly, local bond revenue in Los Angeles Unified is nearly three times that of other districts with critically overcrowded or multi-track schools and more than four times that of all other districts.

While local bond revenue and total revenue tend to be higher in Los Angeles Unified, state aid tends to be lower. Between 1998 and June of 2006, Los Angeles Unified received \$2,860 per-pupil in state aid. In contrast, state aid averaged \$4,133 among all districts with critically overcrowded or multi-track schools and \$3,495 among all other districts. Recall, however, that state aid represents state funding

that has been *apportioned* to school districts for new school construction and modernization projects. When the state implemented the COS program in 2002, it allowed districts with critically overcrowded schools to reserve funding for up to five years (four years plus a possible one-year extension). As a result, a substantial proportion of the funding allocated to the COS program may not have been apportioned to school districts as of June of 2006.

The fourth row of Table 18 attempts to quantify how much additional state aid districts with critically overcrowded schools are likely to receive once they turn their preliminary (reserved) COS apportionments into actual apportionments. Specifically, the fourth row shows the per-pupil *preliminary* COS apportionments from Proposition 47 and 55. On average, districts with critically overcrowded schools stand to receive an additional \$531 per pupil in state aid once they convert their preliminary apportionments. Furthermore, funding for the COS program is not equally distributed across all districts: while Los Angeles Unified contains approximately 50% of all critically overcrowded schools, approximately 75% of all COS program funding has been reserved for Los Angeles Unified.⁷⁵ That amounts to approximately \$3,761 per pupil in additional state aid for Los Angeles Unified alone. Thus, once one considers both actual state apportionments and preliminary state apportionments for the COS program, state aid in Los Angeles Unified is substantially higher than in other districts.

8. Charter School Facility Funding

Sections 2 through 7 documented facility funding for traditional K-12 public schools in California. This section provides an overview of charter school facility funding. Charter schools face unique facility challenges for several reasons. First, unlike public school districts, charter schools can not, by themselves, issue local general obligation bonds to finance their school facility needs. Second, a majority of charter schools in California are start-ups that do not have direct access to public school facilities. Many of these start-up schools obtain facilities by leasing or renting space in office buildings and other commercial sites. For example, a survey conducted by the Rand Corporation in 2002 found that approximately 40% of start-up charter schools leased space from commercial sites, while 24% obtained facilities by either purchasing or renting a privately owned facility.⁷⁶ These schools incur leasing and rental expenses that traditional K-12 public schools do not. Third, because lending institutions view charter schools as high-risk investments, many charter schools have found it difficult to obtain the loans necessary to finance school facilities.⁷⁷ These unique facility issues have led some researchers to conclude that, “an inadequate supply of school facilities may be the single largest stumbling block to the

⁷⁵ District-level data on preliminary apportionments for the Critically Overcrowded School Program was obtained from the Office of Public School Construction.

⁷⁶ Krop and Zimmer (2005), p. 19.

⁷⁷ EdSource (2004), p. 23.

growth of charter schools.”⁷⁸ This section begins by providing an overview of the challenges faced by charter schools in obtaining school facilities. It then goes on to discuss how recent legislation and several court cases have affected the ability of charter schools to obtain adequate facilities. It ends by discussing charter school facility funding options that have recently become available.

The first charter schools were established in California in 1993 after the state legislature enacted SB 1448, the Charter Schools Act of 1992. Among other things, the Act capped the number of charter schools in the state at 100 (with no more than 10 charter schools in any single district) and prohibited private schools from being converted into charter schools. While the Act provided significant detail on the financing of current operating expenditures for charter schools it made no mention of charter school facility issues. The failure of the original legislation to address charter school facility needs stems partly from an underlying belief among its framers that charter schools would be “conversions” and utilize district facilities.⁷⁹ However, as early as 1995, nearly 50% of charter schools were start-ups with no access to existing school facilities.⁸⁰ As mentioned previously, these start-ups typically faced significant facility challenges due to rental and leasing costs and difficulties in obtaining loans to secure facilities. Furthermore, many school districts were experiencing facility shortages in the 1990’s making it difficult for them to find adequate housing for conversion charter schools. The facility problem facing charter schools became more severe when the state legislature expanded the cap on charter schools in 1998. Specifically, AB 544 increased the statewide cap on charter schools to 250 for the 1998-99 school year, and allowed the state to approve an additional 100 schools every year thereafter. Between 1993 and 2000, the number of charter schools expanded from 15 to 165 and by 2005 there were 502 charter schools operating in California. These 502 charter schools enrolled approximately 180,000 students or 3% of California’s total K-12 public school student population. As the number of charter schools increased, so did the facility problems facing those schools. According to the 2002 survey of charter schools conducted by the Rand Corporation, 62% of all charter schools surveyed stated they were struggling to finance their school facility needs.

The Ramifications of Proposition 39 for Charter Schools

The facility picture for charter schools changed considerably following the passage of Proposition 39 in November of 2000. In addition to reducing the vote requirement on local G.O. bonds from two-thirds to 55%, the proposition also required that, “each school district make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the

⁷⁸ Sugarman (2002), p. 6.

⁷⁹ EdSource (2004), p. 20.

⁸⁰ See Krop and Zimmer (2005) for a historical account of the number of start-up and conversion charter schools in California.

charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district.”⁸¹ Prior to the passage of Proposition 39, school districts were only required to allow charter schools to use a district facility if that facility was not currently being used by the district for instructional or administration purposes or if the facility had not been historically used for rental purposes. With the passage of Proposition 39, it became the legal responsibility of school districts to make all reasonable efforts to house charter school students in facilities that were essentially equivalent to those used to house in-district students. Thus, Proposition 39 substantially increased the responsibility of school districts to provide adequate facilities for charter schools.

The charter school provisions of Proposition 39 were phased in over a three-year period. For school districts that passed a bond measure before November 8, 2003, the provisions took effect in July of the year following the passage of a bond measure. For those school districts that did not pass a bond prior to November 8, 2003, the provisions took effect on that date. Furthermore, the charter school provisions of Proposition 39 only apply to charter schools with an enrollment or projected enrollment of 80 students or more. If the actual or projected enrollment of a charter school is less than 80 students, a district can deny the facility requests of the charter school. While the provisions of Proposition 39 require school districts to provide facilities for charter schools, districts are not required to use unrestricted general fund revenues to make those facilities available. In particular, section 47614 of the California Education Codes states that, “no school district shall be required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter school students.” However, if a district does choose to use unrestricted general fund revenue, the district may charge the charter school a “pro rata share” of the facility costs. The pro rata share is based on the ratio of space allocated by the school district to the charter school divided by the total space of the district. If the district uses any other source of revenue (e.g. local bonds or state aid) to finance the cost of charter school facilities, the charter school could not be charged for those costs.

While the intent of Proposition 39 was to ensure that public school facilities were shared fairly among all students, including those enrolled in charter schools, the meaning of “fair” quickly became a matter of contentious debate. The debate may have culminated when the Fifth District Court of Appeals in California ruled that, “charter school students are district students and that school district may not discriminate against charter school students when it comes to providing facilities.”⁸² The court’s ruling stems from the case of *Ridgecrest Charter School v. Sierra Sands Unified District*. In September of 2002

⁸¹ California Education Code, Section 47614.

⁸² California Charter School Association, July 1, 2005.

Ridgecrest Charter School filed a Proposition 39 request for district facilities within Sierra Sands Unified District. The district responded by approving a total of nine and a half class rooms located at five different schools.⁸³ The charter school rejected the district's offer, arguing that that the offer violated the provisions of Proposition 39 because it did not provide facilities that were contiguous. Ridgecrest Charter then made a counter proposal, asking the district to make available one particular site that was currently being used primarily for nonacademic purposes. The district rejected the charter schools' proposal arguing it had made every reasonable attempt to locate and make available space at the fewest number of sites.

On July 29, 2003, Ridgecrest Charter took its case to the court and filed a complaint with the Kern County Superior Court. In its complaint Ridgecrest asked the court to uphold its right under the provisions of Proposition 39 to receive facilities that were contiguous and mandate Sierra Sands Unified to provide facilities at a single site. The presiding judge in the case ruled that Sierra Sands had not abused its discretion in allocating facilities and therefore Ridgecrest Charter was not entitled to a single site to house its students. Ridgecrest appealed and the case was remanded to the Court of Appeal, Fifth District. On June 29, 2005, the Court of Appeal overturned the lower court's ruling. In its decision, the court stated that, "a school district's exercise of its discretion in responding to a Proposition 39 facilities request must comport with the evident purpose of the Act to equalize the treatment of charter and district-run schools with respect to the allocation of space between them."⁸⁴ The decision goes on to say that the court interprets the meaning of "reasonably equivalent" and "fairly shared" to mean that, "to the maximum extent practicable, the needs of the charter school must be given the same consideration as those of the district-run schools, subject to the requirement that the facilities provided to the charter school must be contiguous."⁸⁵ While the court realized that Ridgecrest's facility requests would most likely cause "considerable disruption and dislocation among the District's students, staff, and programs," it nevertheless ruled that the provisions of Proposition 39 required that districts share their facilities fairly with charter school students.

Technically, the court's decision in *Ridgecrest Charter School v. Sierra Sands Unified District* applies only to those school districts located in the Fifth Appellate district of California. However, the decision is likely to affect school districts throughout the state as charter schools become more aggressive in pursuing their Proposition 39 facility requests. For example, a survey of charter schools conducted by EdSource in early 2005 revealed that among the 135 charter schools that submitted Proposition 39 requests for facilities to their districts, 53 (or 39%) of those schools reported that they did not receive

⁸³ *Ridgecrest Charter School v. Sierra Sands Unified School District*, 130 Cal.App.4th 986, 30 Cal.Rptr.3d 648; hereafter *RCS v. Sierra Sands Unified*.

⁸⁴ *RCS v. Sierra Sands Unified*, pp. 15.

⁸⁵ *RCS v. Sierra Sands Unified*, pp. 15.

satisfactory facilities in response to their request or through continued negotiations.⁸⁶ Some of those charter schools have now filed lawsuits to address their facility needs. For example, in December of 2005, two charter schools located in San Diego Unified filed a complaint with the San Diego Superior Court arguing that the district had failed to uphold the provisions of Proposition 39 to provide their students with adequate facilities. While it is still too early to fully evaluate the impact of Proposition 39 on the facility needs of charter schools, there is little question that the proposition has fundamentally altered the facility predicament faced by these schools.

Facility Funding for Charter Schools

In addition to passing Proposition 39, California has also implemented several programs designed to increase funding for charter school facilities. These include the Charter School Facilities Program (CSFP), which is financed with bond revenue from Propositions 47 and 55, the Charter School Revolving Loan Fund (CSRLF), the Charter School Facility Grant Program (CSFGP), and the Charter School Facilities Incentive Grants Program (CSFIGP) which is funded primarily by the federal government. This section concludes by discussing each of these programs in turn.

Assembly Bill 14 enacted in 2002 established the Charter School Facilities Program (CSFP) as a pilot program to assist charter schools in obtaining adequate school facilities. The program allows charter schools or charter school granting authorities to apply for preliminary apportionments (reserve funds) for new school construction projects. Prior to the establishment of the CSFP, charter schools wishing to access state bond revenue for facilities projects had to petition their school districts to include them on applications for state funding. According to EdSource and the Office of Public School Construction, only five new construction projects and four modernization projects received funding prior to the establishment of the CSFP. The CSFP was originally funded with \$100 million of Proposition 47 bond revenue. With the passage of Proposition 55 in 2004, the program received an additional \$300 million in funding.

The CSFP allows districts to obtain funding for new school construction projects directly or through the school district where the charter school is located.⁸⁷ The program currently does not provide funding to charter schools for modernization projects nor does it provide funding to schools offering non-classroom based instruction.⁸⁸ To be eligible for funding, a charter school must demonstrate that the district in which it is physically located is eligible for new school construction. Recall that under the

⁸⁶ EdSource surveyed the universe of charter schools operating in California as of the 2004-05 year. 92% of all charter schools responded to the survey.

⁸⁷ State Allocation Board and the California School Finance Authority, "Charter School Facility Funding: Joint Report to the Legislature," July 2005.

⁸⁸ If approved by voters this November, Proposition 1D would expand Charter School Facilities Program to include modernization funding.

School Facility Program this amounts to providing evidence that existing seating capacity is insufficient to house existing students or anticipated students using a five-year projection of enrollment.⁸⁹ Similar to other programs funded through the School Facility Program, state aid is provided on a 50/50 state and local matching basis. Thus, charter schools wishing to access funds in the CSFP must provide 50% of a project's cost. Charter schools have the option of meeting the 50% match either as a lump sum or by entering into lease agreement with the state for a period of up to 30 years. To qualify for funding, a charter school must demonstrate to the California School Finance Authority that it is financially sound and is capable of meeting the required 50% local matching contribution.

Similar to the Critically Overcrowded School Program, the CSFP allows charter schools to receive preliminary apportionments for new school construction projects. A preliminary apportionment is essentially a reservation of funds which provides a charter school with more time to find an appropriate location for a new school construction project and to obtain the necessary approvals from the California Department of Education and the Division of the State Architecture. Charter schools have up to four years to convert their preliminary apportionments into a final apportionment.

In the original round of funding, which consisted of \$100 million in Proposition 47 bond revenue, the Office of Public School Construction received 17 applications that were eligible for funding. Given the limited funding available, only six of those projects were able to be funded. As a result of this shortfall in funding, the state legislature enacted SB 15 in 2003. The new legislation revised the CSFP regulations to include caps on charter school project funding. Specifically, the new legislation limited the number of per pupil grants that could be requested, the maximum acreage allowed for site acquisition, and total project costs. Because of these caps, in the second round of funding the State Allocation Board was able to fund 28 out of 34 eligible projects.⁹⁰ Table 19 lists the CSFP per-pupil grant amounts and the caps on funding. When the number of eligible project applications exceeds the total amount of funding available in the CSFP, preliminary apportionments are rationed so that they are representative of: (1) various geographical areas in the state, (2) various grade levels served by charter schools, (3) urban, rural and suburban areas of the state, and (4) large, medium and small charter schools. Within each of those areas, preference is given to charter schools located in districts with large percentages of students eligible for free or reduced price lunch, those located in districts with overcrowded schools, and nonprofit charters.

⁸⁹ If the district where the charter school is, or will be, located has not established new construction eligibility, the charter school must submit the appropriate documentation establishing eligibility at the time it submits its application for a principle apportionment to the OPSC.

⁹⁰ State Allocation Board and the California School Finance Authority, "Charter School Facility Funding: Joint Report to the Legislature," July 2005.

In addition to the CSFP, the State also administers a number of loan and grant programs designed to assist charter schools in obtaining adequate facilities. The first such program was established in 1996 when the state legislature created the Charter School Revolving Loan Fund (CSRLF). The program provides low-interest loans of up to \$250,000 for non-conversion charter schools.⁹¹ Schools can receive more than one loan as long as the total amount received does not exceed \$250,000 over the lifetime of the charter school but any given loan must be repaid within five years. Charter schools that are incorporated may borrow directly from the CSRLF, all other charter schools must request a loan through their charter-granting authority. Charter schools can use the proceeds of a loan to help meet any of the objectives outlined in their charter, including the leasing of facilities and the costs of facility improvements.

In 2001, the state legislature created the Charter School Facility Grant Program (CSFGP) to provide charter schools with assistance for facilities rent and leasing costs. To be eligible for a grant, 70% of the students enrolled in a charter must be eligible for free or reduced price meals or the charter school must be located in district where at least 70% of all students are eligible for free or reduced price meals. In addition, conversion charter schools and those that have received reasonably equivalent facilities through a Proposition 39 request are not eligible for a grant. The program allows districts to receive a reimbursement of up to \$750 per pupil for rental and leasing expenditures but no more than 75% of the charter school's total annual rental and leasing cost. Since the program's inception in 2001, the state legislature has appropriated \$22.2 million for the program.

Finally, the Charter School Facilities Incentive Grants Program (CSFIGP) is also designed to provide charter schools with assistance for facility costs. The CSFIGP was implemented in 2005 shortly after the California School Finance Authority (CSFA) was awarded a grant of \$49.25 million from the U.S. Department of Education to assist charter schools in obtaining the adequate school facilities. The proceeds of the grant are to be allocated over a five year period. Grant awards can be used to cover a charter school's rent, lease, mortgage or debt service costs, or for the costs associated with the purchase, design and construction of facilities.⁹² Similar to the Charter School Facility Grant Program, the CSFIGP allows districts to receive a reimbursement of up to \$750 per pupil for rental and leasing expenditures but no more than 75% of the charter school's total annual rental and leasing cost. Furthermore, no grant may exceed \$250,000 per year, with a maximum grant period of three years. The CSFIGP also provides per-pupil grants for the construction and renovation of school facilities. Charter schools are awarded \$1,000 per pupil to cover up to 75% of the annual costs of eligible construction projects. Individual project

⁹¹ The discussion in the text describes the CSRLF program as amended in 2000. Under the original legislation the maximum grant available was \$50,000. Furthermore the proceeds of the loan had to be used within the first year of operation and repaid within two years.

⁹² California School Finance Authority, Text of Regulations, Charter School Facilities Program – Implementation of State Charter School Facilities Incentive Grant Program. Full text is available at: http://www.treasurer.ca.gov/csfa/charter/2005/pgm_regulations.pdf.

grants are limited to a maximum of \$500,000 per year, with a maximum grant period of three years. To qualify for a grant, a charter school must be in good standing with its chartering authority and have completed at least one year of instructional activity.⁹³ Funding priority for CSFIGP grants is based on a preference point system. Specifically, charter schools receive preference points based on: (1) the percentage of free or reduced price students attending a school (maximum of 40 points), (2) location in an overcrowded school district (maximum 40 points),⁹⁴ and (3) whether the school is a nonprofit entity (20 points).

9. Discussion

Sections 2 through 8 of this report documented various aspects of school facility funding in California and examined how revenue for new school construction and modernization projects is distributed across school districts. This final section provides a review of some of the major findings in each section and links those findings to research reports that have recommended various changes to the current system of school facility finance in California.

A Predictable and Consistent Method of Financing School Facilities

Sections 2 and 3 documented the history of school facility finance in California and examined how the level of school facility funding has changed over time. Those sections revealed that California's system of school facility finance has changed frequently and that facility spending has fluctuated quite dramatically over time. While several factors are responsible for the dramatic fluctuations in facility spending, one factor stands out; namely, the irregular nature of statewide school facility bond issues. Several recent reports have suggested the state develop a more consistent and predictable method of financing school facilities. For example, in her 2001 report entitled, "A New Blueprint for California School Facility Finance," Legislative Analyst, Elizabeth Hill, notes:

State bonds are usually fully depleted before additional funds are authorized by voters, leaving "hills and valleys" of revenue availability. This unpredictability in state funding impairs district capacity to plan, build schools, and raise supplementary local funds.⁹⁵

Similarly, in its 2002 report, the Joint Legislative Committee to Develop a Master Plan for Education notes:

... there is no doubt that the current model of funding for public school facilities in California is unresponsive to the planning and funding needs of school districts, and, therefore, results in the

⁹³ In addition, charter schools receiving funding through the Charter School Facility Program are ineligible for grants.

⁹⁴ The preference points are based on the percentage overcrowded, which is calculated by dividing the number of unhouseed students in a district by the district's current enrollment.

⁹⁵ Legislative Analyst's Office (2001), p. 4.

inefficient use of resources for facilities. In particular, reliance on state General Obligation bonds and the current method of allocating bond proceeds has created a system that has not been conducive to long-term planning for school facility needs at the local level, and that fails to ‘leverage’ or encourage the development of local sources of funding for school capital outlay needs.⁹⁶

Reports issued by Cohen (1999), PolciyLink and MALDEF (2005), the Little Hoover Commission (2000), and the California Performance Review Commission (2004) all reach a similar conclusion.

Each of the reports mentioned above provides a slightly different recommendation on how to address the issue but all suggest that the state develop a more predictable and consistent method of financing school facilities. For example, both the LAO report and the Master Plan for Education report call for replacing the current system with a new system that would provide school districts with annual per-pupil allocations from the state General Fund to finance school facility needs.

The irregular nature of statewide school facility bond issues and the “hills and valleys” of revenue availability may also be partly responsible for some of the recent increases in school construction costs. In particular, because statewide bond issues occur infrequently and tend to be quite large when they do occur, school construction costs may rise following a bond issue. In essence, funding school construction with infrequent and large G.O. bond issues causes the demand curve for school construction to shift right following a statewide bond issue. If the supply of school construction is fixed or relatively inelastic, this would lead to a relatively large increase in construction costs due to increased demand. While there are no research reports that document a significant link between construction costs and the passage of statewide bond issues, there is plenty of anecdotal evidence that suggests construction costs have risen significantly since the passage of Proposition 1A and Propositions 47 and 55. Thus, moving towards a more predictable and consistent method of funding school facilities may also have the (positive) unintended consequence of reducing construction costs.

Unifying State Oversight of School Facility Projects

Section 4 of this report provided an overview of the School Facility Program which was established in 1998 following the passage of AB 50. As noted in that section, the SFP was designed to stream-line the application process and simplify the overall structure of the state’s school facilities program. Several reports, including Cohen (1999) and the Little Hoover Commission (2000), suggest that the state has made significant progress in streamlining the regulatory process and improving the transparency and efficiency of the state’s school facility program. Nevertheless, these reports have called for streamlining the state’s school facility approval process even further. For example, in its 2004 report, the California Performance Commission notes:

⁹⁶Joint Legislative Committee to Develop a Master Plan for Education (2002), p. 172.

The state's multi-billion dollar investment in local school buildings involves a cumbersome, duplicative and time-consuming multi-agency approval process that fails to review important elements of the projects. The state needs a facility approval process that ensures the safety and financial security of school sites and construction, without delaying or adding cost to a project.⁹⁷

Reports issued by the Little Hoover Commission (2000) and the Pacific Research Institute (2004) come to similar conclusions.

The concerns raised in these reports revolve around the fact that school districts must interact with multiple state agencies when seeking approval for new school construction and modernization projects. For example, as noted in section 4, in order to obtain funding for facilities projects, school districts must obtain approval from a minimum of six state agencies. In addition, the Department of General Services' website notes that, "seven other State agencies operate approximately 40 programs that also may become involved under certain conditions. The number of entities involved can make the process of building or remodeling a school extremely complex and time-consuming." Based on these facts, the Little Hoover Commission (2000) and the California Performance Committee (2004) have called for unifying state oversight of school facility projects. Both reports call for creating a single state agency (or the functional equivalent thereof) that would serve as the point of contact for school districts.

Equalizing the Ability of School Districts to Raise General Obligation Bond Revenue

Sections 5 and 6 documented the size and distribution of school facility revenue between 1998 and the present. Those sections revealed that funding for school facility projects varies widely across districts. Some of the variation can be explained by differences across districts in need. For example, districts with higher enrollment growth and those that have not invested heavily in school infrastructure in the recent past, tend to have significantly higher levels of facility funding. However, section 6 also highlighted the fact that facility funding tends to vary systematically with district property wealth. In particular, districts with higher assessed value per pupil tend to have significantly higher local bond revenue per pupil and consequently higher total revenue per pupil.

The relationship between assessed value and the ability of school districts to raise general obligation bond revenue was the primary focus of a 1986 report on school facilities prepared by the Legislative Analyst's Office. The report, which was written just prior to the passage of Proposition 46, highlighted a potential problem with the state legislature's 1986 proposal to reinstate the authority of local school district to raise local bond revenue. Specifically, the report notes:

One potential drawback of this proposal, however, is that it could violate the principles on which the Supreme Court's decision in the *Serrano v. Priest* case was based. This is a legitimate

⁹⁷ California Performance Review (2004), Vol. 4, p. 899.

concern. School districts with considerable property tax wealth could raise large amounts for school facilities by imposing a very low tax rate, while school districts with less property tax wealth would not be able to raise sufficient funds even with a very high tax rate.

In *Serrano v. Priest*, the California Supreme Court ruled that differences across district in spending per pupil could not be significantly related to differences in property wealth. Although, the issue at hand in that case was the relationship between *current* spending and property wealth, it seems apparent that the LAO was concerned that a similar argument could be made for the relationship between *capital* (infrastructure) spending and property wealth. To illustrate the LAO's point, consider two unified districts, one with an assessed value per pupil of \$191,000 (approximately the 10th percentile of assessed value per pupil among unified districts in 2005), and the other with an assessed value per pupil of \$1,204,000 (approximately the 90th percentile of assessed value). If both districts impose a tax rate of 0.06% (the maximum allowed), the first district would raise \$115 per pupil in local bond revenue while the second district would raise \$722.⁹⁸ Thus, even though the two districts impose the same tax rates, the second district can raise nearly seven times more revenue.

In its 1986 report, the LAO suggested the state implement a guaranteed tax yield system to address such differences in the ability of local districts to raise revenue through local general obligation bond issues. As noted by de Alth and Rueben (2005), under such a system, the state would guarantee that any given tax rate provided all districts with the same amount of revenue. Specifically, the state would provide a schedule listing a guaranteed yield per pupil from any given tax rate. State aid would then be used to "top off" the revenue raised by low-wealth districts from a given tax rate. Thus, the system would be based on variable state matching rates with low-wealth districts receiving higher levels of state aid than high-wealth districts. A similar type of program was suggested by the LAO in its 2001 report on school facility finance.⁹⁹

Expanding the Definition of Critically Overcrowded Schools

Section 7 examined how the characteristics of critically overcrowded and multi-track schools differed from other schools. It also examined how school facility funding in districts that contain critically overcrowded and multi-track schools compares to other districts. The section illustrated that critically overcrowded and multi-track schools tend to enroll significantly higher proportions of

⁹⁸ Under the guidelines set forth by Proposition 39, unified districts are prohibited from proposing, on any single ballot, a tax increase of more than \$60 per \$100,000 of assessed valuation, implying a tax rate of 0.06%.

⁹⁹ In its 2001 report, the LAO suggested an "ability-to-pay" adjustment program. Under such a system, the state would target revenue to districts with the least ability to raise revenue through local general obligation bonds and developer fees. Specifically, the state would fund the difference between some set standard of revenue per pupil and the amount of revenue a district could raise by imposing the maximum allowable tax rate and collecting developer fees at the maximum rate allowed by law.

disadvantaged and minority students. It also showed that districts that contain critically overcrowded schools tend to receive substantially higher facility funding, particularly Los Angeles Unified. In its 2005 report on ending overcrowding in California's public schools, PolicyLink and MALDEF note that the Critically Overcrowded Schools (COS) Program, which was implemented in 2002, has made progress in addressing the problem of overcrowding. Nevertheless, the report also outlines some potential concerns with the COS program. Specifically, the report notes that the standard used by the CDE to define critically overcrowded schools is quite high: a school must have a student density that is at least 200% of the CDE's recommended density. Furthermore, the report goes on to note:

... while density is considered a good measure of overcrowding, using density alone is inadequate in describing the full extent of the problem. California schools that use temporary approaches to increase school capacity, such as multi-track year-round education calendars, busing, and portable classrooms—practices that are strong indicators of school overcrowding—are not fully captured under the state definition. Portable classrooms are usually counted as permanent classroom space, bused students are not counted in the schools they should attend but are unable to because there is no room for them, and the presence of multitrack year-round calendars is not seen as an indication of overcrowding. The COS program should strive to broaden its definition and capture the schools that use such strategies.¹⁰⁰

Recently, the state legislature has taken action to address some of the concerns raised by PolicyLink and MALDEF. In particular, AB 127, the Kindergarten-University Public Education Facilities Bond Act of 2006, contains \$1 billion in funding for Overcrowding Relief Grants. The grants would enable districts to reduce the number of portable classrooms on overcrowded school sites and replace them with permanent classrooms.¹⁰¹ To be eligible for a grant, a school district must contain schools with a student density that is 175% or more of the CDE's recommended density. The Act allows districts to exclude portable classrooms from the count of existing capacity for the purpose of establishing eligibility for new school construction.¹⁰² Thus, the Act addresses (at least to some degree) two of the concerns raised by PolicyLink and MALDEF: it reduces the density threshold for participating in the program from 200% of the CDE standard to 175% of that standard and it excludes portable classrooms from a district's calculation of existing capacity. According to the Legislative Analyst's Office, under the definition of overcrowding used by the Overcrowding Relief Grants program, approximately 1,800 schools (20 percent of all schools) would be eligible for funding.¹⁰³

While AB 127 addresses some of the concerns raised by PolicyLink and MALDEF, it does not address their concerns regarding schools that utilize multi-track year-round schooling or busing to relieve

¹⁰⁰ PolicyLink and MALDEF (2005), p. 6.

¹⁰¹ State Allocation Board, Implementation Committee Meeting, July 21, 2006.

¹⁰² Portable class rooms used for the Class Size Reduction Program may not be excluded from the calculation of existing capacity.

¹⁰³ Legislative Analyst's Office (July 2006), p. 3.

severe overcrowding. An older version of AB 127, namely AB 58, did contain language that would have allowed school districts access to state funds to “provide permanent school facilities for pupils in multi-track year round programs or pupils on double-session.”¹⁰⁴ However, the provision was eliminated from the final version of AB 127.¹⁰⁵ Other recent legislation has taken action to eliminate the most extreme form of multi-track year-round schooling, commonly known as Concept 6. Relative to other multi-track year round programs, the Concept 6 program provides the maximum enrollment given a school’s capacity and has the potential to increase the seating capacity of a school by 50%.¹⁰⁶ However, this increased capacity comes at a cost. Students that attend schools operating on a Concept 6 calendar receive only 163 days of instruction. Students attending schools that operate on a traditional calendar or any other multi-track year round calendar receive 180 days of instruction. As of 2004-05, 152 schools were operating on a Concept 6 year-round calendar and of those 128, or 84%, were located in Los Angeles Unified.¹⁰⁷ AB 1550, enacted in 2004 prohibits a school district from operating a Concept 6 program unless the district operated such a program continuously since the 2003-04. The bill also prohibits the operation of a Concept 6 program after July 1, 2012.

Adapting to Changing Enrollment Trends

The annual growth rate of student enrollment in California has been steadily declining since the mid-1990’s and is projected to continue declining until about 2009 or 2010. Furthermore, according to projections made by the California Department of Finance, between 2005-06 and 2014-15 total student enrollment in California is predicted to increase by only 191,042 students or approximately 3%. In light of this trend of slowing enrollment growth, the Legislative Analyst’s Office has suggested the state allocate a larger fraction of any future statewide bond issues towards modernization of existing school facilities and a smaller fraction towards new school construction.¹⁰⁸ Proposed funding for the Kindergarten-University Public Education Facilities Bond Act of 2006 is consistent with the LAO’s recommendation. In particular, if approved by voters this November, the Act would provide \$3.3 billion for modernization projects versus \$1.9 billion for new school construction projects. In contrast, bond revenue from Propositions 47 and 55 provided 3.7 billion for modernization projects and \$8.8 billion for new school construction.

¹⁰⁴ Assembly Bill 58, Amended in Assembly January 4, 2006. Full text available at: http://info.sen.ca.gov/pub/bill/asm/ab_0051-0100/ab_58_bill_20060104_amended_asm.pdf

¹⁰⁵ In 2002, the state legislature also considered making funding for districts that utilized multi-track year-round schooling programs a priority for the Critically Overcrowded Schools program. See Coalition for Adequate School Housing New Archives, February 15, 2002.

¹⁰⁶ Oakes (2002), p. 6.

¹⁰⁷ In 2004-05, approximately 4% of all students were enrolled in a school operating on a Concept 6 year-round calendar. Source: California Department of Education list of schools operating on a multi-track year-round calendar.

¹⁰⁸ Legislative Analyst’s Office (February 2006).

Creation of a Statewide School Facility Inventory System

Finally, sections 5, 6, and 7 of this report alluded to an important problem facing California's system of school facility finance: the state lacks a coherent definition of what it means for a school to have adequate facilities and it lacks a statewide school facility inventory system. As Pastor and Reed (2005) note:

Perhaps the most fundamental barrier to an equitable distribution of school bond funds is the lack of a comprehensive school facilities assessment. The state simply does not have the information to compare schools and identify the greatest facility needs.

Reports issued by the Little Hoover Commission (2000), the Joint Legislative Committee to Develop a Master Plan for Education (2002), the Legislative Analyst's Office (2001), and PolicyLink and MALDEF (2005) echo a similar concern.

Although the state currently lacks a comprehensive school facilities assessment, it is making progress towards resolving this issue. As part of the Williams settlement, the state has begun work on implementing a school facilities needs assessment program. Specifically, beginning in 2005-06, SB 550 requires school districts that participate in the SFP and the Deferred Maintenance Program to establish a Facilities Inspection System (FIS) and to ensure that all schools within the district are in "good repair" (i.e. clean, safe and functional).¹⁰⁹ SB 550 also charged the Office of Public School Construction with developing an evaluation instrument that could be used by school districts to identify if a school facility is in good repair. This instrument is to be used by school districts on an interim basis until the state legislature adopts a permanent standard for good repair. Those statewide standards must be adopted by the legislature and governor no later than September 1, 2006. Although, the final form of these statewide standards has not been fully established, the Office of Public School Construction made the following suggestion in March of 2006:

... the State standard for good repair should be described in statute in narrative form, of moderate detail, and be composed of the assessment of more than a dozen school components. Statute should also require that an evaluation tool be developed and maintained by the OPSC or another State agency and it should be designed to accommodate a rating and scoring system.¹¹⁰

While it is too early to tell how the implementation of a state standard for good repair will affect school facility finance in California, it nevertheless represents a significant step forward.

¹⁰⁹ According to the Office of Public School Construction, nearly 89% of school districts participate in the SFP or Deferred Maintenance Program. Thus, the vast majority of California's school districts will be required to implement a Facilities Inspection System.

¹¹⁰ Office of Public School Construction (2006), p. 1.

Tables and Figures

Figure 1
California per Pupil School Infrastructure Spending, 1960-2005

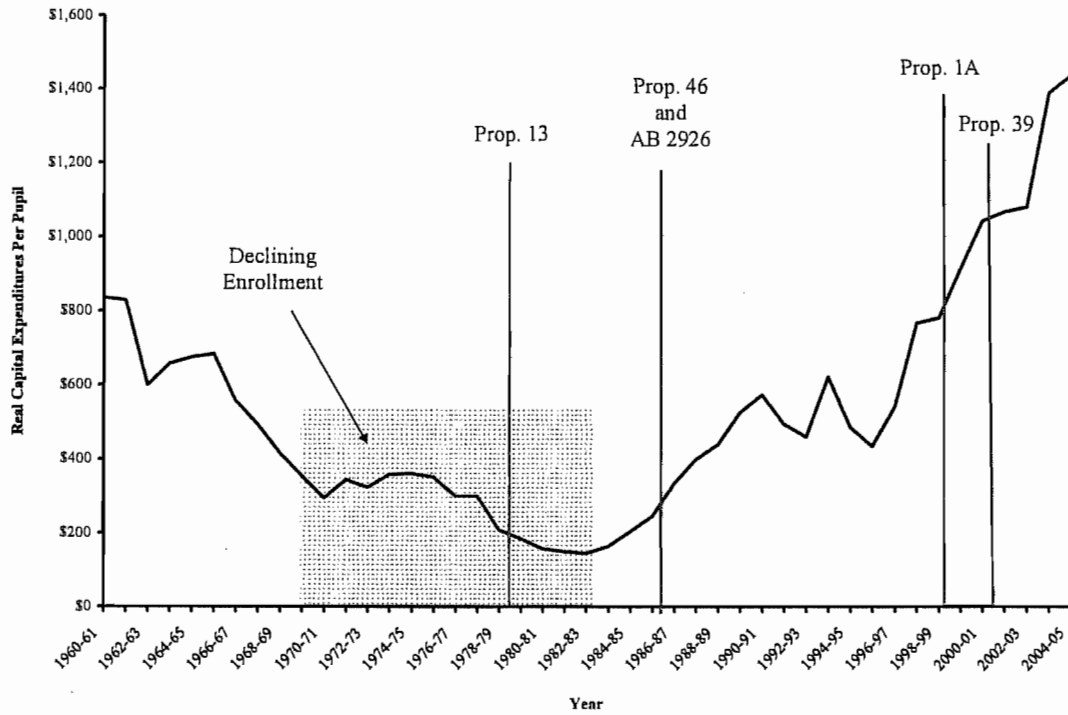


Table 1
State K-12 Education General Obligation Bonds, 1949-2005
(\$ millions)

Years	No. proposed	No. passed	Amount proposed	Amount passed	Real amount passed (2005 \$)
1949-60	5	5	1,055	1,055	5,977
1961-70	3	3	735	735	3,772
1971-80	4	2	1,050	500	1,829
1981-85	2	2	950	950	1,571
1986-90	5	5	4,000	4,000	5,885
1991-95	3	2	3,800	2,800	3,662
1996-00	2	2	8,725	8,725	10,204
2001-05	2	2	21,400	21,400	23,316
Total	26	23	\$41,715	\$40,165	\$56,215

Table 2
Local K-12 Education General Obligation Bonds, 1986-2005
(\$ millions)

Years	No. proposed	No. passed	Amount proposed	Amount passed	Real amount passed (2005 \$)
1986-90	124	65	2,730	1,334	1,944
1991-95	292	128	8,499	3,603	4,613
1996-00	444	282	23,039	14,127	16,441
2001-05	355	285	28,621	26,091	28,058
Total	1,215	760	\$62,889	\$45,155	\$51,056

Figure 2
Facility Spending per Pupil: CA versus the U.S., 1988-2004

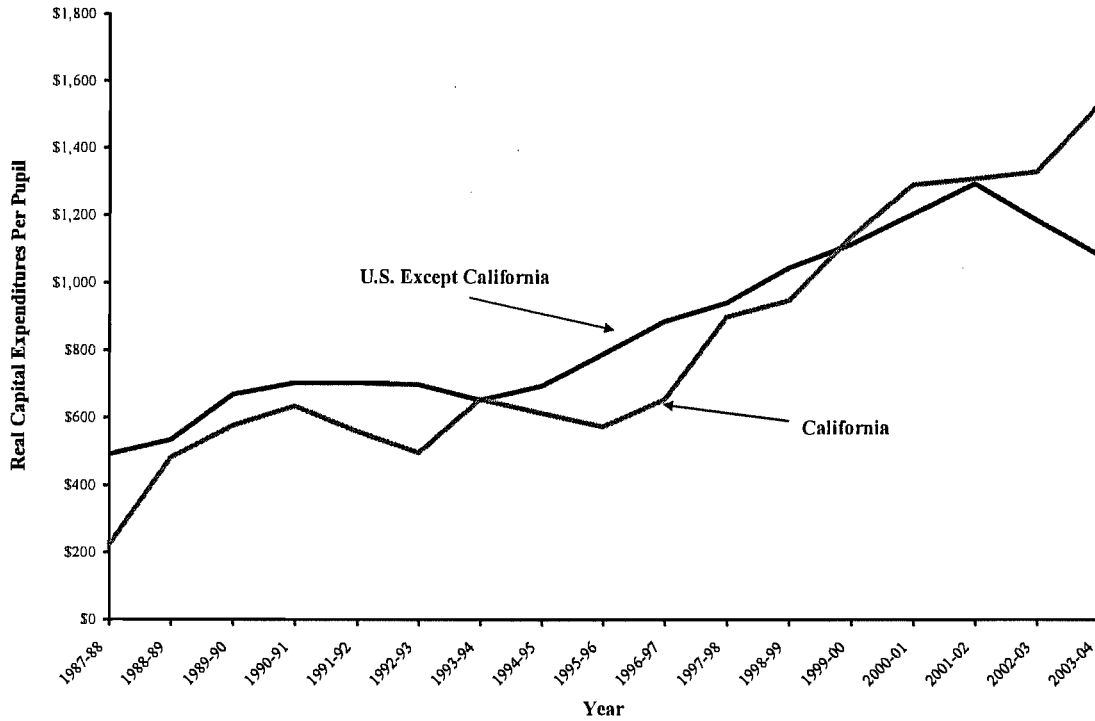


Table 3
State Comparisons of Facility Spending per Pupil, 1988-2004

Period	U.S. Except CA	CA	CO	FL	NJ	TX	WA
1988-92	\$620	\$495	\$698	\$1,076	\$520	\$596	\$1,267
1993-96	\$708	\$585	\$886	\$1,114	\$744	\$833	\$1,196
1997-00	\$996	\$909	\$1,166	\$1,148	\$1,058	\$1,168	\$1,199
2001-04	\$1,192	\$1,364	\$1,193	\$1,371	\$1,354	\$1,348	\$1,253
1988-04	\$864	\$818	\$969	\$1,172	\$895	\$963	\$1,231
Enrollment Growth 1988-04	18.6%	42.9%	35.2%	55.4%	26.3%	33.8%	31.7%

Figure 3
New School Construction and Modernization Funding Process

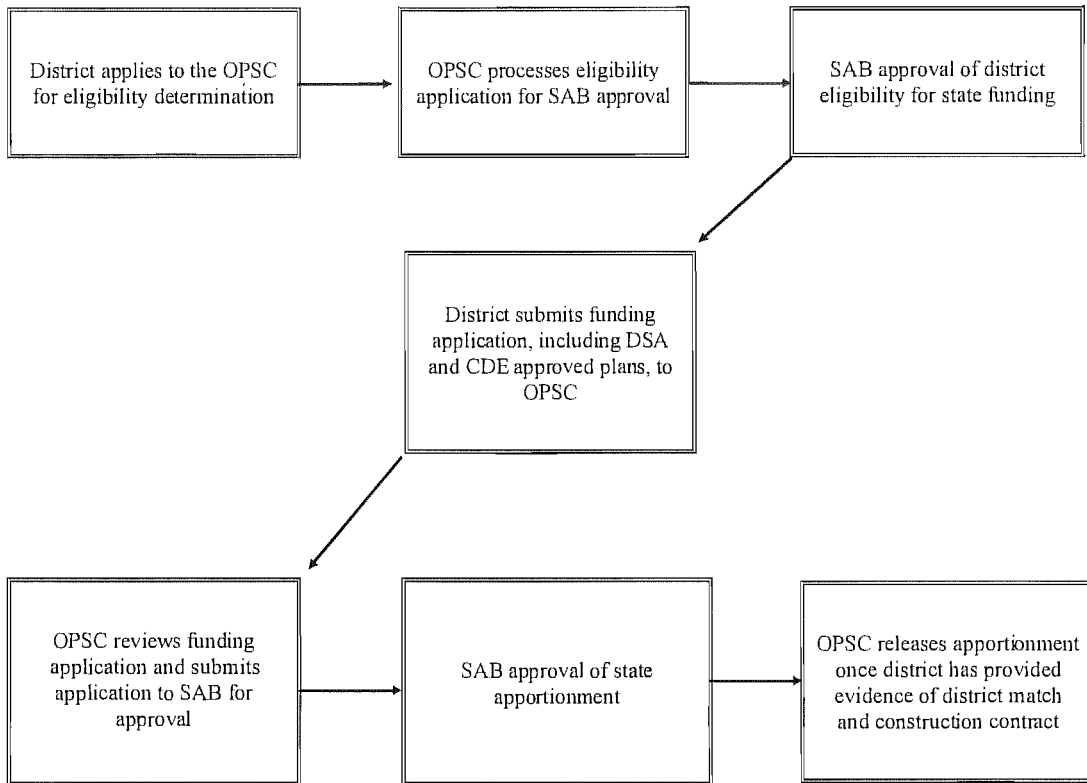


Table 4
New School Construction Grant Amounts

Type of Student	Per-Pupil Grant Amount
Elementary	\$7,082
Middle School	\$7,490
High School	\$9,805
Special Day Class – Non-Severe	\$15,096
Special Day Class – Severe	\$22,572

**Table 5
Modernization Grant Amounts**

Type of Student	Buildings 25 years old or older but less than 50 years old.	Buildings 50 years old or older.
Elementary	\$3,059	\$4,249
Middle School	\$3,236	\$4,494
High School	\$4,236	\$5,884
Special Day Class – Non-Severe	\$6,521	\$9,056
Special Day Class – Severe	\$9,746	\$13,543

**Figure 4
COS Program Funding Process**

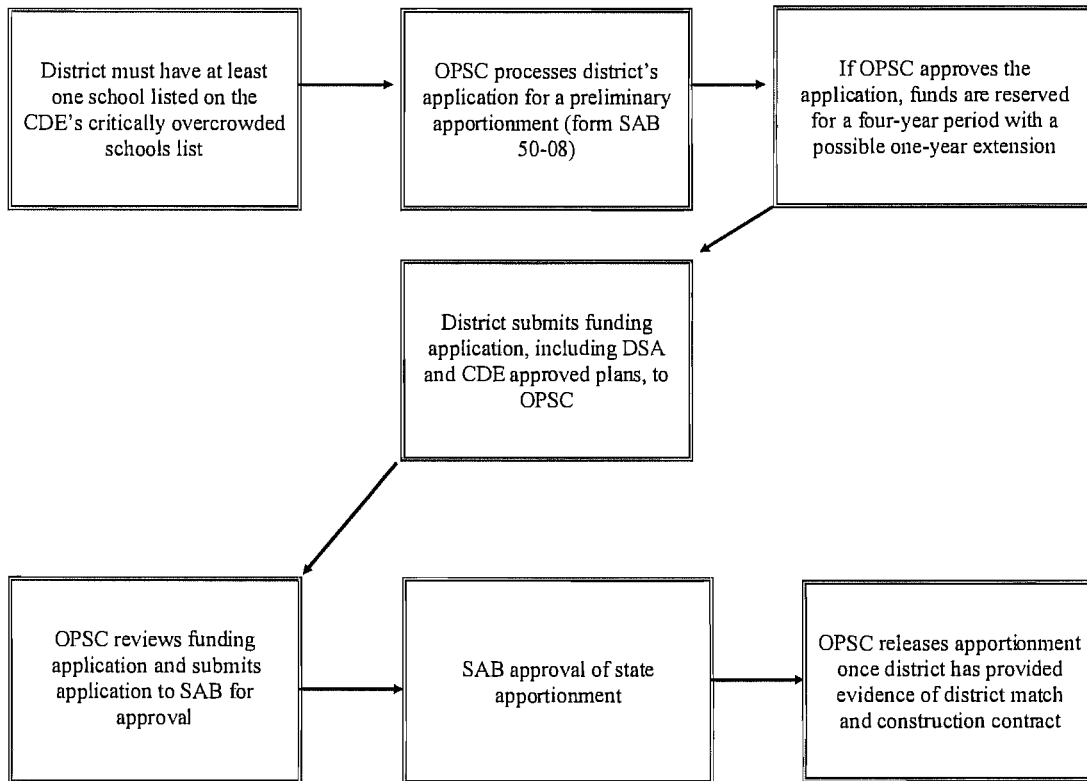


Table 6
Sources of Revenue for School Construction and Modernization, 1998 – Present

Source	Total Revenue (\$ Billion)	Percentage
Local G.O. Bonds	38.4	53
State Aid (State Bond Apportionments)	21.9	31
Developer Fees	6.23	9
Mello-Roos and SFID's	0.71	1
Other	3.99	6
Total	71.22	100

Table 7
Revenue per Pupil by Source, 1998 – Present

Revenue Source	Unified Districts	Elementary Districts	High School Districts
Local G.O. Bonds	\$4,051	\$3,293	\$6,951
State Aid	3,496	3,429	4,735
Developer Fees	1,175	1,077	1,408
Total	9,658	8,246	13,817
Districts	331	548	83
Average Enrollment	12,896	2,127	6,273

Table 8
Distribution of Revenue per Pupil, 1998 – Present

Revenue Source	Percentiles*				
	10	25	50	75	90
Unified Districts					
Local G.O. Bonds	0	1,639	4,979	12,200	16,883
Local G.O. Bonds + State Aid	3,012	5,791	8,475	16,202	19,743
Total	4,274	7,580	10,283	18,211	20,270
Elementary Districts					
Local G.O. Bonds	0	0	1,487	4,874	7,786
Local G.O. Bonds + State Aid	663	1,913	5,752	8,806	11,643
Total	1,278	3,193	7,223	11,045	15,263
High School Districts					
Local G.O. Bonds	0	5,171	7,666	11,154	17,960
Local G.O. Bonds + State Aid	4,585	8,228	12,790	17,345	22,075
Total	6,637	10,987	14,877	22,033	26,567

* Percentiles are weighted by district enrollment.

**Table 9
Distribution of Revenue per Pupil by Quintiles of Enrollment Growth***

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than 0.8%	0.8% - 8.0%	8.1% - 9.3%	9.4% - 18.0%	Greater than 18.0%
Local G.O. Bonds	4,032	3,890	4,770	4,109	4,098
State G.O. Bonds	2,425	2,625	2,842	4,021	6,559
Total	7,960	8,319	9,031	10,143	14,725
Elementary Districts	Less than -4.0%	-4.0% - 3.6%	3.7% - 10.4%	10.5% - 21.0%	Greater than 21.0%
Local G.O. Bonds	2,715	4,897	4,956	2,226	2,534
State G.O. Bonds	2,512	2,518	3,160	4,638	5,660
Total	6,304	8,612	9,493	8,235	10,925
High School Districts	Less than 9.7%	9.7% - 17.4%	17.5% - 24.0%	24.1% - 33.7%	Greater than 33.7%
Local G.O. Bonds	4,384	8,445	8,749	7,828	8,642
State G.O. Bonds	3,937	4,402	4,709	5,114	7,980
Total	10,210	14,285	16,030	14,484	20,836

* Quintiles are weighted by student enrollment

**Table 10
Distribution of Revenue per Pupil by Quintiles of Previous Facilities Investment***

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than \$5,500	5,500 - 6,000	6,001 - 6,800	6,801 - 9,260	Greater than 9,260
Local G.O. Bonds	4,277	4,132	4,846	2,966	4,241
State G.O. Bonds	3,253	3,719	3,302	3,687	3,740
Total	9,087	9,346	10,266	8,980	10,853
Elementary Districts	Less than \$5,000	5,000 - 6,390	6,391 - 7,816	7,817 - 10,030	Greater than 10,030
Local G.O. Bonds	4,656	3,638	3,369	2,211	2,467
State G.O. Bonds	4,143	3,496	2,983	4,113	2,294
Total	9,941	8,359	7,529	8,108	6,579
High School Districts	Less than \$5,950	5,950 - 7,730	7,731 - 9,440	9,441 - 11,730	Greater than 11,730
Local G.O. Bonds	11,565	9,147	7,016	3,957	3,869
State G.O. Bonds	6,203	4,243	4,541	4,707	4,133
Total	19,575	14,994	13,261	11,559	10,702

* Quintiles are weighted by student enrollment

Table 11
Distribution of Revenue per Pupil by Quintiles of Median Household Income*

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than \$36,640	36,640 - 40,415	40,416 - 47,395	47,396 - 57,390	Greater than 57,390
Local G.O. Bonds	2,816	3,289	4,402	3,670	6,300
State G.O. Bonds	2,553	3,944	4,133	3,589	4,009
Total	6,481	9,241	11,685	9,628	12,681
Elementary Districts	Less than \$34,700	34,700 - 42,080	42,081 - 48,560	48,561 - 65,700	Greater than 65,700
Local G.O. Bonds	1,772	2,188	1,422	3,418	9,685
State G.O. Bonds	3,660	2,750	3,681	2,975	3,963
Total	6,206	6,259	6,589	7,992	16,374
High School Districts	Less than \$36,000	36,000 - 43,780	43,781 - 50,266	43,782- 67,400	Greater than 67,400
Local G.O. Bonds	4,036	4,933	7,205	8,504	17,102
State G.O. Bonds	4,323	5,813	3,344	4,455	5,520
Total	10,196	13,136	12,366	16,135	24,186

* Quintiles are weighted by student enrollment

Table 12
Distribution of Revenue per Pupil by Quintiles of Assessed Value per Pupil*

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than \$367	367.1 - 467.9	468 - 508	508.1 - 800	Greater than 800
Local G.O. Bonds	2,053	3,304	4,960	4,155	6,535
State G.O. Bonds	3,438	3,976	3,403	3,634	3,636
Total	6,889	9,200	10,277	9,702	13,507
Elementary Districts	Less than \$330	330 - 518	518.1 - 685	685.1 - 1,140	Greater than 1,140
Local G.O. Bonds	757	1,443	1,727	1,449	8,524
State G.O. Bonds	3,766	3,722	4,153	2,967	2,885
Total	5,219	6,009	6,954	5,852	13,602
High School Districts	Less than \$910	910 - 1,115	1,115.1 - 1,380	1,380.1 - 2,200	Greater than 2,200
Local G.O. Bonds	4,333	5,826	6,599	6,072	13,416
State G.O. Bonds	5,481	4,803	4,324	5,164	4,297
Total	11,983	12,172	13,166	13,059	20,156

* (1) Quintiles are weighted by student enrollment, (2) Assessed Value per Pupil is in 1,000 of dollars

Figure 5
Assessed Value per Pupil (2005) and Local G.O. Bond Revenue per Pupil

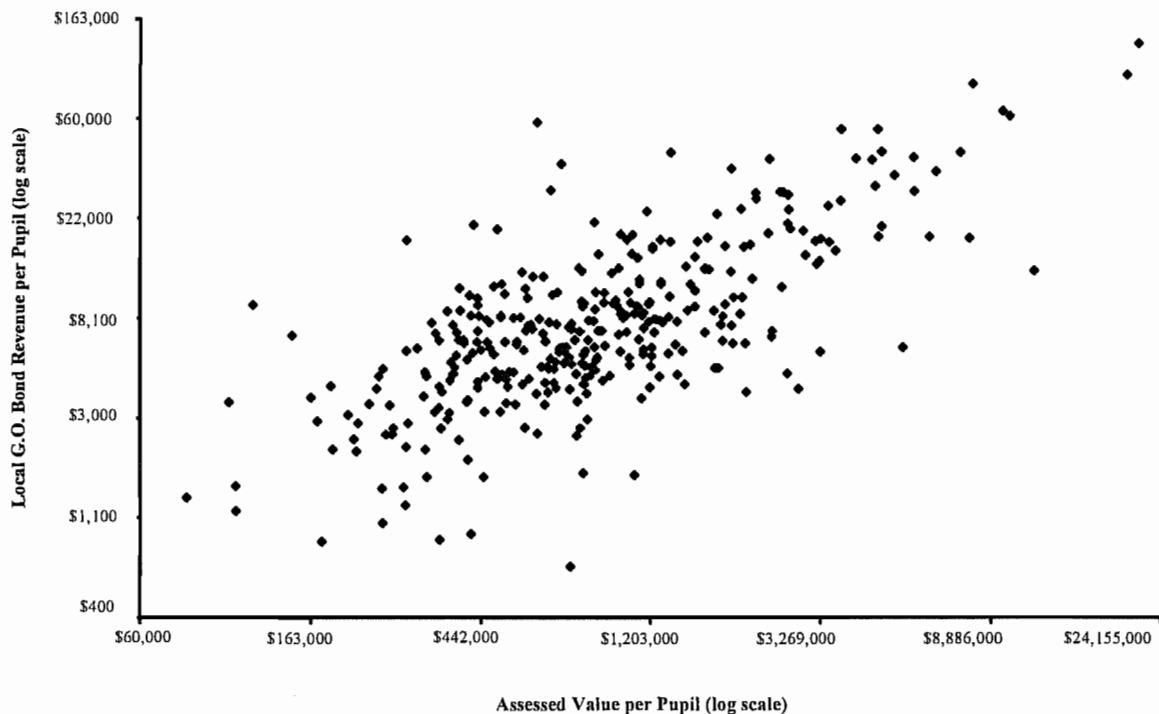


Table 13
Distribution of Revenue per Pupil by Quintiles of Percentage of Minority Students *

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than 45.0%	45.0% - 68.4%	68.5% - 83.4%	83.5% - 91.0%	Greater than 91.0%
Local G.O. Bonds	4,166	4,110	3,666	4,644	3,637
State G.O. Bonds	3,154	3,871	3,406	4,122	3,768
Total	9,556	10,364	9,469	9,944	8,821
Elementary Districts	Less than 38.0%	38.0% - 61.2%	61.3% - 77.5%	77.6% - 91.5%	Greater than 91.5%
Local G.O. Bonds	3,795	2,400	2,586	4,436	2,425
State G.O. Bonds	3,556	3,471	2,995	3,201	3,031
Total	8,791	7,840	6,918	9,001	6,215
High School Districts	Less than 44.0%	44.0% - 62.2%	62.3% - 71.0%	71.1% - 85.3%	Greater than 85.3%
Local G.O. Bonds	5,799	9,771	8,862	5,639	6,865
State G.O. Bonds	4,881	4,358	5,756	3,934	5,027
Total	12,836	16,483	18,480	10,935	12,987

* Quintiles are weighted by student enrollment

Table 14
Regression Estimates
Coefficient/(Standard Error)

Variable	Total Revenue per Pupil	Bond Revenue per Pupil	Probability of a Successful Bond Election
Assessed Value per Pupil	0.56** (0.13)	0.77** (0.06)	0.62** (0.14)
Income	0.27 (0.24)	0.20* (0.11)	-0.21 (0.29)
Enrollment Growth	0.76** (0.19)	0.17* (0.09)	0.24 (0.21)
Prior Investment	-0.46** (0.14)	-0.06 (0.06)	-0.64** (0.16)
Percent Minority	-0.03 (0.07)	0.57** (0.13)	0.70** (0.32)
Total Enrollment	0.53** (0.05)	-0.05** (0.02)	0.54** (0.07)
Elementary District	0.08 (0.15)	-0.29** (0.07)	-0.38** (0.19)
High School District	0.16 (0.23)	-0.17 (0.11)	-0.06 (0.31)
Constant	-2.11 (2.26)	-2.25** (1.10)	-4.95* (2.85)
R-Squared	0.28	0.57	0.19
Observations	904	386	904

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

Table 15
Predicted Total Revenue per Pupil

Variable	Predicted Revenue		75 th - 25 th
	25 th Percentile	75 th Percentile	
Enrollment Growth	3,144	3,741	597
Prior Investment	4,218	3,016	-1,201
Assessed Value per Pupil	2,590	4,654	2,064
Income	3,283	3,802	519
Fraction Minority	3,586	3,525	-61

Table 16
Critically Overcrowded and Multi-Track Schools, 2004-05

	All Schools		Other than LA Unified		LA Unified	
	Percent in Critically Overcrowded Schools	Percent in Critically Overcrowded or Multi-Track Schools	Percent in Critically Overcrowded Schools	Percent in Critically Overcrowded or Multi-Track Schools	Percent in Critically Overcrowded Schools	Percent in Critically Overcrowded or Multi-Track Schools
All	16	22	7	14	78	79
White	5	9	3	8	54	55
African American	22	30	12	22	70	71
Hispanic	23	30	10	18	83	84
Nonwhite	21	27	10	17	80	81
Free/Reduced Price Lunch	24	31	11	19	82	83

Table 17
Characteristics of Critically Overcrowded and Multi-Track Schools, 2004-05

	All Schools		Other than LA Unified		LA Unified	
	Critically Overcrowded or Multi-Track Schools	All Other Schools	Critically Overcrowded or Multi-Track Schools	All Other Schools	Critically Overcrowded or Multi-Track Schools	All Other Schools
White	13.2%	36.4%	18.4%	36.9%	6.2%	19.0%
African American	11.0	7.1	11.4	6.7	10.4	15.9
Hispanic	65.3	41.7	56.0	41.3	77.7	54.9
Nonwhite	86.8	63.6	81.6	63.0	93.8	81.0
Free/Reduced Price Lunch	73.2	45.2	64.7	44.7	84.5	63.7

Table 18
Facility Revenue per Pupil, Critically Overcrowded and Multi-Track Schools

Revenue Source	Districts with Critically Overcrowded Schools	Districts with Critically Overcrowded or Multi-Track Schools	All Other Districts	Los Angeles Unified
Local G.O. Bonds	5,722	4,223	3,825	16,883
State Aid	3,974	4,133	3,495	2,860
Total	11,323	10,459	9,061	20,270
COS Preliminary Apportionment	531	228	...	3,761
Number of Districts	46	107	855	1

Table 19
Charter School Facility Program Grant Amounts and Caps on Funding

<i>Per-Pupil Grant Amounts</i>	
Type of Student	Per-Pupil Grant
Elementary	\$5,870
Middle School	\$6,214
High School	\$8,116
Special Day Class – Non-Severe	\$12,509
Special Day Class – Severe	\$18,703

<i>Limit on Number of Pupil Grants Requested</i>	
Type of School	Maximum Number of Students Funded per Project
Elementary	350
Middle School	450
High School	600

<i>Limit on Amount of Funding by Geography</i>	
Type of School	Total Project Funding (\$ million)
Non-Urban Elementary	5
Non-Urban Middle School	7
Non-Urban High School	10
Urban Elementary	6.6
Urban Middle School	9
Urban High School	12.9

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Appendix

Table 1A
 Regression Estimates: Total Revenue per Pupil
 Coefficient/(Standard Error)

Variable	Unified	Elementary	High School
Assessed Value per Pupil	0.69** (0.21)	0.56** (0.17)	-0.31 (0.33)
Income	-0.55 (0.51)	0.56* (0.29)	1.40** (0.63)
Enrollment Growth	1.24** (0.37)	0.49** (0.23)	3.28** (1.39)
Prior Investment	-0.39* (0.22)	-0.43** (0.18)	-1.46** (0.46)
Percent Minority	0.08 (0.51)	-0.07 (0.08)	-0.19 (0.16)
Total Enrollment	0.51** (0.10)	0.57** (0.07)	0.16 (0.19)
Constant	4.39 (5.34)	-5.61** (2.68)	10.12** (3.77)
R-Squared	0.26	0.25	0.38
Observations	307	517	80

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

Table 2A
Regression Estimates: Local G.O. Bond Revenue per Pupil
Coefficient/(Standard Error)

Variable	Unified	Elementary	High School
Assessed Value per Pupil	0.62** (0.09)	0.75** (0.07)	0.69** (0.20)
Income	0.02 (0.16)	0.28* (0.15)	0.24 (0.38)
Enrollment Growth	0.21** (0.10)	0.10 (0.16)	0.98 (0.59)
Prior Investment	-0.06 (0.10)	-0.08 (0.09)	-0.21 (0.20)
Percent Minority	0.38 (0.24)	0.51** (0.18)	0.91** (0.34)
Total Enrollment	0.05 (0.04)	-0.12** (0.03)	-0.11 (0.07)
Constant	0.08 (1.78)	-3.29** (1.47)	-1.05 (3.54)
R-Squared	0.35	0.71	0.48
Observations	178	160	48

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

Table 3A
Regression Estimates: Probability of a Successful Bond Election
Coefficient/(Standard Error)

Variable	Unified	Elementary	High School
Assessed Value per Pupil	0.51** (0.23)	0.75** (0.19)	-0.22 (0.70)
Income	-0.79 (0.49)	-0.03 (0.39)	0.71 (1.35)
Enrollment Growth	0.34 (0.37)	0.12 (0.26)	3.81* (2.13)
Prior Investment	-0.59** (0.28)	-0.68** (0.20)	-1.42* (0.77)
Percent Minority	0.33 (0.58)	0.80* (0.42)	0.24 (0.57)
Total Enrollment	0.51** (0.11)	0.57** (0.09)	0.53* (0.32)
Constant	2.88 (4.82)	-8.91 (3.74)	4.13 (11.70)
R-Squared	0.09	0.19	0.23
Observations	307	517	80

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

ANNUAL ADJUSTMENT TO SCHOOL FACILITY PROGRAM GRANTS

Grant Amount Adjustments

New Construction / Modernization / Joint-Use	Regulation Section	Current Grant Per Pupil Effective 1-1-09	Adjusted Grant Per Pupil Effective 1-1-10
Therapy/Multipurpose Room/Other (per square foot)	1859.72 1859.73.2 1859.82 1859.125 1859.125.1	\$152	\$142
Toilet Facilities (per square foot)	1859.72 1859.73.2 1859.82 1859.125 1859.125.1	\$276	\$257
New Construction Only			
Parking Spaces	1859.76	\$11,913	\$11,110
General Site Grant (per acre for additional acreage being acquired)	1859.76	\$15,226	\$14,200
Project Assistance (for school district with less than 2,500 pupils)	1859.73.1	\$5,653	\$5,272
Modernization Only			
Two-stop Elevator	1859.83	\$95,294	\$88,871
Additional Stop	1859.83	\$17,151	\$15,995
Project Assistance (for school district with less than 2,500 pupils)	1859.78.2	\$3,013	\$2,810
Facility Hardship / Rehabilitation			
Current Replacement Cost - Other (per square foot)	1859.2	\$305	\$284
Current Replacement Cost - Toilets (per square foot)	1859.2	\$550	\$513
Interim Housing – Financial Hardship (per classroom)	1859.81	\$31,402	\$29,286
Charter School Facilities Program - Preliminary Apportionment Amounts			
Charter School Elementary	1859.163.1	\$8,882	\$8,283
Charter School Middle	1859.163.1	\$9,404	\$8,770
Charter School High	1859.163.1	\$12,282	\$11,454
Charter School Special Day Class - Severe	1859.163.1	\$28,301	\$26,394
Charter School Special Day Class - Non-Severe	1859.163.1	\$18,927	\$17,651

(Continued on Page Three)

ATTACHMENT A

**ANNUAL ADJUSTMENT TO SCHOOL FACILITY PROGRAM GRANTS
State Allocation Board Meeting, January 27, 2010**

Grant Amount Adjustments

		Regulation Section	Current Grant Per Pupil Effective 1-1-09*	Adjusted Grant Per Pupil Effective 1-1-10
New Construction	Elementary	1859.71	\$9,369	\$8,738
	Middle	1859.71	\$9,909	\$9,241
	High	1859.71	\$12,607	\$11,757
	Special Day Class – Severe	1859.71.1	\$26,324	\$24,550
	Special Day Class – Non-Severe	1859.71.1	\$17,605	\$16,418
	Automatic Fire Detection/Alarm System – Elementary	1859.71.2	\$11	\$10
	Automatic Fire Detection/Alarm System – Middle	1859.71.2	\$15	\$14
	Automatic Fire Detection/Alarm System – High	1859.71.2	\$25	\$23
	Automatic Fire Detection/Alarm System – Special Day Class – Severe	1859.71.2	\$48	\$45
	Automatic Fire Detection/Alarm System – Special Day Class – Non-Severe	1859.71.2	\$33	\$31
	Automatic Sprinkler System – Elementary	1859.71.2	\$158	\$147
	Automatic Sprinkler System – Middle	1859.71.2	\$188	\$175
	Automatic Sprinkler System – High	1859.71.2	\$194	\$181
	Automatic Sprinkler System – Special Day Class – Severe	1859.71.2	\$497	\$464
	Automatic Sprinkler System – Special Day Class – Non-Severe	1859.71.2	\$334	\$311
Modernization	Elementary	1859.78	\$3,568	\$3,328
	Middle	1859.78	\$3,774	\$3,520
	High	1859.78	\$4,940	\$4,607
	Special Day Class - Severe	1859.78.3	\$11,366	\$10,600
	Special Day Class – Non-Severe	1859.78.3	\$7,605	\$7,092
	State Special School – Severe	1859.78	\$18,950	\$17,673
	Automatic Fire Detection/Alarm System – Elementary	1859.78.4	\$114	\$106
	Automatic Fire Detection/Alarm System – Middle	1859.78.4	\$114	\$106
	Automatic Fire Detection/Alarm System – High	1859.78.4	\$114	\$106
	Automatic Fire Detection/Alarm System – Special Day Class – Severe	1859.78.4	\$318	\$297
	Automatic Fire Detection/Alarm System – Special Day Class – Non-Severe	1859.78.4	\$213	\$199
	Over 50 Years Old – Elementary	1859.78.6	\$4,955	\$4,621
	Over 50 Years Old – Middle	1859.78.6	\$5,242	\$4,889
	Over 50 Years Old – High	1859.78.6	\$6,863	\$6,400
	Over 50 Years Old – Special Day Class – Severe	1859.78.6	\$15,795	\$14,730
	Over 50 Years Old – Special Day Class – Non-Severe	1859.78.6	\$10,562	\$9,850
	Over 50 Years Old – State Special School – Severe	1859.78.6	\$26,324	\$24,550

*New Construction Elementary, Middle, and High amounts shown are as of adjustment approved February 25, 2009

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